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Why selective distribution for the fashion industry?
An attempt to define « fashion »

- « Fashion » is commonly defined as a distinctive and often habitual trend in the style in which a person dresses. It is the prevailing styles in behavior and the newest creations of textile designers.

- A more economic conception of « fashion » defines it as a complex, strongly interlinked value chains, embracing design, manufacturing of materials and fashion goods (such as textiles, clothing, footwear, leather and fur products, jewelry and accessories, makeup, or even furniture), as well as their distribution and retail to final consumers.
Economical aspects of the fashion industry in the EU

**Economical importance:** fashion represents one of the most important building blocks of EU industry and economy with:

- 850,000 companies (the vast majority of which are SMEs)
- 5 million jobs
- 3% of the EU’s GDP
- EUR 525 billion annual turnover
- 10% of total EU exports*

**Different types of distribution for fashion products:**

- Network of own-name boutiques and shops
- Franchise
- Exclusive distribution
- Selective distribution

*(data 2013 – source: European Commission)*
Main features of a selective distribution system

• In a selective distribution system, the supplier limits resale to a "selected" group of distributors who satisfy a set of criteria defined by the supplier.

• The criteria for selection can be qualitative (technical or other requirements that the dealer should fulfil) or quantitative (limit the number of dealers in particular state or region).

• A selective distribution agreement typically has no element of territorial exclusivity (or customer exclusivity).

• For the legal definition of selective distribution refer to Regulation n° 330/2010, article 1 e).
Reasons for the supplier to choose selective distribution

Four main reasons can be identified for a supplier to choose selective distribution:

1. A way to enhance or obtain luxury image of the mark;

2. Possibility to select the dealers and limit the access to the distribution network;

3. A way to avoid any sale to unauthorized resellers;

4. And also for some suppliers it gives the opportunity to maintain high level of prices under certain conditions.
A preliminary reason for the choice: a very precise legal framework

A distribution agreement is an example of a "vertical" agreement, being an agreement between parties operating at a different level of the chain of supply. In general, Article 101(1) TFEU prohibits agreements that could restrict or distort competition in the common market.

However, in EU and national law, selective qualitative distribution is not, in principle, prohibited where three conditions are satisfied:

- the nature of the goods in question means that such a system is a legitimate requirement (principle of necessity);
- the distributors are selected solely on the basis of non-discriminatory, objective qualitative criteria (principle of objectivity);
- the selection criteria do not go beyond what is necessary (principle of proportionality).
First reason: a way to enhance or obtain luxury image of the mark

1.1. A logical choice for luxury brands

- What is a luxury brand?
- Why a logical choice for luxury brands?

1.2. A way to diversify the type of distribution of the products of luxury brands

1.3. A trend to use selective distribution for more «usual» products as a commercial strategy in order to create image and luxurious connotation of the mark

- Ex. Accepted for dresses (Christine Laure), outdoor sportswear (Barbour France), jeans (Levi’s Strauss), sports wear and sports shoes (Puma, Converse, Adidas, Nike, etc.).
- Ex. Refused for backpacks (Eastpack), underwear (Pierre Balmain).
Second reason: possibility to select the dealers and limit the access to the distribution network

- Selective distribution presents a lot of flexibility because it allows the supplier to select its dealers according to its criteria and that way ensure a commercialisation within conditions which are adequate with the prestige of the luxury products (or attempt to acquire scarcity and prestige of the brand via selective distribution).

- The distributors are selected solely on the basis of non-discriminatory criteria which are applied consistently (principle of objectivity). The selection criteria should also not go beyond what is necessary for the distribution of the products (principle of proportionality).

- The selection could be based on qualitative or quantititative criteria.
Third reason: A way to avoid any sale to unauthorized resellers

Selective distribution is characterized by a restriction on the resale of contract goods to third party resellers who are not party to the selective distribution system. That way in a selective distribution system a supplier could prohibit approved dealers to sell to unauthorized dealers (Regulation n° 330/2010, art. 4 b), iii; Europ. Comm. Guidelines on vertical restrictions, pt. 55).

Using selective distribution allows brands to control their network in order to keep the scarcity of the products.

Unauthorized dealers could damage the image of the mark:

• by not respecting the conditions in which the products are distributed and
• by tending to the banalisation of the products in the eye of the consumer.
Fourth Reason: maintain high prices

Selective distribution permits to maintain high resale prices as manufacturers invest considerably in research and publicity in order to keep the prestige of the mark and to differentiate from competitors. Also, some of these investments are passed on to the selected distributors who repercute their costs to the final consumer.

From the other hand, high prices are one of the characteristics distinguishing luxurious goods from ordinary ones (and a main reason for usual products to choose selective distribution in order to raise their prices).

- But how to maintain these high prices?
  Article 101(1) of the TFEU does not prohibit a supplier from suggesting or recommending resale prices. However, there is always a danger that a "price recommendation" or a "maximum price" becomes a de facto minimum or fixed resale price which will be prohibited.

- In which cases a recommended price becomes an imposed one?
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