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Selective distribution: no off-network sales after termination

On 21 April 2026, the Economic Activities Tribunal of Nanterre (Case No. 2022F01163) ordered the Indian distributor IDFS to pay L'Oréal more than 980,000 USD in unpaid invoices and 200,000 EUR in damages for reselling luxury cosmetic products to unauthorised retailers (i.e. on the "parallel market"), in breach of a selective distribution agreement.

The judgment is a useful reminder that neither the termination of the agreement, nor an economic crisis, nor even a supplier's refusal to repurchase unsold inventory can justify a distributor's decision to sell outside the authorised network.

Background

L'Oréal Produits de Luxe International ('L'Oréal PLI') is responsible for L'Oréal's "Travel Retail" activity, which consists in distributing luxury perfumery and cosmetic products to authorised foreign distributors for resale through duty-free and duty-paid airport outlets.

Since 2014, L'Oréal PLI had maintained commercial relations with the Indian IDFS Group, initially with IDFS Tradings and subsequently with its subsidiary, IDFS Services. The parties entered into successive agreements, including two distribution agreements in 2019 (one covering mass-market products and the other luxury products), both of which restricted resale to the approved distribution network.

By mid-2020, however, the relationship had deteriorated following the indictment of an IDFS shareholder on corruption charges, against the backdrop of the Covid-19 crisis and a growing volume of unpaid invoices.

The partnership consequently came to an end, leaving IDFS with a substantial inventory of unsold products. Faced with L'Oréal PLI's refusal to repurchase that stock, IDFS proceeded to resell it to unauthorised retailers.

Procedure and sanctioned practices

L'Oréal PLI initiated proceedings seeking payment of the unpaid invoices (980,034 USD) and damages for the off-network sales (250,000 EUR). IDFS filed a counterclaim, alleging wrongful non-renewal of the 2019 agreements and abusive termination of ongoing negotiations.

The Tribunal upheld L'Oréal PLI's claims in full and dismissed IDFS's arguments.

With regard to the unpaid invoices — the orders, deliveries and amounts being undisputed — the Tribunal ordered IDFS to pay 980,034 USD, together with contractual interest.

As to the off-network sales, the Tribunal found IDFS liable and awarded L'Oréal PLI 200,000 EUR in damages, notwithstanding IDFS's argument that the disruption of airport activity during the Covid-19 pandemic and L'Oréal PLI's refusal to take back the goods had left it with no viable alternative.

Off-network sales

Relying on Article 1103 of the French Civil Code (binding force of contracts) and Article L. 442-2 of the French Commercial Code (which sanctions participation in the breach of a selective or exclusive distribution agreement), the Tribunal held that IDFS's resale of L'Oréal products to unauthorised retailers — which IDFS itself acknowledged — constituted a breach of the 2019 agreements, irrespective of the economic context or L'Oréal PLI's refusal to repurchase the inventory.

The Tribunal emphasised the heightened seriousness of the breach, noting that the products had not even been paid for, as IDFS had stopped paying its invoices.

It further held that the resulting prejudice is, in principle, presumed from the breach itself and may consist merely in a "commercial disturbance". The Tribunal found that the parallel sales had created, in consumers' minds, the perception that the products could be purchased outside the official network at lower prices, thereby undermining the luxury image of the brands. In the absence of a precise quantification of the loss by L'Oréal PLI, the Tribunal exercised its discretion and assessed damages at 200,000 EUR.

Counterclaims dismissed

The Tribunal dismissed IDFS's counterclaim based on the alleged wrongful non-renewal of the 2019 agreements, noting that those contracts did not provide for automatic renewal and that L'Oréal PLI had legitimate grounds for declining to enter into a new agreement, including the corruption indictment of an IDFS shareholder, unpaid invoices and the Covid-19 context.

Commentary

The judgment provides several useful reminders that extend beyond French law.

First, a distributor that resells outside the authorised network commits a contractual breach that gives rise to liability, irrespective of the economic environment or any commercial difficulties it may encounter. Neither a global

crisis, such as Covid-19, nor a supplier's refusal to repurchase unsold stock constitutes a valid justification.

Secondly, the Tribunal reaffirmed its broad discretion in assessing damages. While accepting that harm arising from off-network sales is presumed in principle, it exercised that discretion to quantify the damage to L'Oréal PLI's brand image and to award damages accordingly.

Finally, the judgment serves as a practical reminder of the importance of anticipating, at the contractual stage, the treatment of unsold inventory upon termination of a distribution relationship. Both parties have a strategic interest in addressing this issue from the outset: the distributor will seek to secure a repurchase mechanism, whereas the supplier must weigh the cost of such an obligation against the reputational and pricing risks associated with products entering the parallel market.

The judgment is subject to appeal.

The judgment has not yet been published in public databases.