

Notice pursuant to Article 19 (3) of Council Regulation No 17 (*) concerning Case No IV/33242 — Yves Saint-Laurent Parfums

(90/C 320/05)

1. Yves Saint-Laurent Parfums SA, Neuilly-sur-Seine, France, notified the Commission on 7 July 1989 of a network of selective distribution contracts for the marketing of its perfumery, skin care and beauty products in the Member States of the European Economic Community. Yves Saint-Laurent Parfums applied for negative clearance or, alternatively, for exemption.

2. Yves Saint-Laurent Parfums is held entirely by Yves Saint-Laurent SA, whose activities include haute couture and high-quality ready-to-wear clothing (Yves Saint-Laurent Couture) and the manufacture and marketing of luxury cosmetic products (Yves Saint-Laurent Parfums).

3. In the case of cosmetic products (perfumery, skin care and beauty products), two markets may be distinguished, one relating to mass-distributed, everyday products and the other to luxury products, sold only through selected retail networks. The products covered by the notified contracts belong to this second market.

4. Yves Saint-Laurent Parfums distributes its products within the common market through a network of some 8 000 authorized retail outlets, which, in France, are supplied direct by Yves Saint-Laurent Parfums and, in the other Member States, through the intermediary of its subsidiaries or independent companies acting as exclusive agents.

5. Essential features of the contracts notified

The distribution network notified by Yves Saint-Laurent Parfums is based on:

- the standard-form authorized retailer contract linking Yves Saint-Laurent Parfums to its specialized retailers established in France, and on the general conditions of sale attached to it,
- the standard-form authorized retailer contract linking the exclusive agents of Yves Saint-Laurent Parfums, either subsidiaries or independent companies, established in a Member State other than France to their specialized retailers, and on the general conditions of sale attached to it.

These standard-form contracts have undergone certain amendments in response to comments made by the Commission, and they will enter into force in their amended form as from 1 April 1991. Essentially, the two types of standard-form contract comprise similar provisions, whose content is as follows:

(a) *Selection criteria*

The only retailers admitted to the selective distribution network are those approved by Yves Saint-Laurent Parfums or by its exclusive agents on the basis of the selection criteria set out below.

- (i) The authorized retailer, or its sales staff, must have a professional qualification in perfumery, with a beauty diploma or a professional perfumery training certificate issued by a recognized Chamber of Commerce and Industry or at least three years' sales experience in perfumery. In addition, the authorized retailer undertakes to have its staff attend the training sessions organized by Yves Saint-Laurent Parfums and to provide, at its point of sale, adequate advisory and demonstration service for customers.
- (ii) The location, the shop sign and fittings of the point of sale must reflect the prestige of the Yves Saint-Laurent brand. In particular, the quality of the point of sale is assessed by reference to the nature, standing and external appearance of the other shops in the immediate neighbourhood and the facade, shop window size and decoration, sales area, lighting, floor, furniture, fixtures and fittings of the shop. If another activity is carried on at the point of sale, the eligibility of the application for the opening of an account is also assessed in the light of the scale of such other activity, the external and internal presentation and separation of the two activities and the competence of the staff allocated to the sale of Yves Saint-Laurent products.
- (iii) The retailer is prohibited from offering for sale on the premises any goods whose proximity might detract from the brand image of Yves Saint-Laurent.
- (iv) The area set aside for the sale of Yves Saint-Laurent products must not be disproportionate to the number of brands sold. In addition, it must allow the authorized retailer to provide, having regard to the other brands represented,

(*) OJ No 13, 21. 2. 1962, p. 204/62.

a location reflecting the prestige of the Yves Saint-Laurent brand and permitting its identification by the user.

- (v) The authorized retailer must display and sell Yves Saint-Laurent products only on the premises covered by the contract and must refrain in particular from selling them by mail order. The authorized retailer also agrees to sell the products only in their original packaging and not by weight, capacity or otherwise.
- (vi) The authorized retailer agrees to hold a stock in hand comprising two-thirds of the references of each of the ranges marketed by Yves Saint-Laurent Parfums and at least one product of each of those references. The authorized retailer also agrees to present to customers products which are always in a perfect state of freshness and preservation and to ensure an annual rotation in the stock in hand corresponding to the application of a minimum rotation ratio of two.
- (vii) The authorized retailer is required to promote the image of the Yves Saint-Laurent brand, notably by having available within its shop new products launched by Yves Saint-Laurent Parfums, by endeavouring to participate in the various promotion activities and by displaying within the shop and the shop windows the advertising material, display units and products of Yves Saint-Laurent.
- (viii) The authorized retailer agrees to achieve at the point of sale covered by the contract a minimum annual turnover either with the exclusive agent for Yves Saint-Laurent products in the country in which the point of sale is situated or directly from Yves Saint-Laurent Parfums if the point of sale is situated in France. The turnover figure is set periodically by Yves Saint-Laurent Parfums, or, where appropriate, by its exclusive agent, by reference to objective criteria reflecting an average profitability threshold for each point of sale.

(b) *Procedure for admission to the distribution network*

In their original version, the general conditions of sale attached to the contract concluded with authorized retailers established in France provided that each application for the opening of an account would, as from its receipt, be entered on a departmental waiting list. Each application was to be dealt with in the order in which it was entered on the list, but the decision to grant applications was taken only where the opening of a new account was regarded by Yves Saint-Laurent Parfums as justified in terms of the economic potential in the area in question. Although the contracts concluded with authorized

retailers in Member States other than France did not provide for the establishment of such a system of waiting lists, the opening of a new account was subject in practice to similar considerations of economic opportuneness. In response to comments made by the Commission, Yves Saint-Laurent has agreed to amend its contracts with effect from 1 April 1991, with the existing waiting lists having to be used up during a transitional period ending on 31 March 1992.

Under the new provisions incorporated in the contracts, which apply to the entire territory of the EEC, receipt of an application for the opening of an account is followed by an inspection of the point of sale to determine whether it meets the qualitative selection criteria described above. Yves Saint-Laurent Parfums (or, where appropriate, its exclusive agent) undertakes to carry out such an inspection within an average period of four months and a maximum of six months as from the date on which the application for the opening of an account is received. Thereafter, if the application is far from meeting the qualitative criteria, Yves Saint-Laurent Parfums (or, as the case may be, its exclusive agent) informs the applicant in writing that its application has been rejected. Conversely, if the application is capable of meeting the qualitative selection criteria subject to certain work being carried out at the point of sale, the applicant is informed accordingly in writing and, if the work is carried out within a maximum period of six months, its account will be opened within a maximum period of one year from the date of the inspection. Lastly, if the application meets entirely the qualitative selection criteria, the applicant is informed accordingly in writing and its account will be opened within a period of one year as from the date of the inspection.

(c) *Freedom of cross supplies between members of the distribution network*

In response to the comments made by the Commission, Yves Saint-Laurent Parfums amended some of the provisions in the standard-form contract intended for authorized retailers established in Member States other than France, in so far as such provisions restricted the ability of the authorized retailer to resell Yves Saint-Laurent products to network members established in the same country as itself. The new provisions now provide that, as under the standard-form contract applicable in France, each authorized retailer may resell Yves Saint-Laurent products to any other authorized retailer established in any Community country. The new provisions also stipulate that each authorized retailer is free to obtain supplies from other authorized retailers or exclusive agents of Yves Saint-Laurent Parfums established in any Community country.

Exercise of this right is subject to the following conditions:

- (i) before reselling Yves Saint-Laurent products to another network member, the authorized retailer must ensure that the purchasers are indeed authorized Yves Saint-Laurent Parfums retailers. It undertakes to check this under its entire responsibility and to consult Yves Saint-Laurent Parfums where there is doubt as to the status of the purchaser;
- (ii) the authorized retailer must keep a copy of the invoices of such resales for one year. Yves Saint-Laurent Parfums (or, where appropriate, its exclusive agent) may consult them only where it has grounds for believing that the retailer is reselling Yves Saint-Laurent products outside the distribution network. Authorized retailers obtaining supplies from other network members are subject to similar provisions. In response to comments made by the Commission, Yves Saint-Laurent Parfums withdrew provisions under which the authorized retailer had to communicate systematically to Yves Saint-Laurent Parfums (or, where appropriate, to its exclusive agent) copies of the invoices or vouchers for each resale to or supply from another authorized retailer;
- (iii) only the value of the orders invoiced by Yves Saint-Laurent Parfums (or, where appropriate, by its exclusive agent) is taken into account in calculating the minimum figure for the authorized retailer's annual purchases. So as to maintain the freedom of cross supplies between network members, Yves Saint-Laurent Parfums agreed to delete certain provisions in the agreement under which the amount of the price paid by the authorized retailer to Yves Saint-Laurent Parfums (or to its exclusive agent) for the purchase of products subsequently resold to another network member were not taken into account in calculating the abovementioned minimum purchases figure. Furthermore, the Commission has established that the amount of such figure accounted in 1988 for some 50 % of the average figure for purchases of Yves Saint-Laurent Parfums products per point of sale;
- (iv) any authorized retailer on whose territory a new Yves Saint-Laurent product has not yet been launched undertakes, so as not to adversely affect the campaigns for the launch of the new product, not to engage in the active sale of the new product for a period of one year as from the date when the new product is first launched

in one of the Community countries. In this respect, the standard-form contracts notified provided initially for an export ban applicable during the first year of the official launch of the new product in a Community country. Yves Saint-Laurent Parfums amended this clause along the above lines in response to comments made by the Commission.

(d) *Closed distribution network*

The authorized retailer agrees not to sell to any wholesaler or retailer not included within the Yves Saint-Laurent Parfums distribution network and not to obtain supplies from such wholesalers or retailers. For its part, Yves Saint-Laurent Parfums undertakes to market products bearing the Yves Saint-Laurent brand name only in sales outlets which meet the conditions stipulated in the selective distribution contract.

(e) *No imposed prices*

The standard-form contracts notified provide expressly that authorized retailers are free to set the resale prices of their products.

(f) *No ban on competition*

Authorized retailers may obtain supplies of articles similar to the articles covered by the contract from competing producers.

(g) *Duration of the contracts*

The contracts are concluded for a specific term, normally one year. They may be terminated before the end of their term, without or after notice having been given, where the authorized retailer does not abide by its contractual obligations or where it ceases to be responsible for the actual running of its business, subject to the rights of the authorized retailer's directly descendant heirs. The procedure for admission to the distribution network, as described in point 5 (b) above, does not apply to the periodic renewals of the contract.

6. The Commission proposes to adopt a favourable attitude to the network of agreements notified, the essential clauses of which have been described above.

Before doing so, it invites interested third parties to send any comments they might have within 30 days of the date of this notice to the following address, quoting reference IV/33 242:

Commission of the European Communities,
Directorate-General for Competition,
Directorate C,
200, Rue de la Loi,
B-1049 Brussels.