



- You are now logged in.

## Chanel v Crepslocker: does exhaustion apply?

16-06-2021

Flavia Ștefura



Creative Lab / Shutterstock.com

Fashion house Chanel claims the discount resale of its luxury products tarnishes its brand. Flavia Ștefura of MPR Partners examines whether its case stands up.

The French fashion powerhouse Chanel is famous not only for its brand, but also for its efforts in defending it against misuse and infringement.

While Chanel's legal battles with retailers who sell allegedly counterfeit goods are ongoing, the brand has also started a lawsuit in England against an online retailer—Kensulate, owner of the Crepslocker online store—that sells authentic Chanel goods.

Chanel accuses Crepslocker's owner of infringing Chanel's trademark by tarnishing its positioning as a luxury fashion brand.

Chanel's main arguments consist in the facts that Crepslocker:

- uses the 'Chanel' trademark to describe the goods it sells in the product captions in its online store and in a store on eBay;
- sells the 'Chanel'-branded goods alongside goods from other brands which do not have the same note of luxury. The Crepslocker website offers pages dedicated to various brands, where branded products are sold; there used to be such a page for Chanel products, which has currently been disabled;
- offers the trademarked goods online, which Chanel's policies do not allow (*per* the official Chanel website, there are no authorised sellers of Chanel leather goods, fashion items and watches on the internet, only fragrance and beauty and eyewear products); and
- does not offer the luxury experience to customers (Chanel claims that in a test shop the item purchased came crumpled and not in the original packaging).

Crepslocker defends itself by invoking the exhaustion of Chanel's rights to the sold products. The trademark exhaustion rule means that after the first sale of a trademarked product by or with the consent of the trademark holder, the trademark owner can no longer control the subsequent sale(s) of the product.

The exception is that the trademark owner can oppose subsequent sales for legitimate reasons, especially when the condition of the products has been materially changed or impaired.

Crepslocker claims that Chanel makes an artificial distinction between the goods it sells online and the ones it does not. Also, according to Crepslocker, mixing the Chanel products with sportswear is not tarnishing Chanel's reputation, which itself has collaborated with sports apparel manufacturers for its products.

## Analysis

Until the UK's departure from the EU, courts in the UK were bound by guidance from the Court of Justice of the European Union (CJEU). Now that the UK is no longer part of the EU, the dispute will instead be subject only to national British legislation. However, courts in the UK are still free to refer to CJEU decisions in their own rulings.

The UK's Trade Marks Act 1994 is harmonised with EU legislation on the issue of rights exhaustion. The Trade Marks Act and the Directive (EU) 2015/2436 treat the principle of trademark exhaustion in the same manner, providing the same exceptions.

CJEU precedents so far seem to indicate that the EU's highest court is protective of trademark owners. Analysing the matter from a competition law perspective, in the [Coty Germany v Parfümerie Akzente \(C 230/16\)](#) case, the CJEU ruled that luxury brand owners were entitled to implement selective distribution systems.

“Crepslocker claims that Chanel makes an artificial distinction between the goods it sells online and the ones it does not.”

This allows brands to establish systems where they control the distribution chain, in order to preserve the luxury image of their respective goods, on condition that the selection of the resellers was based on: “objective criteria of a qualitative nature that are laid down uniformly for all potential resellers and applied in a non-discriminatory fashion and that the criteria laid down do not go beyond what is necessary”.

Moreover, the ruling allowed brand owners to exclude online sale of their goods through contractual clauses.

In *Copad v Christian Dior* (C 59/08), the CJEU held that when a trademark licensee sells goods in a discount store in spite of the contractual provisions of the licence which do not allow the sale of the goods in discount stores on grounds of the trademark’s prestige, the trademark owner can invoke their rights against the licensee. This applies if the trademark owner can establish that the sale of the products damages their “allure and prestigious image”, the

The CJEU has also ruled, in *L’Oréal v eBay* (C 324/09), that trademark owners can oppose the sale of their product after the removal of its original packaging, if it contains “essential information”. This includes the identity of the manufacturer or the person responsible for marketing cosmetic products.

“Where the removal of the packaging has not resulted in the absence of that information, the trademark proprietor may nevertheless oppose the resale of an unboxed perfume or cosmetic product bearing his trademark, if he establishes that the removal of the packaging has damaged the image of the product and, hence, the reputation of the trademark,” the court ruled.

These decisions highlight several acceptable exceptions to the trademark exhaustion rule. Even though the higher courts in the UK are no longer obliged to follow the rulings of the CJEU, it is unlikely that they will depart from established trademark principles without well-grounded reasons.

Crepslocker used to sell both new and secondhand Chanel products. In the case of new goods, it may be possible that the UK courts will deem the situation similar to the ones in the CJEU cases mentioned above.

However, an element of novelty rests in the used products which Crepslocker kept in consignment from its customers. Here the courts will probably consider balancing not only Chanel’s rights against Crepslocker’s, but also the rights of the natural persons who legitimately bought Chanel goods that they wish to sell to benefit from a platform where the used goods can be sold.

In the event the dispute ends in settlement or a win for Chanel, this may have a chilling effect on online resellers of other luxury brands in the UK and elsewhere in Europe. One can argue that maintaining the prestige and value of luxury brands protects both the brands and the consumers of luxury goods.

However, part of Crepslocker’s business responds to a real need of consumers owning luxury products for a resale outlet, and the corresponding demand for such products. Careful consideration

should be made as to whether the market for secondhand luxury goods is different from that for new goods, and whether the exception to the trademark exhaustion principle still applies.



[View full size](#)

*Flavia Stefura is a senior associate at MPR Partners. She can be contacted at [flavia.stefura@mprpartners.com](mailto:flavia.stefura@mprpartners.com)*

X

## Sign up for the newsletter

Receive daily emails from WIPR