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European Commission publishes fining decision in Pierre Cardin case

In a decision adopted on 28 November 2024, the European Commission ("Commission") sanctioned fashion house Pierre Cardin and its long-time licensee Ahlers for engaging in a significant antitrust infringement that lasted over 13 years. The case, known as AT.40642 – Pierre Cardin, serves as a textbook example of how vertical restraints - when taken too far - can breach EU competition law.

At the core of the case lies a fundamental principle of the EU internal market: the free movement of goods. The Commission found that Pierre Cardin and Ahlers had collaborated to restrict cross-border sales of Pierre Cardin-branded products within the European Economic Area (EEA), effectively partitioning the market and stifling competition.

The recent publication of the fining decision (link) offers detailed insight into the specific conduct of both companies and the Commission's legal reasoning. We've distilled the key takeaways for you below.

The Setup: Licensing Meets Exclusivity

Pierre Cardin ("Cardin") operates a global licensing model, granting third parties the right to manufacture and distribute products under its brand. One of its most significant licensees in the EEA was Ahlers, a German textile company that held exclusive rights to distribute Cardin menswear in 23 EEA countries.

The relationship between Cardin and Ahlers was close and long-standing, but also problematic. Over time, the two companies developed a system of contractual clauses and coordinated enforcement practices that effectively prevented other licensees – and their customers – from engaging in both active and passive sales into Ahlers' exclusive territories.

Notably, during the infringement period, Ahlers was a significantly larger undertaking than Cardin. This imbalance enabled Ahlers to exert pressure on Cardin to maintain absolute territorial protection.

The Infringement: Two Layers of Restrictions and an Extensive Monitoring System

The Commission identified two main types of restrictions:

1. Territorial Sales Restrictions: The license agreements between Cardin and its licensees (including Ahlers), as well as the sub-license agreements between Ahlers and its sublicensees, contained clauses that prohibited out-of-territory sales. In essence, these agreements restricted *all* cross-border sales (including online sales), without making any legal distinction between active or passive sales.
2. Customer Restrictions: The agreements also included clauses limiting the categories of customers to whom (sub-)licensees could sell. Discounters, supermarkets, and duty-free shops were frequently excluded. Some contracts even empowered Cardin to impose penalties or terminate agreements if sales were made to customers deemed incompatible with the brand's "prestige" image.

In addition to these contractual restrictions, the Commission found evidence of coordinated enforcement efforts between Cardin and Ahlers aimed at preserving Ahlers' absolute territorial protection. Ahlers actively monitored the market for so-called "unauthorised" sales – i.e., any sales into its territories by other (sub-)licensees. It compiled blacklists of retailers, conducted test purchases, and pressured Cardin to intervene. Cardin, in turn, responded by issuing legal warnings, terminating contracts, and accepting royalty deductions from Ahlers as leverage. It also kept Ahlers informed of the enforcement actions it undertook.

Legal Analysis: Restriction by Object

The Commission concluded that the aforementioned practices amounted to a "restriction of competition by object." In other words, they were so clearly anti-competitive that no further analysis of their effects was needed.

The decision draws on well-established case law, and confirms that:

- passive sales restrictions are illegal under Article 101 TFEU;
- customer restrictions are only allowed within a properly structured selective distribution system; and
- coordinated actions between supplier and licensee to enforce such restrictions can constitute a concerted practice.

Importantly, the Commission rejected the argument that these measures were necessary to protect the Cardin brand. While brand image is a legitimate concern, it cannot justify blanket bans on cross-border sales or vague restrictions on customer types, especially when there is no selective distribution system in place.

Fines and Application of Point 35 of the Fining Guidelines

The Commission imposed fines of:

- 2.24 million EUR on Cardin; and
- 3.5 million EUR on Ahlers.

In its decision, the Commission applied point 35 of the 2006 Guidelines on Fines, which allows for a reduction in the fine where an undertaking demonstrates that payment would irretrievably jeopardise its economic viability. Although such reductions are rarely granted, the Commission found – based on confidential evidence set out in Annex I – that imposing the full fine would have seriously endangered the financial survival of the undertaking concerned. As a result, the fine was reduced to a specified amount, representing a significant percentage reduction. The Commission also granted favourable payment conditions. While the identity of the applicant and the precise grounds for the reduction remain confidential, this case underscores the high evidentiary threshold and exceptional nature of successful claims under point 35.

Conclusion

This case is noteworthy because it is uncommon for a distributor to be fined alongside the supplier for participating in anticompetitive vertical agreements. In this instance, however, the distributor maintained a close and long-standing relationship with the supplier and played an active role in sustaining the infringement. The facts even revealed that the distributor was able to exert pressure on the supplier to uphold absolute territorial protection.

Against this backdrop, the fine imposed on the distributor is hardly surprising. The case serves as a clear warning: distributors who collaborate with suppliers to enforce unlawful restrictions on competition risk significant financial penalties. Going forward, they would be well advised to tread carefully – such cooperation may come at a high cost.