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Distribution of luxury goods - prohibition of third-party platforms is permissible under German antitrust law

Wettbewerbsrecht
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The European Court of Justice has ruled that a supplier of luxury goods can prohibit its retailers organised in a selective distribution network from selling the goods via third-party internet platforms (judgment of 6 December 2017 (Case C-230/16 - Coty Germany).

The starting point of the lawsuit was the refusal of an authorised dealer of the Fa. Coty Germany to comply with a contractual prohibition which prohibited him from selling the contractual products via internet marketplaces such as Ebay or Amazon (so-called third platform prohibition).

Although the contract basically allowed authorised retailers to sell goods on the Internet, this was only allowed via their own webshop. However, it was expressly forbidden to sell the goods online via third-party platforms, provided that this was recognisable to consumers.

Fa. Coty Germany raised a claim against the retailer before the German courts, seeking an injunction to prohibit the retailer from selling its products via Amazon Marketplace. The Court of Appeal of Frankfurt am Main expressed some doubts as to the compatibility of the contractual clause with EU competition law and asked the ECJ for a preliminary ruling on the matter.

Distribution of luxury goods - prohibition of third-party platforms is permissible under antitrust and competition law.

In its ruling of 6 December 2017, the ECJ stated that the antitrust prohibition doesn't preclude a contractual clause which prohibits authorized retailers in a selective distribution system for luxury goods, which is essentially aimed at ensuring the luxury image of these goods, from using externally recognizable third-party platforms when selling online these said goods, provided that the relevant clause :

- is intended to ensure the luxury image of the aforementioned goods,
- uniformly defined and applied without discrimination, and
- is proportionate to the objective pursued.

The admissibility of third-party platform bans has been highly controversial in recent years. The reason for this was in particular the judgment of the European Court of Justice from 2011 in the Pierre Fabre case (Case C-439/09). At that time the court had clarified - with reference to cosmetics - that the aim of protecting the prestige character of a product does not justify a total ban of online distribution. The ruling of the ECJ of 6 December 2017 is therefore to be welcomed, as it finally offers manufacturers of luxury products legal certainty with regard to the admissibility of the third-party platform ban. Third-platform ban to preserve the luxury and prestige image of the goods.

In its judgment of 6 December 2017, the ECJ states that the quality of luxury goods is based not only on their material characteristics but also on their prestige character, which gives them a luxurious aura.

Therefore, the Court considers that damage to the luxurious aura is likely to affect the quality of the goods themselves. In the present case, the Court considers that it is clear that the disputed contractual clause is intended to ensure the luxury and prestige image of Coty's goods. It points out that, according to the observations of the national court, the clause is objective and uniform and is applied without discrimination to all authorised retailers.

The prohibition is also suitable for ensuring the luxury image of the goods and doesn't go beyond what is necessary for that purpose. Since there is no contractual relationship between the supplier and the third-party platforms, the supplier doesn't have means to force the platform operators to comply with certain quality requirements.

According to the acknowledgment of the Court, this entails the risk of an online deterioration in the presentation of the said goods, which could damage their image of a luxury product.

Is the ban on third party platforms for branded goods without a luxury image admissible?

In addition to the welcomed clarification for the branch of luxury products, the ECJ ruling also has implications for the selective distribution of high-quality branded products which don't have a distinct luxury image, such as high-quality sports goods. Restrictions on sales via online platforms to protect the product image are also permissible for such goods under certain conditions.

Indeed, the ECJ ruling of 6 December 2017 clarifies that a third-party platform prohibition is in principle exemptable, as it doesn't have as its object either a restriction of the customer group or a restriction of passive sales to final consumers and thus doesn't constitute a hardcore restriction according to the Verticals Block Exemption Regulation. Even if the said goods in aren't luxury products, a selective distribution agreement with a third-party platform prohibition therefore is valid according to the Vertical Block Exemption, provided that the market share of the manufacturer and the distributor does not exceed 30 % each.

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