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CASE CARD | 20 April 2026

Pierre Cardin (AT.40642)

Limitation of out-of-territory sales by licensees

1. CASE SUMMARY

A. Summary of facts

Pierre Cardin is a long-established French fashion brand. Its business model relies on a global licensing system, granting third parties the rights to manufacture and distribute products under its brand. Ahlers – a German textile company – held more Pierre Cardin licences than any other licensee of Pierre Cardin-licensed products in the EEA. In 2021, it held exclusive licensing rights for the manufacture and distribution of Pierre Cardin-licensed products in 23 EEA countries. It is important to note that Ahlers is a significantly larger undertaking than Pierre Cardin, with turnover that is several times higher.

Between 2008 and 2021, the two companies implemented a series of practices that restricted (i) out-of-territory passive sales of Pierre Cardin-licensed products by Cardin licensees (including by restricting online sales); (ii) out-of-territory passive sales of such products by customers of Cardin licensees; and (iii) the customers to whom Cardin licensees and their customers could sell such products, all within the EEA.

These practices consisted of restrictive clauses included in licence agreements between Cardin and its licensees, including Ahlers, and coordinated actions by Cardin and Ahlers aimed at ensuring compliance with the contractual clauses. Most of the restrictive contractual clauses between Cardin and Ahlers had expired or were replaced by July 2019. Cardin and Ahlers set up a coordinated enforcement system aimed at preserving the latter's absolute territorial exclusivity. Ahlers actively monitored the market for so-called "unauthorised sales" (i.e. any sales into its exclusive territories by other (sub-)licensees) by conducting test purchases and compiling blacklists of retailers. Ahlers threatened to withhold royalties due to Cardin under its own license agreements to exert pressure on Cardin to intervene against "unauthorised sales".

Following a complaint by Malu NV, a parallel trader of Pierre Cardin clothing, and an investigation (without dawn raids), the European Commission imposed a fine on the parties totalling 5,700,000 EUR: 2,237,000 EUR on Pierre Cardin and 3,500,000 EUR on Ahlers.

B. Legal analysis

Article 101(1) TFEU - unilateral action or concerted practice?

The Commission considered the series of contractual clauses and the conduct, whereby Ahlers would complain/inform Cardin about the so-called “unauthorised sales” and Cardin would react to these complaints, to be agreements and concerted practices in the sense of Article 101(1) TFEU.

The Commission rejected Pierre Cardin and Ahler’s assertion that Pierre Cardin’s termination of the agreements with four of its licensees and Ahler’s conduct toward another licensee of Pierre Cardin were unilateral acts and did not constitute concerted practices. In doing so, the Commission referred to factual elements such as, in relation to the terminations, complaints by Ahlers or Ahlers taking over the territory concerned and in relation to the fifth licensee, prior contacts between Pierre Cardin and Ahlers.

Article 101(1) TFEU - restriction by object

The Commission found that Cardin and Ahlers engaged in a series of practices that restricted:

- out-of-territory passive sales of Pierre Cardin-licensed products by Cardin licensees;
- out-of-territory passive sales of such products by customers of Cardin licensees;
- the customers to whom Cardin licensees and their customers could sell such products.

The agreements and concerted practices at issue restricted out-of-territory sales by Cardin licensees as well as the customers to whom those licensees could sell Pierre Cardin products. The Commission states that this was part of an overall plan put in place by Cardin and Ahlers to ensure compartmentalisation of the internal market and to protect Ahlers’ absolute territorial exclusivity, protecting it from competition from retailers offering Pierre Cardin products at lower prices. It concluded that, by there very nature, Pierre Cardin’s and Ahlers’ agreements and concerted practices had the object of restricting competition.

In doing so, it referred to case law of the EU courts regarding restrictions of parallel trade or customer allocation without applying the standard test for by object restrictions as developed by the European Court of Justice ('ECJ') in, among others, *UK Generics*, *Super Bock* and *Valve* (the latter also concerned restrictions of parallel imports): *“In order to determine whether that criterion is met, regard must be had to the content of its provisions, its objectives and the economic and legal context of which it forms a part. When determining that context, it is also necessary to take into consideration the nature of the goods or services affected, as well as the actual conditions of the functioning and structure of the market or markets in question.”*

The Commission appears, in particular, to ignore the ECJ’s view on hardcore restrictions in *Super Bock* by stating that *“[h]ardcore restrictions are generally restrictions of competition by object within the meaning of Article 101(1) TFEU, for which it is presumed that they generally result in a net harm to competition”*. In *Super Bock*, the ECJ

had ruled that *"provisions of Regulations Nos 2790/1999 and 330/2010 do not contain an indication as to whether those restrictions must be categorised as a restriction 'by object' or 'by effect'. Furthermore, as the Commission observed in its written observations before the Court, the concepts of 'hardcore restrictions' and of 'restriction by object' are not conceptually interchangeable and do not necessary overlap. It is therefore necessary to examine restrictions falling outside that exemption, on a case by case basis, with regard to Article 101(1) TFEU."* (§41)

Article 101(3) TFEU - no block or individual exemption

As the agreements and concerted practices at issue concern the licensing of trademarks, the Vertical Block Exemption Regulation would not apply unless the assignment of intellectual property rights was not found to be the primary object.

The decision leaves open the issue since the restriction of out-of-territory passive sales (including absolute bans on online sales) and the restriction of the customers to whom Cardin licensees could sell were found to be hardcore restrictions. As a result, the agreements and concerted practices at issue could in any event not benefit from the Vertical Block Exemption Regulation.

Pierre Cardin argued that the restrictions relating to the customers to which Pierre Cardin-licensed products could be sold satisfy the conditions for an individual exemption under Article 101(3) TFEU. According to Cardin, consumers benefit from these restrictions since they prevent sales by distributors that reduce the quality of product presentation and sales services and thereby contribute to the preservation of the "high-end image and prestige" of the products. The Commission rejected this argument due to a lack of evidence and the possibility of a less-restrictive alternative in the form of a selective distribution system based on verifiable criteria.

Single and continuous infringement

The Commission found that the contractual clauses and coordinated enforcement efforts all had the common objective of restricting competition and fit into the overall plan of ensuring Ahlers' absolute territorial exclusivity. Consequently, the agreements and concerted practices mounted to a single and continuous infringement of Article 101(1) TFEU.

Fines - inability to pay

In determining the fines in this decision, the Commission made rare use of point 35 of the 2006 Fining Guidelines. Under this provision, the Commission may, in exceptional cases, take into account the inability of the undertaking to pay the full amount in a specific social and economic context. In those cases, a reduction could be granted solely on the basis of objective evidence that the imposition of the fine would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value. The Commission clarified that a

potential liquidation as a result of the imposition of a fine does not necessarily mean that there will be a total loss of the value of the assets of that undertaking and, therefore, this may not in itself justify a reduction of the fine. This is because liquidations sometimes take place in an organised, voluntary manner, as part of a restructuring plan in which new owners or new management ensure the continuity of the undertaking its assets. Therefore, an applicant must demonstrate that viable alternative solutions are not available.

In this case, one of the undertakings concerned applied for a reduction under point 35. In Annex I, which remains confidential, the Commission carried out an assessment of the financial position of the applicant and the impact of the fine in its respective social and economic context.

The claim in this case was partially accepted and favourable payment conditions were granted. The identity of the applicant and the specific grounds for the reduction remain confidential.

2. QUOTES

"*Conduct which partitions markets by limiting parallel trade or by allocating customers may be considered as being so likely to have negative effects on the market, in particular on the price, choice, quantity or quality of the goods or services in question, that it may be considered redundant, for the purposes of applying Article 101(1) TFEU, to prove that they have actual effects on the market.*" (§302)

"*The Union courts have held that agreements aimed at partitioning national markets along national borders or making the interpenetration of national markets more difficult must be regarded, in principle, as agreements whose object is to restrict competition within the meaning of Article 101(1) TFEU. Therefore, where a licence agreement is designed to prohibit or limit the cross-border supply of a product, it is deemed to have as its object the restriction of competition*." (§303)

"*To assess sales restrictions, the Commission and Union courts distinguish between restrictions of active and passive sales479. Restrictions of active sales may be necessary to protect investments in a territory or user group that has been allocated exclusively to a distributor or reserved by a supplier to itself. Restrictions of passive sales however are designed to prevent any cross-border sales, thereby conferring absolute territorial exclusivity480. Restrictions of passive sales therefore have the object of partitioning markets within the meaning of the case-law referred to above.*" (§304)

"*The Court has held that agreements restricting out-of-territory active and passive sales make it possible for undertakings to charge for the products in question prices which are sheltered from all effective competition by artificially maintaining separate markets within the EEA.*" (§305)

"*As regards restrictions of online sales, the Union courts have held that a contractual provision which de facto*

prohibits the internet as a method of marketing amounts to a restriction of competition by object within the meaning of Article 101(1) TFEU, as it has at the very least as its object the restriction of passive sales to end users wishing to purchase online and located outside the trader's territory." (§306)

"*Additionally, the Union courts and the Commission in its decisional practice have found that certain types of conduct falling short of an outright prohibition of out-of-territory sales or the conferral of absolute territorial protection may also constitute infringements of Article 101(1) TFEU by object. These include inter alia situations where export is permitted only if the consent of the producer is obtained; where the producer must be contacted before exporting via the internet; where an agreement requires a distributor to pass on to the producer any customer enquiries coming from outside the licensed territory; where discounts are reduced or additional fees charged in the event of sales outside the destination territory; or where a producer threatens to terminate or actually terminates contractual arrangements with distributors or dealers which sell outside their allocated territory. As regards monitoring systems, while these are not anti-competitive as such, the Commission has condemned their use as part of a system of market partitioning*." (§308)

"*The Court of Justice has also held that agreements restricting the customers to which products can be resold with a view to restricting parallel trade are an infringement of Article 101 TFEU by object. This was the case in BMW Belgium, where car dealers in Belgium were prohibited from selling cars outside Belgium or "to firms who propose to export them". The Court of Justice stated that, based on the tenor of the circulars that had been issued to the Belgian dealers, their legal and factual context and the conduct of the parties, there was an intention to put an end to all exports outside of Belgium492. The Court of Justice further elaborated upon this in Javico, explaining that "an agreement intended to deprive a reseller of his commercial freedom to choose his customers by requiring him to sell only to customers established in the contractual territory is restrictive of competition within the meaning of Article [101(1) TFEU]*". (§309)

"*Finally, as explained in detail in Section 7.3.6.2.1, the restriction of the territory into which an exclusive distributor or its customers may passively sell the contract goods is considered to be a hardcore restriction of competition. Where a selective distribution system has not been put in place by the supplier, restricting the ability of an exclusive distributor to sell to specific customers where these have neither been exclusively allocated to other distributors, nor have exclusively been reserved for the supplier, is also a hardcore restriction. Hardcore restrictions are generally restrictions of competition by object within the meaning of Article 101(1) TFEU, for which it is presumed that they generally result in a net harm to competition.*" (§310)

"*The Vertical Block Exemption Regulations do not generally apply to trademark licence agreements, unless the provisions within these agreements which relate to the assignment or use of the IPRs to the licensee "do not constitute the primary object of such agreements and are directly related to the use, sale or resale of goods or services by the buyer or its customers". The Guidelines on Vertical Restraints further clarify that the Vertical Block*

Exemption Regulations do not cover "the pure licence of a trade mark or sign for the purposes of merchandising" and that "in order to be covered by the Block Exemption Regulation, the primary object of the agreement must not be the assignment or licensing of IPRs. The primary object must be the purchase, sale or resale of goods or services and the IPR provisions must serve the implementation of the vertical agreement". Where it has been established that the primary object of an agreement is related to the use, sale or resale of goods or services, the Vertical Block Exemption Regulations apply if the relevant market share threshold is not exceeded and the agreement does not contain hardcore restrictions." (§421)

3. RELEVANT LEGISLATION

- Article 101(1) TFEU
- Article 53 EEA Agreement
- Regulation 330/2010
- Regulation 2790/1999
- Fining Guidelines

4. PRACTICAL SIGNIFICANCE

First, this decision is noteworthy because it is rather uncommon for a distributor to be fined alongside the supplier for participating in anti-competitive vertical agreements. In this case, however, the distributor maintained a close and long-standing relationship with the supplier and played an active role in sustaining the infringement. The facts revealed that the distributor was able to exert pressure on the supplier to protect its absolute territorial exclusivity. In light of these circumstances, the fine imposed on the distributor is hardly surprising. This decision serves as a clear warning: distributors who collaborate with suppliers to enforce unlawful restrictions on competition risk significant fines.

Second, this decision marks a rare instance where the Commission applied point 35 of the Fining Guidelines, allowing for a reduction of the fine based on the undertaking's inability to pay the full amount. Since the full assessment of the Commission (Annex I) remained confidential, this decision offers limited additional guidance on inability-to-pay reductions.