Luxury Daily®
The News and Intelligence You Need on Luxury

RETAIL

Risks to China's growth in luxury retail

December 23, 2021

Todd Liao is partner at Morgan Lewis

By Todd Liao

China is as an integral player in luxury retail sales, accounting for 35 percent of all luxury sales across the globe.

By 2025, those sales could shoot up to 50 percent of all luxury retail revenue, according to Bain Analytics.

But new regulations that aim to address financial disparity and personal privacy in China could have a major impact on international sales for luxury brands.

"Common Prosperity" initiative
President Xi Jinping called for regulation of "excessively high incomes" to prioritize the goal of "common prosperity," including a crackdown on displays of a luxury lifestyle and wealth flaunting.

Mr. Xi called for the "reasonable adjustment of excessive incomes and encouraging high income groups and businesses to return more to society."

While this announcement did not come with concrete details, it is expected to extend to celebrities and influencers, many of whom use their platforms to display aspirational lifestyles and extravagant goods, promoting and ultimately selling these products to consumers who follow them.

The increased regulatory attention has resulted in the cancellation of luxury brand ambassadors and a change in retailers' overall marketing plans.

But without significant additional changes stemming from the August announcement, luxury retailers have not yet seen a major hit in sales.

New privacy laws restricting data use
China's Personal Information Protection Law (PIPL), which went into effect Nov. 1, likewise will affect the reach of global luxury brands in China.

Regarded as China's version of the EU General Data Protection Regulation (GDPR), the PIPL lays out a comprehensive set of rules for how business operators should collect, use, process, share and transfer personal information within and outside of China. This includes guidelines that all data collection and processing must be "legal, necessary and to the minimum extent."

The law grants statutory rights to data subjects, such as the right to withdraw and modify consent of data, the right of data portability and the right to refuse automated decision-making.

The law also includes restrictions on the transfer of data outside of China, on the use of individual location tracking, on third-party data for marketing purposes, and on the creation of algorithmically curated content.

Potential penalties for breaching the PIPL are heavy, including up to a $7.77 million fine, or 5 percent of the company's annual revenue.

With PIPL, individual consent is now a prerequisite for brands to push personalized content and ads, impacting a company's ability to use automatic or programmatic decisions for marketing.

Also, brands that draw on third-party, big tech platforms to garner customer information to create specifically developed content and products may no longer be able to use that data.

Additionally, for brands that analyze data collected in China in their United States- and European Union-based headquarters, the PIPL makes this type of data transfer subject to separate consent, internal control processes of personal information protection impact assessments and security self-assessments, and government-led security assessments approved by the Cyberspace Administration of China (CAC).

On track

There is more to register. With the PIPL now defining individual location tracking and facial recognition as sensitive personal information, brands have a reduced ability to track offline store visits for remarketing and retagging purposes.

Prior to the PIPL, only companies that were classified as a critical information infrastructure operator (CIIO) were required to store personal information in China and undergo security assessments approved by the CAC for cross-border data transfers.

But the PIPL extends the scope beyond just CIIOs to brands that process personal information that exceed a threshold designated by the CAC.

The specific amount has not been published yet. Draft law illustrates it would be PI of 1 million data subjects, cumulative transfer of 100,000 user PI, or sensitive PI of over 10,000 users. This provision allows smaller, general companies to be exempted from the burdensome procedure of conducting government security assessments.

BETWEEN THIS more stringent regulation of the way that private businesses can use data, the crackdown on wealth flaunting and lingering effects of COVID-19, luxury retailers are bracing for potential volatility in the market in 2022.

It is too early to tell the full impact of these changes, but many retailers and luxury buyers are operating as close to normal as possible for the time being.

Todd Liao is partner with Morgan Lewis, Shanghai, China. Reach him at todd.liao@morganlewis.com.