# 29 october 2008: Internet sales of parapharmaceuticals

Published on March 04, 2009

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**The Conseil de la concurrence orders Pierre Fabre Dermo-cosmétique to amend its contracts to allow distributors to sell its products online**

***> Version française***

The Conseil has issued a decision, ruling that Pierre Fabre Dermo-cosmétique breached competition law by prohibiting its authorized distributors from selling Klorane, Avène, Ducray and Galenic branded products over the Internet.

**Background of the case and the offending practices committed by Pierre Fabre Dermo-cosmétique**

Like most companies operating in its sector, Pierre Fabre Dermo-cosmétique has opted for a system of selective distribution: its products are sold through authorized distributors (pharmacies, parapharmacies, etc.), selected according to the quality of their point of sale, the qualifications of their staff and their commitment to guarantee that a pharmacist will be present at all times. This latter criterion is deemed necessary in order for products to be sold.

Without calling into question the principle of selective distribution, the Conseil de la concurrence, having launched ex officio proceedings in 2006, had previously expressed competition concerns regarding clauses prohibiting authorized distributors from selling products online. This is why ten companies gave the Conseil a commitment to amend their contracts, in such a way as to ensure respect for their corporate image and the guaranteed quality of their products, whilst allowing authorized distributors to take advantage of this dynamic retail channel. These proceedings against them were closed in March

2007 (see press release dated 8 March 2007).

**By prohibiting the sale of its products online, Pierre Fabre Dermo-cosmétique placed excessive restrictions on the commercial freedom of its distributors, to the detriment of consumers' interests**

Ruling on the case of Pierre Fabre, which did not wish to benefit from the same negotiated procedure such as the other companies, and without being bound by its previous decision in which no legal qualification of the facts was established, the Conseil de la concurrence has taken the view that Pierre Fabre Dermo-cosmétique, by prohibiting the online sale of its products, has broken competition rules: this practice equates to a prohibition of active and passive sales, and cannot be considered exempt, either under a block exemption allowed by the EC Regulation of 1999 on vertical agreements, or individually under national and EC provisions allowing for the agreement's contribution to economic development to be taken into account.

Pierre Fabre DC has harmed the interests of consumers by preventing them from enjoying the pro-competition effects that may be expected from the online sale of products distributed through a selective network, and has restricted the commercial freedom of its authorized distributors, by depriving them of a marketing channel with strong growth potential.

This method of distribution not only allows consumers to compare prices more easily, but also offers them services that sales in physical outlets are unable to provide. Home delivery and real time availability of product-specific documentation, in any location, serve to stimulate price competition whilst giving distributors an incentive to provide more services in order to attract or retain custom.

**The Conseil believes selective distribution networks offer sufficient guarantees to a brand concerned with protecting its prestige and reputation**

The Conseil reiterates that parapharmaceutical products are not medicines, and that the selective organization of distribution through specialist networks is

sufficient to guarantee respect for product quality.

It also takes the view that the selection criteria for the selective distribution system defined by Pierre Fabre DC, intended to enhance the value of its products, can be adapted to Internet sites.

The Conseil has acted to restore proper competition quickly, ordering Pierre Fabre Dermo-cosmétique to remove, in its selective distribution contracts, any section effectively prohibiting Internet sales of its cosmetics and personal hygiene products. All points of sale must be informed of this amendment, which shall be applied within a period of three months.
Given the circumstances of the case and the expected effect of the injunctions handed down, the Conseil has limited the fine imposed on Pierre Fabre Dermo-cosmétique to 17,000 euros.

> For more details of decision 08-D-25



***> See decision of the Paris court of Appeal (29th October 2009)***

***> See decision of the European Court of Justice (13th October 2011)***