

Competition Tribunal File No. CT-2007-002

BETWEEN:

LONDON DRUGS LIMITED

APPLICANT

AND:

PARFUMS GIVENCHY CANADA LTD.

RESPONDENT

AFFIDAVIT

I, JEANIE LEE, merchandising manager of 12251 Horseshoe Way, in the City of Richmond in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am the merchandising manager with London Drugs Limited ("London Drugs"), and as such have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are stated to be based on information and belief and where so stated I verily believe them to be true.

I. MY EXPERIENCE IN THE RETAIL INDUSTRY

2. I have been employed in the retail industry for twenty-nine years and have been employed by London Drugs for twenty-one years.

3. I have held the position of merchandising manager with London Drugs since September 6, 1999. Prior to that, I was a buyer in over the counter pharmaceuticals from 1997 to 1999; a buyer in health and beauty department from 1994 to 1996; a merchandising assistant from 1987 to 1993; and a sales supervisor from 1985 to 1986.

II. LONDON DRUGS

4. London Drugs is a privately-held company which was founded in 1945. It has sixty-four stores in four provinces (British Columbia, Alberta, Saskatchewan and Manitoba) and employs approximately 7,000 people. In addition, since 2003, London Drugs has sold its products on its web-site www.londondrugs.com.

5. London Drugs is part of the H.Y. Louie Group of companies. The H.Y. Louie Group was founded more than 103 years ago.

6. London Drugs was established as a traditional pharmacy. However, its stores carry a wide variety of products, including cosmetic and beauty products, pharmaceutical products, photographic products and development services, housewares and hardwares, automotive products, food, hi-tech and electronic equipment, audio visual equipment, computers, stationery, books and health and beauty aids.

7. London Drugs is the leading retailer of cosmetics and beauty products in the provinces in which it operates. Now shown to me and attached as Exhibit "A" to this Affidavit is a copy of an excerpt from a report conducted by Kubas Consultants, an independent survey company, which sets out the top retailers of cosmetics and fragrances in Canada. In the western region, London Drugs is the leading retailer of cosmetics and fragrances as a whole, with 58.5% of consumers shopping at London Drugs. In Vancouver, 70.5% of consumers shop at London drugs, with 49.3% in Edmonton and 42% in Calgary. The report contains information which is confidential to London Drugs and as such is filed confidentially under seal.

III. GIVENCHY

8. Now shown to me and attached as Exhibit "B" to this Affidavit is a corporation profile report for Parfums Givenchy Canada Ltd. ("Givenchy"). Givenchy is a supplier of women's and men's fragrance, and is the only authorized supplier of Givenchy products in Canada.

9. Until December 2006, Givenchy distributed its products in Canada to London Drugs, Shoppers Drug Mart and Jean Coutu, in the drug store channel, and Sears, The Bay and Holt Renfrew, in the department store channel.

IV. THE BEAUTY MARKET IN CANADA

10. Now shown to me and attached as Exhibit "C" to this Affidavit is a copy of an Industry Canada profile report, which states that the cosmetics and beauty products industry in Canada is a US\$1.1 billion per year industry. Retail sales have increased by approximately one percent per year.

11. Now shown to me and attached as Exhibit "D" to this Affidavit is a copy of an online industry report which indicates that market observers expect sales to increase by 3.9% per year.

V. THE PRESTIGE FRAGRANCE MARKET IN CANADA

12. Certain fragrances are known as “prestige” fragrances. Such fragrances include Armani, Givenchy, Christian Dior, Calvin Klein, Chanel, Estee Lauder and Clinique.

13. According to Trendex, an independent survey company, eighteen suppliers, including Givenchy, occupy 73% of the market in women’s prestige fragrances. Of those eighteen, there is no clear market leader. Givenchy holds between three and four percent of the total market share. Now shown to me and attached as Exhibit “E” to this Affidavit is a copy of a Trendex report entitled “Prestige Cosmetics Management Summary Report”.

14. The prestige fragrance market is an unusual market, with each fragrance constituting its own market. Competition in the prestige fragrance market is unusual, and limited, for the following reasons:

(a) The market is not interchangeable. Customers tend to have a personal, emotional attachment to a particular fragrance. A customer will come to a store to purchase a particular fragrance and if the store does not stock that particular fragrance, the customer will leave and go elsewhere. Even gifts may not be enough to entice a customer to a store. The customer will choose the fragrance, and then choose the store from which to purchase the fragrance.

(b) Purchasers of prestige fragrances tend to be product-driven. The fragrance represents a status symbol and purchasers will buy a particular fragrance because of its status. Many prestige fragrance suppliers tend to rely on advertising campaigns and celebrities to promote their fragrances, which generates a huge demand for that market. For instance, Liv Tyler promotes Givenchy's Very Irresistible fragrance, which has greatly improved the profile of that fragrance. At London Drugs, that endorsement made the fragrance one of the most successful promotional introduction of a fragrance for us.

(c) In Canada, prestige fragrances tend to be distributed on a selective basis, through a limited number of department stores and drug stores. This practice also occurs outside Canada. Now shown to me and attached as Exhibit “F” to this Affidavit is a copy of a decision of the European Commission in *Parfums Givenchy System of Selective Distribution* dated July 24, 1992.

Now shown to me and attached as Exhibit "G" to this Affidavit is a copy of excerpts from a report of the U.K. Competition Commission entitled "Fine Fragrances: A Report for the Supply in UK for Retail Sale of Fine Fragrances" dated August 1993.

(d) In terms of distribution, it is also important for suppliers and authorized distributors that a store also carry prestige fragrances from other suppliers and authorized distributors. The suppliers and authorized distributors tend not to supply product to a store if there are few or no other prestige fragrances sold at that store. Consequently, if a retailer wants to build its prestige fragrance markets, it must attract and maintain a range of prestige fragrances. One of the first questions a potential supplier or authorized distributor will ask is which other fragrances are in the stores.

(e) Customers also expect a store to carry other prestige fragrances. Customers prefer to purchase from a retailer which stocks a wide selection of prestige fragrances. Customers will not purchase from stores with a limited selection.

(f) Suppliers and authorized distributors play a large role in determining the end price of the product and they usually do not permit variations in pricing. Discounting is discouraged. This practice also carries on outside Canada.

15. As a result of the foregoing factors, each supplier and authorized distributor of prestige fragrances represents its own market and it is extremely difficult to replace that market.

16. Traditionally, prestige fragrances have been sold in department stores. In 1992, London Drugs became the first drug store to enter into a direct relationship with a prestige fragrance supplier, which was Calvin Klein. The retail landscape for prestige fragrances changed again in the 1990s, with the demise of Eaton's. London Drugs was approached by other suppliers and authorized distributors, and increased its representation of prestige fragrances.

17. At the same time, suppliers and authorized distributors realized the benefits of dealing directly with drug stores, as opposed to the department stores. Drug stores offer better customer service than department stores. In addition, in department stores, suppliers and authorized distributors often subsidize the salaries of staff employed at the beauty counters. By contrast, drug stores do not receive staff subsidies.

VI. SALE OF PRESTIGE FRAGRANCES BY LONDON DRUGS

18. In its stores, London Drugs showcases its cosmetics and prestige fragrances. In each of London Drugs' store, the brand logos of each prestige fragrance are prominently displayed, both inside and outside the store. Inside the store, London Drugs will display the brand logo on London Drugs' installations in its beauty department. For instance, brand logos appear on the high quality, custom made cabinet in which the product is placed. Outside the store, London Drugs will use the manufacturer's imagery, often in large, billboard-style displays. London Drugs also advertises its prestige fragrances regularly in its flyers and catalogues.

19. London Drugs' strategy is to make London Drugs a destination for consumers of cosmetics and beauty products. London Drugs wants to attract a customer who likes prestige products, not just fragrance and beauty products but also other types of products, such as electronics. As an example, London Drugs sells high end, home theatre systems at prices of up to \$30,000.

20. Consequently, it is important for London Drugs to build and maintain its prestige brands. Starting in 1999, London Drugs made a major investment to remodel its stores to create destination areas for cosmetic and beauty products. In 2006, London Drugs refreshed its concept, at further cost. London Drugs is currently launching this latest improvement in all of its stores. Now shown to me and attached as Exhibit "H" to this Affidavit is a copy of a photograph of London Drugs' latest concept. The process of introducing and refreshing the destination concept into London Drugs' stores has required a significant investment on the part of London Drugs.

21. The key underpinning of London Drugs' strategy to make its stores a destination for cosmetic and beauty products, is to have the right mix of product and, in particular, to have a range of prestige brands.

22. Purchasers of prestige fragrances are important to London Drugs also because of their willingness to buy other products while at London Drugs. Although it is difficult to quantify exactly, our research and experience tells us that the purchaser of a prestige fragrance is also likely to buy other products, such as iPods and lipstick. For instance, a man buying a plasma television may also purchase his wife a gift of fragrance at the same time.

VII. LONDON DRUGS' RELATIONSHIP WITH GIVENCHY

23. London Drugs has had a direct distribution agreement with Givenchy since August 1996. Prior to that time, London Drugs purchased its Givenchy fragrances through parallel imports. Now shown to me and attached as Exhibit "I" to this Affidavit is a copy of the Master Vendor Agreement between London Drugs and Givenchy.

24. London Drugs has always followed Givenchy's pricing policies.

25. London Drugs carries seventeen stock-keeping units ("SKUs") of Givenchy fragrances, which represents most of Givenchy's line. London Drugs sells Givenchy products in all of its sixty-four stores and showcases Givenchy products on London Drugs' website. At all times, London Drugs has made full efforts to support Givenchy products in London Drugs' stores. Now shown to me and attached as Exhibits "J" and "K" to this Affidavit are a copy of a listing of all Givenchy products that have been carried by London Drugs and a listing of the most recent products carried by London Drugs.

26. Included in the range of Givenchy products were fragrances of varying strengths, body lotions, shower gels, soaps, deodorants, gift sets and limited editions. Limited editions are important because they create a "newness" which attracts customers. Customers will buy their regular fragrance, but will also purchase a limited edition of that fragrance along with their regular purchase.

27. London Drugs is required to adhere and has adhered to Givenchy's usual trade terms, which includes not only the price paid by London Drugs to Givenchy for the product, but also the price which London Drugs may set for the sale of the Givenchy products in its stores. Givenchy typically sets the price London Drugs may charge, and sets any increases in that price. London Drugs also negotiated co-operative advertising amounts and negotiated support by means of in-store displays, samples for customers and customer education. London Drugs received a three percent commission on sales of Givenchy products and received advertising support.

28. In each of London Drugs' stores, the Givenchy brand logo is prominently displayed. Givenchy has prime showcases in London Drugs' stores, in the highest traffic areas. London Drugs takes pride in its marketing of Givenchy products: the products are well displayed and always in pristine condition. London Drugs ensures that the area is well staffed, to offer optimal customer service.

29. London Drugs has also advertised Givenchy products on the outside of its stores. For instance, in the Fall of 2006, Givenchy launched a new fragrance, Ange ou Demon. The fragrance was heavily advertised by London Drugs. The advertising included in-store demonstrations, large, billboard-type advertising outside the stores and a prominent position in London Drugs' catalogue. Now shown to me and attached as Exhibit "L" to this Affidavit is a copy of an excerpt from the London Drugs' catalogue for the Christmas period of 2006. The catalogue was issued at the beginning of December.

30. London Drugs ordered Givenchy fragrances by submitting purchase orders. Since July 5, 2004, those orders are transmitted electronically. Before 2004, each store would submit its own purchase orders; however, since then, London Drugs has moved to a centralized system of ordering. Through the order sheets, Givenchy would give notice of any price increases.

31. On occasion, London Drugs has questioned the pricing policy of Givenchy. Around four or five years ago, I became aware that Shoppers Drug Mart was selling Givenchy products at a discount. On or about September 27, 2003, I communicated with Givenchy's then representative, Laurel Dinney, about whether London Drugs should follow and offer a discount. Ms. Dinney told me that Shoppers Drug Mart were selling grey market products, which were probably old or even counterfeit. Ms. Dinney stated that it would not be appropriate for London Drugs to offer a discount because it was selling the real product.

32.

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33. As with the general prestige fragrance market, London Drugs' sales of Givenchy products encourages other suppliers and authorized distributors of prestige fragrances to continue with London Drugs. In addition, London Drugs benefits from the cross-shopping done at London Drugs by its Givenchy customers.

VIII. GIVENCHY'S REFUSAL TO DEAL

34. Prior to December 2006, I had a very good relationship with Givenchy's representative, Steven Lynch. In particular, London Drugs had worked very closely with Givenchy to promote its new fragrance, Ange ou Demon. London Drugs has worked together with Givenchy on co-operative advertising and in-store visual displays.

35. In late November 2006, London Drugs began experiencing difficulty receiving product from Givenchy. Givenchy stopped filling the purchase orders submitted by London Drugs. I asked Mr Lynch what was happening. He explained that there was a general shortage of the Ange ou Demon product, because Givenchy had underestimated how well that fragrance would sell, but he did not explain the shortages of other products. He simply told me he would look into the matter and get back to me.

36. In December 2006, Givenchy stopped supplying its products to London Drugs altogether. On or about November 23, 2006, London Drugs issued a purchase order, for delivery on December 11, 2006. That order was never shipped and I received no notification or explanation from Givenchy. Again, on December 19, 2006, London Drugs issued a further purchase order, for delivery on February 1, 2007. That order was also not filled. I received no notification or explanation. I called Mr. Lynch several times. Each time, he told me he was looking into why the product had not been shipped and that he would get back to me. However, he did not respond to requests for an explanation. Now shown to me and attached as Exhibits "N" and "O" to this Affidavit are a copy of each of the purchase orders dated November 23, 2006 and December 19, 2006, respectively. Those orders have not been filled.

37. In January 2007, I expected to hear from Givenchy to set up its marketing presentation for spring. In the past, Givenchy would make its spring marketing presentation to department stores toward the end of the year, and then would make its presentation to drug stores in January. However, no-one from Givenchy contacted me to set up the meeting.

38. On January 10, 2006, I was advised by e-mail that Erin Donohue, of Givenchy, wanted a meeting with me and Wynne Powell, president of London Drugs. My assistant, Julie Santos, contacted Ms. Donohue and asked for an agenda. She advised that the agenda for the meeting was "to review the business and the future direction for Givenchy in Canada". Now shown to me and attached as Exhibit "P" to this Affidavit is a copy of the e-mail exchange between Ms. Santos and Ms. Donohue.

39. On January 18, 2007, Mr. Powell and I met with Ms. Donohue. She advised us that Givenchy was going to stop supplying product to London Drugs and would work to assist London Drugs with the "transition of the business". At the meeting, Ms. Donohue confirmed that Givenchy would continue to supply product to Shoppers Drug Mart, which would mean that Shoppers Drug Mart would be the only drug store to carry Givenchy products.

40. After the meeting, London Drugs sent a letter to Givenchy. Now shown to me and attached as Exhibit "Q" to this Affidavit is a copy of a letter dated January 23, 2007 from Mr. Powell to Ms. Donohue. Givenchy did not respond to the letter.

41. On or about January 24, 2007, Givenchy confirmed its decision in a letter from Robert Kwinter of Blakes, Cassels & Graydon LLP, counsel to Givenchy. That letter is marked "without prejudice". The letter contained a warning to London Drugs that Givenchy would take legal action against London Drugs if London Drugs attempted to purchase Givenchy products on the "grey market", to replace the lost supply.

42. Other than the meeting with Ms. Donohue and the letter received from Mr. Kwinter, London Drugs has received no verbal or written communication regarding Givenchy's decision, its explanation for the decision or even to discuss any ongoing or future issues.

43. I have since learned that Givenchy has terminated its supply relationship with Sears and has either terminated or threatened to terminate Jean Coutu's supply. As a result, Givenchy will be distributing its fragrances to only one drug store, Shoppers Drug Mart.

IX. HARM TO LONDON DRUGS

44. Givenchy's refusal to supply product to London Drugs has caused and will in the future cause a great deal of harm to London Drugs. London Drugs could not and cannot meet the demand for Givenchy products. First, with respect to the Ange ou Demon fragrance, London Drugs could not meet the demand which had been generated by the intensive promotion we had done for that product. We launched the product in mid-November 2006 and it was a huge sales event for us. We provided in-store displays with samples, outside billboards and advertising on the back cover of the Christmas catalogue (which is a prime position in the catalogue). We generated a great deal of interest in the new fragrance. However, by the time the Christmas catalogue (which heavily promoted the product, with a complimentary gift) was

shipped to households, London Drugs had very little of the product left. We were virtually sold out by early December.

45. Redacted pursuant to
Confidentiality Order of the
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46.

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47. With the exception of the immediate period before Valentine's Day, the early months of the year tend to be relatively slow. The next major push for sales is Mother's Day. During that time, we typically experience great increases in sales. However, this year, we will have no Givenchy stock. I am worried about what I can tell customers. I have no doubt that if London Drugs does not have the Givenchy fragrances, it will lose those customers. Based on my experience, those customers will not switch to another fragrance. The loss of customers will also affect sales of other products which are tied in with Mother's Day, such as cards, chocolates and other beauty products.

48. London Drugs plans its advertising campaigns several months in advance. In January 2007, London Drugs set its advertising programme for Mother's Day, which focussed on Givenchy products. In the past, our offerings of Givenchy fragrances has been tailored to increase sales at that time. For instance, in the past Givenchy has offered gifts with purchases, including decorative plates. Our customers expect London Drugs to provide Givenchy fragrances.

49. The loss of product means that our showcases are empty of Givenchy products. Having empty showcases in a high traffic area sends an extremely negative message to our customers.

50. London Drugs plans to open two new stores on March 20, 2007 and May 15, 2007. Those stores are destination stores for beauty products and we have allocated space and fixtures for Givenchy fragrances. We have no Givenchy product for those stores.

51. With no Givenchy fragrances, London Drugs' Givenchy customers will go elsewhere, likely to Shoppers Drug Mart. Shoppers Drug Mart will be the only drug store to carry Givenchy fragrances and will, therefore, have a monopoly in London Drugs' market (the drug store channel).

52. Other prestige fragrances will be affected. As I deposed above, a key to being a retailer of prestige fragrances is being accepted by other prestige fragrance suppliers and authorized distributors. Suppliers and authorized distributors are very fickle and will only distribute to a retailer if the other suppliers and authorized distributors in that product category are doing so.

53. Givenchy's refusal to deal with London Drugs will cause irreparable harm to London Drugs in the following ways:

(a)

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(b) London Drugs' market share will be involuntarily shifted to Shoppers Drug Mart, given that the London Drugs' supply of Givenchy products is cut-off. This, in turn, will create a monopoly situation in the drug store channel for Givenchy products. We are concerned that other suppliers and authorized distributors will follow suit. Ultimately customers will not have choices in retail selection in the drug store channel other than Shoppers Drug Mart.

54. In addition, London Drugs will suffer additional irreparable harm as follows:

(a) London Drugs will lose sales from the cross-segment shopping that originates with Givenchy products.

(b) London Drugs will suffer harm with other suppliers of cosmetics and fragrances. For example, such suppliers may view London Drugs as being at a disadvantage and try to extract more concessions from London Drugs. Also, other suppliers and authorized distributors may not supply to London Drugs because London Drugs may be seen as being unable to attract customers of prestige fragrances.

(c) London Drugs will have diminished negotiating capabilities in terms of attracting new products, because of the negative stigma associated with losing the Givenchy market. London Drugs will face difficulty keeping existing products and attracting new brands.

(d) London Drugs will also suffer a stigma among its customers, who will have a lower impression of London Drugs because it does not carry Givenchy products. London Drugs' reputation and market image will suffer. It is essential to London Drugs' strategy of being a destination for cosmetic and beauty products that it carry a full range of prestige fragrances. It will lack credibility with customers if well-known prestige fragrances, such as Givenchy, are missing.

55. The losses that will be suffered by London Drugs cannot be quantified in damages.

56. While it is possible to turn to parallel imports to restock Givenchy fragrances, Givenchy has threatened to pursue legal action against London Drugs if it purchases Givenchy fragrances through parallel imports. Givenchy wants to prevent us from selling Givenchy fragrances altogether, with the consequent loss of those customers. Givenchy has created a monopoly in the drug store channel.

57. It is also unrealistic to suggest that London Drugs could replace the Givenchy fragrances with another, similar line. Given customer loyalty and lack of substitution within the prestige fragrance market generally, even obtaining a new brand would not replace the Givenchy market.

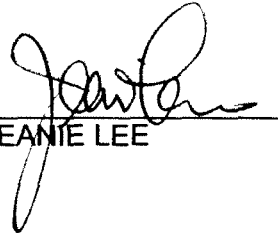
58. London Drugs has met the trade terms set by Givenchy for the past eleven years. London Drugs is willing to meet the usual, lawful trade terms set by Givenchy. To my knowledge, Givenchy products are not in short supply in the retailers who continue to sell the products.

SWORN BEFORE ME at the City of)
Richmond, in the Province of British)
Columbia this 9th day of March, 2007.)



_____)
A Commissioner for taking Affidavits for)
British Columbia)

ERIN A. ACKERMAN
BARRISTER & SOLICITOR
BULL, HOUSSEY & TUPPER LLP
1000, 1055 WEST GEORGIA
VANCOUVER, B.C. V6E 3R5
(604) 641-4831
(604) 641-4831



_____)
JEANIE LEE

This is Exhibit A referred to in the
Affidavit of Jeanie Lee
Sworn before me at Richmond, British Columbia
this 9th day of March A.D. 2007



A Commissioner for taking Affidavits for British
Columbia

ENA A. ACKERMAN
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Redacted pursuant to
Confidentiality Order of the
Tribunal dated May 2, 2007

This is Exhibit B referred to in the
Affidavit of Jeanie Lee
Sworn before me at Richmond, British Columbia
this 9th day of March A.D. 2007



A Commissioner for taking Affidavits for British
Columbia

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(604) 641-4831

Request ID: 008883993
 Transaction ID: 31487658
 Category ID: UNE

Province of Ontario
 Ministry of Consumer and Business Services
 Companies and Personal Property Security Branch

Date Report Produced: 2007/02/13
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CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
840230	PARFUMS GIVENCHY CANADA, LTD.	1989/05/19
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address	Date Amalgamated	Amalgamation Incl.
2 BLOOR STREET WEST SUITE 1802	NOT APPLICABLE	NOT APPLICABLE
TORONTO	New Amal. Number	Notice Date
ONTARIO	NOT APPLICABLE	NOT APPLICABLE
CANADA M4W 3E2		Letter Date
Mailing Address		NOT APPLICABLE
208 FERNWOOD AVENUE	Revival Date	Continuation Date
EDISON	NOT APPLICABLE	NOT APPLICABLE
NEW JERSEY	Transferred Out Date	Cancel/Inactive Date
UNITED STATES OF AMERICA 08837	NOT APPLICABLE	NOT APPLICABLE
	EP Licence Eff.Date	EP Licence Term.Date
	NOT APPLICABLE	NOT APPLICABLE
	Number of Directors	Date Commenced
	Minimum Maximum	In Ontario
	UNKNOWN UNKNOWN	NOT APPLICABLE
Activity Classification		Date Ceased
NOT AVAILABLE		In Ontario
		NOT APPLICABLE

Request ID: 008883993
Transaction ID: 31467656
Category ID: UNE

Province of Ontario
Ministry of Consumer and Business Services
Companies and Personal Property Security Branch

Date Report Produced: 2007/02/13
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CORPORATION PROFILE REPORT

Ontario Corp Number

840230

Corporation Name

PARFUMS GIVENCHY CANADA, LTD.

Corporate Name History

PARFUMS GIVENCHY CANADA, LTD.

Effective Date

1989/05/19

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

**Administrator:
Name (Individual / Corporation)**

OLIVIER
DUBOS

Address

178 CRESCENT ROAD
Suite # 2
TORONTO
ONTARIO
CANADA M4W 1V3

Date Began

2003/12/15

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

GENERAL MANAGER

Resident Canadian

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Transaction ID: 31467656
Category ID: UN/E

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Ministry of Consumer and Business Services
Companies and Personal Property Security Branch

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CORPORATION PROFILE REPORT

Ontario Corp Number

840230

Corporation Name

PARFUMS GIVENCHY CANADA, LTD.

**Administrator:
Name (Individual / Corporation)**

ALAIN
LORENZO

Address

10 ALLEE DES ERABLES
CROISSY SUR SEINE
FRANCE 78290

Date Began

2004/09/20

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

N

**Administrator:
Name (Individual / Corporation)**

ALAIN
LORENZO

Address

10 ALLEE DES ERABLES
CROISSY SUR SEINE
FRANCE 78290

Date Began

2004/09/20

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

CHAIRMAN

Resident Canadian

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Transaction ID: 31467658
Category ID: UN/E

Province of Ontario
Ministry of Consumer and Business Services
Companies and Personal Property Security Branch

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CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
840230	PARFUMS GIVENCHY CANADA, LTD.

Administrator: Name (Individual / Corporation)	Address
ALAIN LORENZO	10 ALLEE DES ERABLES CROISSY SUR SEINE FRANCE 78290

Date Began	First Director	
2004/09/20	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
OFFICER	CHIEF EXECUTIVE OFFICER	

Name (Individual / Corporation)	Administrator: Address
W. BRIAN ROSE	77 AVENUE ROAD Suite # 405 TORONTO ONTARIO CANADA M5R 3R8

Date Began	First Director	
1989/05/19	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
DIRECTOR		Y

Request ID: 008883993
Transaction ID: 31467656
Category ID: UN/E

Province of Ontario
Ministry of Consumer and Business Services
Companies and Personal Property Security Branch

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CORPORATION PROFILE REPORT

Ontario Corp Number

840230

Corporation Name

PARFUMS GIVENCHY CANADA, LTD.

**Administrator:
Name (Individual / Corporation)**

W.
BRIAN
ROSE

Address

77 AVENUE ROAD

Suite # 405
TORONTO
ONTARIO
CANADA M5R 3R8

Date Began

1989/05/24

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y

Request ID: 008883993
Transaction ID: 31467656
Category ID: UN/E

Province of Ontario
Ministry of Consumer and Business Services
Companies and Personal Property Security Branch

Date Report Produced: 2007/02/13
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CORPORATION PROFILE REPORT

Ontario Corp Number

840230

Corporation Name

PARFUMS GIVENCHY CANADA, LTD.

Last Document Recorded

Act/Code Description

Form

Date

CIA ANNUAL RETURN 2005

1C

2006/07/15 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON THE COMPANIES AND PERSONAL PROPERTY SECURITY BRANCH MICROFICHE.

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.

This is Exhibit C referred to in the
Affidavit of Jeanie Lee
Sworn before me at Richmond, British Columbia
this 9th day of March A.D. 2007



A Commissioner for taking Affidavits for British
Columbia

ENA A. ACKERMAN
BARRISTER & SOLICITOR
BULL, HOUSSEY & TUPPER LLP
#3000, 1055 WEST GEORGIA
VANCOUVER, B.C. V6E 3R3
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Cosmetics and Toiletries

Industry Sector Analysis [ISA]

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- Regions: **WH;Western Hemisphere;North America**
- Country: **Canada**

- Industry: **Consumer Goods & Home Furnishings**
- Sector: **Cosmetics/Toiletries**

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Canada's US\$1.1 billion cosmetics and toiletries market is dominated by imports from the United States of over US\$740 million, and offers growth of 4 to 6 percent over the next several years, especially in sales of skincare products including sunscreens and suntan preparations, hair care products, especially shampoos and preparations for permanent waving or straightening of hair, perfume and toilet waters, manicure and pedicure preparations.

SUMMARY

The Canadian market for cosmetics and toiletries is expected to remain buoyant in the next few years, even if negative conditions should affect the economy. The US\$1.1 billion market should grow by an annual average of two to four percent over the next 3 years, reaching US\$1.7 billion in sales by 2006. U.S. imports into Canada stood at US\$713 million in 2002, an incredible growth of nearly 300 percent in the last ten-year period. Imports from the United States are expected to increase by 4 to 6 percent annually over the next three years, surpassing US\$740 million in 2003. The USA represents more than 70 percent of the import market of such products into Canada.

Skincare products including sunscreens and suntan preparations, hair care products, especially shampoos and preparations for permanent waving or straightening of hair, perfume and toilet waters, manicure and pedicure preparations offer the strongest potential for increased U.S. exports to Canada over the next few years. Products targeted towards specific demographic groups (seniors, teens, tweens, children, babies)

will also be an important market for future retail sales in Canada.

The industry in Canada is dominated by affiliates of multinational corporations and medium-sized domestic enterprises. Ontario and Quebec are the largest producers of cosmetics and toiletries in Canada and are the most active marketplaces for such products. Recent years have seen a shift from department stores as primary retailers of personal toiletry products towards mass-market channels such as grocery stores and drugstores, even in sales of "prestige" lines such as Dior and Lancôme. The metropolitan areas of Toronto, Montreal and Vancouver represent the most active marketplaces in terms of market demand for cosmetics and toiletries.

MARKET OVERVIEW

This Canadian market for cosmetics and toiletries includes color cosmetics; perfume and toilet waters; skin care preparations, including sunscreens and suntan preparations; and hair care. With sales of over \$1 billion annually, the market is expected to remain buoyant over the next several years, even if negative conditions should affect the overall Canadian economy, because in an economic downturn and even in a recession people tend to increase their desire to spend money on themselves, and that includes purchases of cosmetics and therapeutic products. The 2 to 4 percent annual growth rate forecast for the next three years is predicated on rising disposable incomes among Canadians, falling unemployment, and growing numbers of baby boomers and teenagers, both of which are important consumers of cosmetic products.

Baby boomers, with their high amounts of disposable income and concerns with aging, continue to drive the cosmetics market's growth in Canada. Skin and hair treatment products are key products serving this group. Table 1 provides a statistical overview of Canada's cosmetics and toiletries market:

TABLE 1
Cosmetics and Toiletries
Statistical Market Overview

	2002 US\$ millions	2003 US\$ millions	2004 US\$ millions	Projected Average Annual Growth Rate 2005-2006 (%)
Import Market	999.2	1,068.0	1,303.6	6-8
Local Production	784.1	799.8	926.7	1-2
Exports	636.3	698.0	855.9	8-10
Total Market	1,147.0	1,169.9	1,374.4	2-4
Imports from U.S.	713.0	740.8	887.3	4-6
Exchange Rate*	\$0.6400	\$0.6400	\$0.7300	

* value of one Canadian dollar

Estimated future inflation: 2 percent

Source: Strategis; unofficial estimates by Commercial Service Montreal based on best available industry information. The most recent complete industry data dates from 2001 (US\$ millions, exchange rate of 0.67): Import Market 915.8, Local Production 793.7, Exports 636.3, Total Market, 1,134.7, Imports from U.S., 680.4.

MARKET TRENDS

Product Innovation and Increase market penetration of products in areas such as men's skin care and fragrances, sun care, children and baby care will drive the growth in the retail market. The following groups of products are expected to offer strong growth potential in the next few years:

- Sun care products (baby), self-tanning products, bronzers
- Hair coloring preparations
- Skin care (men's), for body and face
- Lip care products
- Nail products
- Fragrances (men's)

An industry specialist has observed that expansion of the market for anti-aging and other therapeutic products will include new consumers concerned with their skin and appearance, especially younger women and men. Harsh Canadian winter weather conditions exacerbate the market's need for nourishing and moisturizing skincare products. Similarly, Euromonitor has observed that 85 percent of elderly Canadians suffer from dry skin. As consumers are becoming more educated about the positive effects of taking proper care of their skin, many are also willing to pay higher prices for high-quality products, especially those employing new technological innovation and using natural ingredients. Value-added higher-priced items will also contribute to increased sales in the market. However, there are also consumers demanding unique, high quality products that both meet performance needs and are affordable. The Canadian cosmetics marketplace has seen a number of new brands that respond to this demand such as Aveda, MAC, Origins, The Body Shop and Rialto.

Sales of prestige or high-end cosmetics, toiletries, and fragrances have shown an important shift from the department store to drugstores in recent years as drugstore chains such as Jean Coutu and Shoppers Drug Mart have begun offering traditional department store lines such as Clarins, Dior, and Lancôme; an endeavor that has been largely met with positive results: "Our open sell approach creates an environment where the consumer is empowered- he or she has the choice of having service, or not having service", comments Michael Losvin, vice-president of category management, beauty and conveniences at Shoppers Drug Mart. As many Canadian department stores have recently had to face financial difficulties, mass channels have become vital to generate strong sales for cosmetics suppliers. Increased consumer awareness about products available on the market has also been influential in this trend.

Retailers in Canada are continually re-inventing themselves to keep up with fickle and rapidly changing trends. The Bay, a major Canadian department store chain, recently renovated its large first-floor cosmetics department in downtown Montreal to include flat screen TVs which announce the store's current promotions to customers. However, as Jim Hicks, publisher of Cosmetics Magazine, has observed, "I don't care how many times you change, re-do, renovate, relocate, and redecorate, customers come back because of the service the counter personnel provide. This is still a people/relationship business."

Chart 1 shows the consumer sales channels for cosmetics and toiletries in FCanada.

Chart 1
Canadian Cosmetics and Toiletries
Consumer Sales Channels

38.1%	Drugstores
-------	------------

17.1%	Department Stores
15.4%	Mass Merchandisers
14.7%	Food Stores
6.1%	Direct Sales
4.1%	Salons
1.0%	Specialty Stores
3.7%	All others

* Source Kline & Company

The cosmetics market in Canada is dominated by several large companies, with the top ten companies of the industry accounting for 57 percent of industry sales. As large conglomerate companies such as Procter & Gamble and L'Oreal Group continue to acquire new businesses and grow in size, consolidation of the industry is likely to continue. These large companies possess the advantage of being able to maintain a high profile through extensive advertising campaigns and gift-with-purchase offers. However, a major cosmetics distributor in Canada recently commented that many of these companies' head offices are not located in Canada, and thus they have little understanding of the nuances of this market. In his opinion, this limits creativity and the ability to propose new concepts that are targeted specifically to the Canadian consumers.

According to the research firm Kline & Company, the following 10 leading categories account for more than 70 percent of the cosmetics and toiletries market sales in Canada:

- Facial Treatments (13.6%)
- Shampoos/Conditioners (12.4%)
- Women's Fragrances (8.5%)
- Personal Cleaning Products (6.9%)
- Hand/Body Creams, Lotions and Treatments (5.9%)
- Hair Coloring (5.3%)
- Toothpastes (4.8%)
- Hair Styling Products & Sprays (4.8%)
- Deodorant/Antiperspirants (4.8%)
- Face Makeup (4.7%)

The sectors for which most exceptional growth in sales (more than 25 percent) has been documented from 1998 to 2003 were the following:

- Sun care products for babies
- Hair coloring products
- Products for lips
- Self-tanning products
- Nail products

Finally, in recent years, personal-care products for men have demonstrated an exceptional growth. This market segment represents US\$3.5 billion dollars worldwide and will continue to grow. Personal-care products targeted towards a specific demographic (elderly people, teens, children...) will be an important market for retailers to target.

Fragrances

In the autumn of 2003 nearly 50 new fragrances will be introduced in the Canadian market; only 10 percent will be successful. Newness is the key driver that will bring customers to retail counters. Designer names or celebrity endorsement is a definite plus when launching a new product. For the Quebec market, endorsement by a local celebrity has proven even more successful. Prestige fragrance market is not the only segment experiencing a boom. Mass-market fragrances should also experience sales growth in bargain stores such as Wal-Mart. Fragrances are now considered as accessories for day-time, evening, sports, or vacation time.

Anti-aging Products

Facial treatments comprise the largest sector of the Canadian cosmetics market. This is due in large part to the continuing technological innovation and expansion of the anti-aging skin care market. These include alpha-hydroxy acid products which work to reveal fresher, younger-looking skin by gently exfoliating away dry, flaky surface skin, products formulated with botanical extracts to prevent lines, to firm skin, and infused with vitamins to fight free radicals. Higher-priced products from prestige lines have traditionally dominated this area. However, the past year has seen drugstore lines aggressively move into the market. Almay, for example, introduced its new line of Advanced Anti-Aging products, containing kinetin, a natural growth extract discovered in green leafy plants and proven to delay the onset of aging of skin cells. An industry specialist also identified cosmetics targeting body shape management and body tone enhancement as important fields for cosmetic products: "The cosmetics industry must awaken and recognize that topical compositions offering localized management of body slimming, firmness and tone will attract customer enthusiasm."

Sun Care and Protection

Growing widespread awareness of the risks of sun exposure and the damaging effects of the sun on skin (hastening the appearance of wrinkles and spots) as well as the high rate of sun cancer in Canada will make sun care protection products an important sector for suppliers to focus on. Products combining protective, self-tanning, and moisturizing or other therapeutic benefits will represent an important niche in this market. Self-tanning products are a particularly strong bet for manufacturers: they are "less charted territory and offer room for tremendous growth," according to industry experts.

Hair Care

Shampoos and conditioners account for more than 50 percent of hair care sales. Conditioners, hairstyling products and hairsprays are in high demand due to high fashion statement hairstyles. The demand for coloring products in retail outlets is proportionally not as strong in Canada as it is in the USA, consumers preferring in-salon applications. No-scent hair products and perfume for hair are emerging trends. Natural ingredient preparations and result-oriented products will continue to be in demand.

Makeup

In face makeup, a major trend has been to satisfy the demands of consumers looking for sheerness and 'light diffusing' products, which appeal both to younger consumers looking for a light, natural look, and baby boomers hoping to look more youthful through use of 'glow-enhancing' cosmetics. Revlon's recently introduced Skinlights line has been hugely popular in drugstore sales: It offers foundations, concealers, face illuminators, eye shadows, and lip-glosses.

IMPORT MARKET

Imports of cosmetics and toilet preparations into Canada reached US\$999 million in 2002. This is a 10 percent increase over the previous year, and a 13 percent average increase over the last 10 years. U.S. imports into Canada stood at US\$713 million in 2002, an incredible growth of nearly 300 percent in the last ten-year period. Imports from the United States are expected to increase by 4 to 6 percent over the next three years, surpassing US\$740 million in 2003.

Imports currently constitute more 70 percent of the Canadian cosmetics and toiletries market. The ten top countries supplying these products to Canada contribute 97 percent of all imports in that sector. As shown in Chart 2 below, the United States is at the top of the list more than 71 percent of the total Canadian market for imports. France is second on the list with close to 12 percent, followed by the United Kingdom, Italy, Germany, and China with each 3 percent or less of all imports:

Chart 2
Canadian Cosmetics and Toiletries Imports - 10 Top Countries

COMPETITION

The industry in Canada is dominated by affiliates of multinational corporations and medium-sized domestic enterprises. Ontario is the leader of production in Canada, with over 70 percent of domestic production, followed by Quebec with 20 percent. In 2001, ten companies were responsible for 57 percent of industry sales in Canada. The two leaders are 1) U.S.-based Procter & Gamble (CDN\$ 400 million) and 2) France-based L'Oréal (CDN\$380 million). The next eight companies are listed in rank order and each registered between 50 and 175 million Canadian dollars: 3) Unilever 4) Estée Lauder 5) Colgate-Palmolive 6) Avon 7) Johnson & Johnson 8) Gillette 9) Revlon and 10) The Body Shop.

The top domestic manufacturers of color cosmetics at the mass-market (distributed in grocery and drug stores) include Annabelle, Lancaster, Del Laboratories Canada (including Naturistic Cosmetics and N.Y.C. New York Color), Revlon Canada Inc., and L'Oréal Canada Inc. At the mid-range level, top manufacturers include Lise Watier, Make-Up Art Cosmetics (M.A.C.), Club Monaco Cosmetics, and Cargo Cosmetics. High-end manufacturers include YSL Beauté Canada, Clarins Canada Inc., Elizabeth Arden Canada, Guerlain Canada Ltd., Shiseido Canada Inc., Chanel Inc., and Estée Lauder Cosmetics Ltd.

For perfumes and fragrances, most Canadian manufacturers tend to supply to a largely high-end market. Such manufacturers include Parfums Christian Dior Inc., Chanel Inc., Parfums Givenchy Inc., Calvin Klein Cosmetics Canada Ltd., and Hermès Canada Inc.

Finally, in the shampoo and hair-care sector, mass-market manufacturers include Alberto-Culver Canada Inc., Clairol Canada, L'Oréal Canada Inc. Midrange manufacturers include Fruits & Passion. Finally, higher-end manufacturers tend to supply largely to salons. These manufacturers include Wella Canada Inc., Joico, Revlon Professional, Redken, Paul Mitchell, and Sebastian.

New-to-export U.S. manufacturers of skin care and makeup products can benefit from Canada's high

receptivity to U.S.-made products provided they understand the nuances of this market and its large graying population and offer formulations based on natural, environmentally friendly ingredients and fragrances.

The elimination of tariffs under the North American Free Trade Agreement (NAFTA), coupled with Canadians' high receptivity to U.S.-made personal care products will help U.S. exporters remain competitive in Canada. Also, geographical proximity between U.S. suppliers and Canadian buyers allows for shorter lead times and affords the retailer better service in the case of direct sales. Major U.S. manufacturers currently supplying the Canadian cosmetics and toiletries market include Estée Lauder, Elizabeth Arden, Calvin Klein, Ralph Lauren, Liz Claiborne, Revlon, Tiffany, Carolina Herrera, Avon, Mary Kay, Clinique, and Artistry.

END USERS

With a little over 40 percent of sales, Ontario represents the largest retail market for cosmetic products in Canada and Quebec is second with nearly 25 percent of sales. British Columbia, the three prairie provinces of Alberta, Manitoba and Saskatchewan, and the four Atlantic provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland & Labrador each account for 15 percent or less of cosmetic sales. The metropolitan areas of Toronto, Montreal and Vancouver are the most active marketplaces in terms of market demand for cosmetics products.

Canadian women in the 20-to-55 year old age group constitute the primary purchasers of personal care products, representing approximately one quarter of consumers out of Canada's 30

million consumers. Many consumers in this age group are career women from the extremely significant baby boom generation. They are generally well educated, with high levels of disposable income and are conscious about their image. This generation is now aging: currently, nearly 30 percent of Canada's population is aged 50 or older, leading most industry specialists to identify anti-aging and therapeutic products as most important in terms of sales. Pascal Pollet, president of Clarins Canada Inc, observed that this demographic will have a longer life expectancy than ever before: "So, they'll be looking after themselves and wanting to look younger for a longer period of time." Innovation in technologies, especially in skin care products, will be important to bring something new to the consumer market and to encourage continuing sales growth: an industry specialist observed that "if it's innovative, if it excites the consumer, you can sell it."

Although women are the primary end-users of personal care products, an increasing number of men use skin care products and other toiletries. The market for skin care products for male consumers over the age of 30 is growing rapidly. Young Canadian men are much more fashion-conscious than members of the older generation who generally use only aftershave lotions and colognes, usually purchased for them by women. The number of products available to men has greatly expanded in recent years. Manufacturers from premium, mid-range, and mass-market channels have all expanded their lines to cater to the new hygiene-and-appearance conscious male consumer: these firms include Clinique, Decleor, Blotherm, Vichy and Clarins.

Also, parents are becoming more conscious of their babies' and children's skin care needs, and they not only buy the classic baby care oils and anti-rash creams, but also buy a range of skin care products formulated for babies' and children's sensitive and delicate skin. These products include body lotions, body creams, face lotions, sun filtering creams, and after sun lotions.

SALES PROSPECTS

The following categories have shown the strongest growth in U.S. exports to Canada over the last five years:

Skincare products including sunscreens and suntan preparations
Manicure and pedicure preparations
Lip make-up preparations
Eye make-up preparations
Shampoos and preparations for permanent waving or straightening hair
Powder make-up including face powder, rouge, baby and bath powder

The products listed below offer the strongest potential for increased U.S. exports to Canada over the 2004 - 2006 time frame:

Skincare products including sunscreens and suntan preparations
Shampoos and preparations for permanent waving or straightening hair
Perfume and toilet waters
Manicure and pedicure preparations

All the above categories have shown strong growth in value of imports to the Canadian market, and based on research and interviews conducted with industry experts, this growth is likely to continue for the next several years.

MARKET ACCESS

Customs Duties and Tariffs

There are no customs duties on U.S.-made cosmetics products imported into Canada under the North American Free Trade Agreement. U.S. manufacturers must note that NAFTA rules of origin apply for products to benefit under NAFTA. Tariffs for similar third-country skin care and make-up products imported into Canada are 9.5 percent.

Nearly all imports into Canada are subject to the Goods and Services Tax (GST). For small shipments into Canada, Canadian taxes and customs duties also apply on shipments of postal and courier imports into Canada over CDN\$20 (approximately US\$13). U.S. catalog mail-order parcels valued at more than this amount are subject to applicable taxes charged to Canadian customers at the time orders are placed. Vendors must collect and remit the required amounts to Revenue Canada.

Rules and Regulations

The Canadian cosmetics industry is governed by three sets of laws and regulations: 1) the Food and Drug Act governs the classification and labeling of cosmetic products; 2) the Consumer Packaging and Labeling Act prescribe the mandatory information that must appear on a cosmetic product label; and 3) the Canadian Broadcasting Act specifies that all radio and television advertising of cosmetics must be previewed and cleared by the Health Protection Branch (HPB) before it may be broadcast. It is the responsibility of cosmetics producers or foreign exporters to ensure compliance with the requirements of each legal requirement..

Canadian legislation requires cosmetic manufacturers to submit a Cosmetic Notification Form (CNF) to Health Canada, Product Safety Bureau, within 10 days of first sale of a new product. Currently, individual content listings are not required on the labels of cosmetic products sold in Canada. The Canadian Cosmetic, Toiletry & Fragrance Association reviews the existing content labeling requirements, and may propose that product content listings be mandatory on all cosmetic products entering Canada. Nonetheless, several suppliers are already providing the information on their products.

The Health Protection Branch (HPB) is responsible for overseeing that all CNF submissions comply with Canadian cosmetic regulations, as governed by the three acts. Filing of a CNF serves to notify the HPB that a new cosmetic product has been introduced into the Canadian market. It is the responsibility of

domestic cosmetic producers or foreign exporters to Canada to ensure that the product meets all regulatory requirements.

Instructions accompanying cosmetic products sold in Canada must be in both Canada's official languages, English and French, and should comply with Canadian packaging and labeling requirements as prescribed by Industry Canada and the French language laws of the Province of Quebec.

There is a definite line between cosmetics and cosmetic-like drugs. Product literature and inscriptions including references to an "active ingredient", a "therapeutic effect", or the word "SPF" will result in regulation of the product as a drug. Exporters are encouraged to work closely with a local distributor or major retailer to facilitate their compliance with all these requirements.

Packaging fees for companies selling consumer products in Ontario may soon become part of the cost of business. In accordance with Ontario's Bill 90, industry will be asked to reimbursement 50 percent of the local government recycling cost. The plan will apply to several industries including cosmetics. It also applies to printed papers, resulting in weight fees on paper inserts, flyers and manuals. The bill is not yet officially a law and according to experts, it will be given further consideration after the upcoming Canadian elections. If the bill becomes law, even companies based outside of Canada will have to pay for Ontario's local recycling.

Distribution/Business Practices

U.S. suppliers of cosmetic products may use several approaches to entering the Canadian market, including sales through distributors, or direct sales to retailers such as drug stores, supermarkets, department stores, and discount stores, as well as direct mail order sales. Because each retailer has a different vision or strategy, suppliers must be flexible enough to adapt their programs to the buyers' needs. Regardless of the name of the chain or store location, the key to sales success is a capable sales representative, complemented by a professional, in-store beauty advisor. In Canada, department stores usually purchase directly from U.S. manufacturers to benefit from volume discounts in order to be more price competitive. According to an industry source, success in cosmetics merchandising during the next five years will depend on alliances or business partnerships between retailers and vendors. Countrywide coverage may be achieved through a master agent/distributor or through a regional agent/distributor. According to industry sources, advertising on television, in magazines, and on the Internet will play a primary role in the sale of cosmetics in the future.

Although Canadian buyers often attend U.S. trade shows to meet suppliers, they are often more comfortable negotiating for sales in their own offices. U.S. exporters can sometimes make faster and more effective inroads into the market by traveling to Canada to meet with large retail accounts, as well as with agents or distributors.

U.S. exporters should also be aware that volume accounts in the Canadian market are much smaller than those in the United States. U.S. suppliers should be prepared to respond quickly and efficiently to Canadian accounts and to seek competitive transportation prices. To facilitate Canadian orders, exporters should extend toll-free telephone service to Canadian accounts.

Financing

In the Canadian cosmetics market, terms of payment generally follow the North American standard of a 30-day net basis, but exporters should be willing to extend 60-day credit terms, as is common practice in Canada. U.S. exporters should consider interest rates and other costs, such as brokerage fees, when negotiating payment agreements. U.S. exporters are advised to secure payment on a letter of credit basis when dealing with new distributors and small retail accounts, until a strong relationship is established.

UPCOMING TRADE SHOWS

Major trade events held in Canada include:

The International Congress of Applied Esthetics, held annually in Montréal and Toronto

Esthétique SPA International, held in Montreal, Toronto, Halifax, Vancouver, and New York at different points throughout the year

The Canadian Cosmetics, Toiletry and Fragrance association also holds an annual conference in Ontario in late September of each year

The Allied Beauty Association (ABA) Canada holds trade shows in Montreal, Toronto, Winnipeg, and Vancouver each year

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This is Exhibit D referred to in the
Affidavit of Jeanie Lee
Sworn before me at Richmond, British Columbia
this 9th day of March A.D. 2007



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HANDBOOK of cosmetic ingredients

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Newsletter N. 118

E-BEAUTY NEWS

TRACK THE TRENDS OF THE C&T MARKET IN NORTH AMERICA.

As in the other Western developed countries, the cosmetics, perfumery and toiletries (C&T) market in Canada and the U.S.A. is considered as mature. With the exception of certain specific segments, double digit growth rates now belong to the history of the market. However, within a highly competitive environment, product and retail innovations prove to be successful in matching new consumer needs and in boosting sales.

>> Innovative mature markets.

As far as cosmetics, perfumery and toiletries (C&T) are concerned, the U.S.A. is the second largest market in the world, behind Western Europe. According to the European Cosmetic Toiletry and Perfumery Association (COLIPA), the US market reached EUR 25.7 billion at manufacturing/ex-factory sales prices (MSP), while Western Europe (EU15 + Norway and Switzerland) and Japan reached EUR 36.3 billion and EUR 11.9 billion respectively.

Bearing in mind the size of its population, it comes as no surprise that, in value terms, **the US C&T market is worth nearly ten times that of neighbouring Canada.** According to Euromonitor, the size of the US C&T market was USD 4,645.3 million at retail value (RSP) while the size of the Canadian C&T market was USD 45,605.3 million.

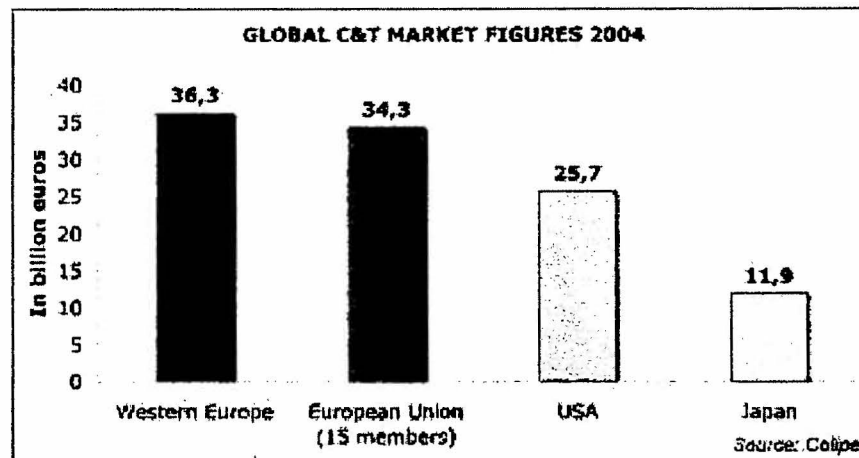


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Despite steady growth rates of the overall GDP, the retail sales of cosmetics and toiletries grew by just 0.7% in 2003 and 0.5% in 2004 in the U.S.A. (Euromonitor). The economic prosperity of the late 1990s has been followed by a mild recession and a subsequent sluggish recovery, and continues to be plagued by budget and trade deficits.

However, market analysts agree that growth rates should rise over the next three years and that, despite its much smaller size, the Canadian C&T market should prove more dynamic than the US. According to Datamonitor, "in terms of average annual growth, Canada's personal care market is set to expand more rapidly over the next few years - at a compound annual growth rate of 3.9% against 2.9% for the US".

Cosmetics & Toiletries market sizes (forecasts)					
Retail value RSP - US\$ mn - fixed ex rate - current prices					
CANADA					
2004	2005	2006	2007	2008	2009
4645,3	4956,9	5288,3	5615,7	5947,9	6295,8
USA					
2004	2005	2006	2007	2008	2009
45605,3	47181,3	49121,2	51561	53930,8	56135,4

Source: Euromonitor.

Most of the growth will come from innovative products matching the needs of "emerging" categories (men, ex-baby boomers, ethnic minorities) or proposing alternative health and wellbeing solutions (natural products, spa and salon products, cosmeceuticals).

>> Most dynamic market segments.

"A true spot within cosmetics and toiletries has been retail sales of **men's grooming products**. The strong sales performance stemmed primarily from an influx of new product launches in nearly all men's grooming areas, as well as men's growing acceptance of the importance of being well groomed," reports Euromonitor about the USA. Between 1998 and 2003, current retail value gains topped 37% at a compound annual growth rate of 6.5%. Retail sales of men's grooming products continued to progress between 2003 and 2004 at a rate much higher than the bulk of the sector: +4.8%

From 2004 to 2008, it is expected that the men's beauty segment will continue to grow, from USD 4003 million to USD 5069 million (+27%) in the USA and from USD 747 million to USD 945 million (+27%) in Canada (Euromonitor). Indeed, men's growing interest in their external appearance corresponds to strong societal trends and should therefore continue to spread far beyond the "metrosexual" cliché (=> see our previous reports: Body confidence: self-esteem, personal achievement and cosmetics; Understanding the male cosmetics market and Cosmetic and beauty trends).

"**Natural cosmetics**" form another fast-growing category. According to Euromonitor: "The rise of wider trends such as environmentalism in the US has further raised awareness of natural products, as consumers seek to align themselves with the perceived goodness of nature in every aspect of their lives, including their consumer goods. The term 'natural products' has no clear meaning in the US, but most consumers would describe them as non-synthetic and botanical in origin."

The U.S. market for natural and organic cosmetics has been marked by three consecutive years of double-digit gains. The segment "reached USD 5 billion in 2004, increasing by more than 50% since 2000", reports market research publisher Packaged Facts (The U.S. Market for Natural Organic Personal Care Products, 2nd Edition). By 2009, Packaged Facts projects that the natural personal care market will climb to USD 7.9 billion. "Although relatively few natural brands are significant enough to show up in mass-market data tracking, natural brands' collective presence is a growing force," comments Don Montuori, Acquisitions Editor of Packaged Facts.

Another market segment catches the attention: anti-ageing facial skin care. According to a survey from Kline Research, sales grew over 8% in 2004 reaching USD 4.7 billion. This growth is strongly linked to the ageing of ex-baby boomers and their desire to prevent the ravages of time. "The explosion of new ingredients helped fuel dynamic new product introductions promising scientifically proven benefits. The vast majority of these ingredients entered the market through premium and doctor-created brands. Dermatologist

NV Perricone MD first popularised the term 'cosmeceuticals' when he created his skin care line NV Perricone MD Cosmeceuticals, featuring antioxidants such as vitamin C ester and alpha lipoic acid," details [Euromonitor](#).

The baby boomer generation generally has more confidence in the progress and benefits of science and technology than their children. Baby boomers naturally bet on the use of high-tech age-defying products containing innovative active components to fight ageing. Cosmetics manufacturers have therefore launched several sophisticated ingredients such as grapeseeds, Q10, green tea extracts and finished products claiming to be non-surgical alternatives to *Botox* or lifting. All market analysts consider that the anti-ageing facial skin care category will continue significant growth. However, the segment requires heavy R&D investments as consumers are expecting immediate results and do not hesitate to switch between products until they find the one that provides the desired results.

>> Trends uncovered at Cosmoprof North America

On the occasion of the third edition of [Cosmoprof North America](#), which will be held from July 24 to 26, 2005, in Las Vegas (Nevada, U.S.A.), Future Concept Lab will present its investigation into the values and behaviours that affect the perception and experience of well-being and beauty in North America and on a worldwide basis. Francesco Morace, Future Concept Lab's Managing Director, will present the trends that will shape the industry across five continents both today and in the future, with a special focus on retail and spa environments.

This presentation will be one among many opportunities to uncover the latest trends of the North American C&T market. More than 650 exhibitors will participate in [Cosmoprof North America](#) and will display their latest innovations.

[Blue Cross Beauty Products, Inc.](#) is a private label manufacturer specialised in household cleaning and health and beauty care products. The company currently proposes over 75 products in the health and beauty care segment from hair care and skin care to oral care products.

Founded in 1978, [Columbia Cosmetics](#) is another private label manufacturer. The company produces cosmetic formulations including active ingredients such as liposomes, alpha hydroxy acids, sodium hyaluronate or essential oils. With more than a thousand formulations, [Columbia Cosmetics](#) provides skin care products from head to toe.

Also a private labeller, [Corwood Laboratories](#) is located in New

York. Over 36 years, they have proven able to answer a wide scope of demands in the cosmetic field, from skin care to pet care products.

Dermanew is specialised in micro-dermabrasion systems. Dedicated to combat the signs of aging, Dermabrasion machines gently polish and exfoliate skin to wipe out wrinkles, acne, scarring and more. Refreshing facial lines, stretch marks, spots and dull skin. Dermanew's micro-dermabrasion system is designed for use at home. The company also provides skin care products specially designed to be used in conjunction with its micro-dermabrasion devices.

Created in 2002, Fake Bake is a young company supplying sunless tanning products. Self tanning creams or mousse, glamour lipgloss, essential oils perfumed with passion fruit, rose hips, linden flower or lavender oil, Fake Bake provides a large range of toolkits and gift packages to seduce women and to prepare for their holidays. (=> see our previous reports *Tanning attitudes*)

Helen of Troy Limited is a private label manufacturer, who has established a leadership position in the personal care products market in North America. Headquartered in El Paso, Texas, with offices and warehouse facilities around the world, the company designs, produces, and markets brand-name personal care electrical products, which include hair dryers, straighteners, curling irons, hairsetters, mirrors, hot air brushes, home hair clippers and paraffin baths, as well as comfort products such as massage cushions, footbaths and body massagers. Helen of Troy also produces and markets non-electrical products, including: brushes, combs, hair accessories, mirrors, hair care products, body powder and skin care products. The company's products are sold primarily through mass merchandisers, drug store chains, warehouse clubs, and grocery stores.

Jordana Cosmetics is a U.S. family-owned company located in Los Angeles, California. Their products are distributed worldwide. Jordana Cosmetics proposes good quality and trendy colour cosmetics to beauty stores. Face, lips, eyes, nails, the company has an extensive product range providing over 1,000 colour cosmetics to all ethnic demographics. Jordana Cosmetics products can be found in beauty stores, drug stores, mass outlets, supermarkets, and in discount and specialty stores.

For a full list of companies exhibiting at Cosmoprof North America please [click here](#).

www.beauty-on-line.com
June 28, 2005

This is Exhibit E referred to in the
Affidavit of Jeanie Lee
Sworn before me at Richmond, British Columbia
this 9th day of March A.D. 2007



A Commissioner for taking Affidavits for British
Columbia

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**CANADIAN
PRESTIGE COSMETIC
MANAGEMENT
SUMMARY REPORT
July - September 2006**

Prepared By:

Trendex



TOTAL PRESTIGE BEAUTY CARE MARKET

Retail Dollar Sales

Retail Channel	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Department Stores	63.7%	62.7%	62.1%	62.7%	64.0%	63.6%
Clothing Stores	5.1%	4.4%	2.8%	4.4%	4.0%	2.9%
Discount Stores	2.2%	1.4%	2.8%	2.4%	2.2%	2.9%
Drug Stores	15.1%	19.1%	22.3%	17.7%	19.0%	20.4%
Cosmetic/Beauty Care Stores	5.5%	3.6%	4.3%	5.1%	3.8%	3.6%
All Other Outlets	8.4%	8.8%	5.7%	7.7%	7.0%	6.6%
TOTAL	100%	100%	100%	100%	100%	100%

TOTAL PRESTIGE BEAUTY CARE MARKET

Retail Dollar Sales

Retailer	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Sears Retail	25.7%	22.9%	20.7%	26.3%	23.5%	23.0%
The Bay	36.5%	38.0%	40.1%	34.6%	38.1%	39.2%
Holt Renfrew	4.1%	3.5%	2.6%	3.6%	3.4%	2.7%
Les Ailes	1.0%	0.9%	0.2%	0.9%	0.6%	0.2%
Jean Coutu	4.4%	7.2%	6.1%	5.0%	5.7%	4.9%
London Drug	1.1%	1.9%	1.3%	1.4%	1.4%	1.6%
Shoppers Drug Mart	7.8%	8.3%	13.0%	9.2%	10.3%	11.1%
TOTAL	80.6%	82.7%	84.0%	81.0%	83.0%	82.7%

TOTAL PRESTIGE MAKE UP MARKET

Retail Dollar Sales

Retail Channel	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Department Stores	69.0%	67.3%	67.0%	69.7%	65.7%	68.8%
Clothing Stores	7.4%	6.5%	5.1%	7.7%	6.2%	5.2%
Drug Stores	10.0%	15.1%	14.0%	10.1%	16.5%	13.7%
Cosmetic/Beauty Care Stores	6.8%	5.6%	11.5%	6.8%	6.3%	9.6%
All Other Outlets	6.8%	5.5%	2.4%	5.7%	5.3%	2.7%
TOTAL	100%	100%	100%	100%	100%	100%

TOTAL PRESTIGE MAKE UP MARKET

Retail Dollar Sales

Retailer	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Sears Retail	27.0%	21.6%	18.7%	26.6%	21.9%	18.5%
The Bay	41.0%	45.1%	46.5%	41.6%	42.3%	49.0%
Holt Renfrew	6.4%	6.0%	5.1%	6.9%	5.6%	5.0%
Les Ailes	1.0%	0.5%	0.1%	0.8%	0.5%	0.2%
Jean Coutu	4.5%	8.7%	5.7%	4.1%	6.5%	4.8%
London Drug	1.4%	1.2%	0.5%	1.2%	1.1%	1.5%
Shoppers Drug Mart	3.5%	4.6%	6.3%	3.7%	7.8%	6.1%
TOTAL	84.8%	87.7%	82.9%	84.9%	85.7%	85.1%

TOTAL PRESTIGE SKIN CARE MARKET

Retail Dollar Sales

Retail Channel	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Department Stores	66.7%	66.0%	64.6%	64.1%	68.4%	64.4%
Clothing Stores	7.5%	4.9%	3.1%	6.2%	4.9%	2.2%
Drug Stores	17.3%	22.1%	24.2%	20.5%	19.6%	24.4%
Cosmetic/Beauty Care Stores	3.0%	0.7%	1.3%	3.6%	2.3%	1.0%
All Other Outlets	5.5%	6.3%	6.8%	5.6%	4.8%	8.0%
TOTAL	100%	100%	100%	100%	100%	100%

TOTAL PRESTIGE SKIN CARE MARKET

Retail Dollar Sales

Retailer	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Sears Retail	26.3%	21.4%	21.4%	25.5%	23.2%	21.7%
The Bay	39.1%	43.0%	43.0%	37.3%	43.5%	42.3%
Holt Renfrew	5.7%	2.8%	2.8%	4.7%	3.8%	2.1%
Les Ailes	1.7%	0.3%	0.3%	1.5%	1.0%	0.2%
Jean Coutu	6.2%	7.5%	7.5%	7.4%	7.1%	5.8%
London Drug	1.3%	1.1%	1.1%	1.4%	1.6%	1.0%
Shoppers Drug Mart	<u>8.4%</u>	<u>14.6%</u>	<u>14.6%</u>	<u>10.7%</u>	<u>9.6%</u>	<u>12.8%</u>
TOTAL	88.7%	90.7%	90.6%	88.5%	89.8%	85.9%

TOTAL PRESTIGE WOMEN'S FRAGRANCE MARKET

Retail Dollar Sales

Retail Channel	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Department Stores	61.0%	56.5%	56.9%	59.0%	61.9%	61.9%
Clothing Stores	2.5%	3.3%	1.7%	2.3%	2.7%	2.3%
Discount Stores	3.7%	3.4%	4.4%	3.8%	3.7%	4.3%
Drug Stores	13.9%	19.4%	25.4%	18.1%	19.4%	20.0%
Cosmetic/Beauty Care Stores	7.7%	4.2%	3.0%	5.0%	3.1%	2.6%
All Other Outlets	11.2%	13.2%	8.6%	11.8%	9.2%	8.9%
TOTAL	100%	100%	100%	100%	100%	100%

TOTAL PRESTIGE WOMEN'S FRAGRANCE MARKET

Retail Dollar Sales

Retailer	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Sears Retail	26.6%	24.3%	22.3%	27.9%	24.1%	25.4%
The Bay	32.4%	30.4%	33.5%	29.6%	35.0%	34.5%
Holt Renfrew	2.1%	2.5%	1.6%	1.7%	2.3%	2.3%
Les Ailes	0.5%	0.8%	0.2%	0.6%	0.4%	0.1%
Jean Coutu	3.0%	6.6%	4.0%	4.2%	4.7%	2.8%
London Drug	0.7%	2.5%	1.9%	1.8%	1.6%	2.2%
Shoppers Drug Mart	<u>7.8%</u>	<u>7.3%</u>	<u>16.6%</u>	<u>9.3%</u>	<u>10.8%</u>	<u>12.7%</u>
TOTAL	73.1%	74.4%	80.1%	75.1%	78.9%	80.0%

TOTAL PRESTIGE MEN'S FRAGRANCE MARKET

Retail Dollar Sales

Retail Channel	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Department Stores	48.5%	60.4%	62.2%	56.1%	58.2%	58.6%
Clothing Stores	0.1%	1.0%	0.9%	0.8%	1.9%	2.2%
Discount Stores	7.4%	1.8%	4.2%	5.6%	5.0%	5.9%
Drug Stores	24.8%	20.7%	24.0%	23.6%	21.1%	24.0%
Cosmetic/Beauty Care Stores	2.9%	4.9%	1.7%	3.0%	4.3%	2.3%
All Other Outlets	16.3%	11.2%	7.0%	10.9%	9.5%	7.0%
TOTAL	100%	100%	100%	100%	100%	100%

TOTAL PRESTIGE MEN'S FRAGRANCE MARKET

Retail Dollar Sales

Retailer	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Sears Retail	16.8%	24.6%	18.9%	21.9%	25.1%	25.2%
The Bay	30.8%	33.2%	40.9%	32.2%	29.4%	31.6%
Holt Renfrew	0.1%	0.5%	0.5%	0.8%	1.6%	1.9%
Les Ailes	0.1%	0.5%	0.4%	0.1%	0.2%	0.2%
Jean Coutu	2.6%	3.0%	9.2%	3.8%	4.1%	9.1%
London Drug	1.2%	1.4%	2.1%	0.9%	0.7%	1.3%
Shoppers Drug Mart	<u>16.6%</u>	<u>13.0%</u>	<u>11.2%</u>	<u>15.6%</u>	<u>14.4%</u>	<u>11.1%</u>
TOTAL	68.2%	76.2%	83.2%	75.3%	75.5%	80.4%

TOTAL PRESTIGE BEAUTY CARE MARKET

Retail Dollar Sales

Brands	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Clinique	14.4%	14.6%	9.8%	12.9%	12.7%	10.4%
Lancôme	11.2%	9.3%	10.8%	10.0%	10.1%	8.9%
Calvin Klein/C.K./Eternity*	3.1%	4.1%	4.5%	3.9%	4.6%	4.7%
Estee Lauder	9.3%	8.6%	7.0%	8.0%	7.3%	7.8%
Biotherm	6.5%	6.1%	4.2%	5.8%	4.2%	3.7%
Elizabeth Arden/Red Door	3.7%	4.4%	4.9%	3.8%	4.4%	4.4%
Chanel	2.2%	2.9%	4.6%	2.8%	3.9%	3.9%
MAC	4.6%	4.0%	4.5%	3.9%	3.3%	3.5%
Lise Watier/Neiges	3.3%	7.4%	4.6%	3.6%	6.6%	4.0%
Givenchy	3.1%	1.2%	1.7%	3.3%	1.4%	1.7%
Christian Dior/Dior	2.9%	2.7%	3.1%	2.9%	2.5%	2.8%
Oscar de La Renta	1.3%	1.4%	2.1%	1.5%	2.1%	3.0%
Alfred Sung (Total)	1.6%	2.2%	2.4%	2.1%	2.0%	2.5%
Shiseido	1.5%	0.8%	1.5%	1.2%	0.5%	1.8%
Ralph Lauren/Polo	1.8%	2.4%	2.5%	2.0%	3.0%	2.7%
Clarins	1.9%	2.9%	2.8%	1.9%	3.5%	3.5%
TOTAL	<u>72.4%</u>	<u>75.0%</u>	<u>71.0%</u>	<u>69.6%</u>	<u>72.1%</u>	<u>69.3%</u>

*Includes Obsession/Escape

TOTAL PRESTIGE MAKE UP MARKET

Retail Dollar Sales

Brands	Jan - Sept 9 Months			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Lancôme	16.5%	14.0%	15.4%	17.5%	16.3%	15.4%
Clinique	21.3%	22.0%	17.9%	20.6%	21.2%	19.3%
MAC	19.4%	15.1%	19.6%	18.2%	14.6%	16.3%
Estee Lauder	13.5%	13.2%	9.9%	13.0%	12.7%	14.3%
Lise Watier	7.5%	13.6%	10.7%	7.3%	13.7%	9.3%
Elizabeth Arden	3.4%	2.8%	5.6%	3.0%	2.8%	4.8%
Christian Dior	4.1%	4.1%	2.8%	3.5%	3.2%	3.2%
Shiseido	2.0%	0.3%	2.4%	1.7%	0.2%	2.8%
Clarins	<u>2.5%</u>	<u>2.4%</u>	<u>1.0%</u>	<u>2.8%</u>	<u>4.1%</u>	<u>2.1%</u>
TOTAL	90.2%	87.5%	85.3%	87.6%	88.8%	87.5%

TOTAL PRESTIGE SKIN CARE MARKET

Retail Dollar Sales

Brands	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Clinique	24.2%	25.2%	18.0%	25.2%	25.5%	19.9%
Biotherm	19.7%	19.6%	15.3%	20.2%	15.9%	14.1%
Lancôme	14.2%	13.7%	18.2%	14.4%	15.4%	14.9%
Estee Lauder	10.7%	9.3%	9.7%	9.3%	8.4%	9.0%
Elizabeth Arden	5.7%	7.0%	9.4%	5.2%	7.4%	8.2%
Clarins	3.9%	7.4%	9.2%	4.6%	9.6%	11.8%
Shiseido	2.8%	1.9%	3.0%	3.0%	1.3%	4.3%
Lise Watier	1.3%	5.0%	3.1%	1.4%	4.4%	2.5%
Christian Dior	<u>1.8%</u>	<u>2.2%</u>	<u>3.7%</u>	<u>2.0%</u>	<u>3.1%</u>	<u>3.6%</u>
TOTAL	84.3%	91.3%	89.6%	85.3%	91.0%	88.3%

TOTAL PRESTIGE WOMEN'S FRAGRANCES MARKET

Retail Dollar Sales

Brands	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Calvin Klein/CK/Eternity *	5.5%	7.9%	7.0%	6.6%	6.7%	7.5%
Chanel (Total)	5.2%	6.3%	10.2%	5.3%	8.6%	8.0%
Givenchy	9.0%	3.6%	4.8%	8.4%	3.6%	4.4%
Elizabeth Arden/Red Door	2.9%	4.8%	3.0%	4.3%	4.8%	3.1%
Lancôme	7.8%	4.4%	6.3%	5.7%	6.3%	4.6%
Oscar de La Renta	3.8%	4.2%	5.7%	4.0%	5.5%	7.4%
Alfred Sung	4.7%	6.8%	6.5%	5.4%	5.2%	6.2%
Ralph Lauren	3.0%	5.8%	3.6%	3.0%	4.5%	4.0%
White Diamonds/Elizabeth Taylor	1.3%	1.7%	1.3%	2.0%	2.3%	1.8%
Estee Lauder	7.5%	7.2%	5.9%	6.7%	5.8%	6.2%
Lise Watier/Neiges	3.1%	7.3%	3.5%	4.0%	5.8%	3.1%
Christian Dior/J'Adore	3.9%	2.7%	4.0%	4.2%	2.4%	3.1%
Dolce Gabanna	1.6%	2.1%	1.9%	2.3%	2.1%	3.7%
Cool Water	1.0%	1.5%	2.5%	2.2%	1.1%	1.6%
Opium	0.3%	1.6%	2.1%	0.3%	1.8%	1.5%
Nina Ricci	3.8%	1.8%	2.1%	2.9%	1.9%	1.8%
Clinique (Total)	4.1%	3.2%	2.2%	3.5%	3.1%	3.0%
Celine Dion	2.0%	1.9%	2.6%	2.5%	1.9%	2.0%
TOTAL	70.5%	74.8%	73.6%	73.3%	73.4%	73.0%

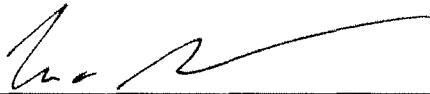
*Includes Obsession

TOTAL PRESTIGE MEN'S FRAGRANCE MARKET

Retail Dollar Sales

Brands	Jan - Sept (9 Months)			Oct - Sept (12 Months)		
	2004	2005	2006	2004	2005	2006
Hugo Boss/Hugo	5.2%	9.6%	10.9%	5.6%	6.0%	9.4%
Polo/Polo Sport/Polo Crest	8.9%	4.8%	9.0%	7.7%	10.0%	8.6%
Drakkar	8.1%	6.9%	6.3%	5.8%	5.4%	6.4%
Calvin Klein/CK 1	5.5%	4.2%	3.2%	5.3%	4.9%	4.6%
Obsession	4.6%	6.4%	6.4%	3.5%	6.6%	4.3%
Swiss Army	9.0%	5.6%	4.6%	10.3%	6.7%	5.7%
Cool Water	3.0%	0.6%	2.8%	2.2%	3.7%	2.1%
Eternity	2.8%	3.2%	4.5%	2.7%	3.4%	4.2%
Tommy Hilfiger	0.1%	0.7%	0.7%	0.6%	1.4%	1.3%
Armani	4.5%	4.8%	6.5%	8.5%	4.5%	8.3%
Escape	3.8%	0.7%	1.0%	2.9%	0.4%	0.1%
Perry Ellis	1.1%	2.9%	1.2%	1.2%	2.0%	0.9%
Azzaro	8.4%	5.0%	4.4%	5.7%	3.0%	5.7%
Dolce Gabanna	<u>2.6%</u>	<u>1.2%</u>	<u>1.0%</u>	<u>3.0%</u>	<u>2.0%</u>	<u>0.7%</u>
TOTAL	67.6%	56.6%	62.5%	65.0%	60.0%	62.3%

This is Exhibit F referred to in the
Affidavit of Jeanie Lee
Sworn before me at Richmond, British Columbia
this 9th day of March A.D. 2007



A Commissioner for taking Affidavits for British
Columbia

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1 of 1 DOCUMENT

COMMISSION DECISION (92/428/EEC)

24 July 1992

relating to a proceeding under Article 85 of the EEC Treaty (Case No IV/33.542 --
Parfums Givenchy system of selective distribution)

OJ L 236, 19.8.92, P 11, [1993] 5 CMLR 579

LANGUAGE: French

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty (OJ No 13, 21.2.1962, p 204/62.), as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 6 and 8 thereof,

Having regard to the application for exemption submitted by Parfums Givenchy SA on 19 March 1990 in respect of a standard-form selective distribution contract which the company has drawn up for the retail sale of its products in the European Economic Community,

Having regard to the summary of the notification published pursuant to Article 19(3) of Regulation No 17 (OJ No C 262, 8.10.1991, p 2.),

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

I. THE FACTS

A. The undertakings

Parfums Givenchy SA ('Givenchy') Levallois-Perret, France, forms part of the Louis Vuitton Moët-Hennessy group whose activities include luxury perfumery products, leather goods, luggage and accessories, champagnes and wines, cognac, spirits, haute couture and fashion accessories. The group controls other companies operating in the same market as Givenchy, namely Parfums Christian Dior and Parfums Christian Lacroix. The net consolidated turnover of the Louis Vuitton Moët-Hennessy group in 1991 was FF 22 billion. In the same year, Givenchy achieved a net consolidated turnover of FF 889 million, of which FF 430 million derived from its activities in the Community. The retail sale of Givenchy cosmetic products in the Member States is carried out by a network of authorized retailers, whose contractual conditions are laid down in the agreement to which this proceeding relates.

B. Distribution structure and position of Givenchy on the market

Cosmetic products cover a wide variety of articles intended for many different uses and include, in particular, perfumery, skin care and beauty products and haircare and toiletry products. A study carried out for the Commission ('Les systèmes de distribution selective dans la Communauté du point de vue de la politique de la concurrence: le cas de

l'industrie des parfums et des produits cosmétiques,' Andre-Paul Weber 1988.) confirms that, within the overall category of cosmetic products, luxury products constitute a specific market segment. Luxury cosmetic products are high-quality articles, sold at a relatively high price and marketed under a prestige brand name. The extent to which they are substitutable for similar products falling within our market segments is generally limited.

The segmentation of the sector is accompanied by differentiation in distribution channels: cosmetic products are marketed, under various brands, either through authorized retailer networks (perfumeries and department stores), or through pharmacies and similar establishments, or through general and mass marketing outlets (supermarkets, 'drogueries' selling household products and toiletries, grocery shops, etc), or through direct sale (mail order, etc).

Generally speaking, luxury cosmetic products, particularly top-of-the-range perfumery, skin care and beauty products, are sold only through authorized retailer networks. According to the abovementioned study, products marketed in this way accounted, in 1987, for 24,7% of all cosmetic products sold in Germany, 30,3% in France, 36,2% in Italy and 22,4% in the United Kingdom.

On the supply side, the number of both producers and distributors of luxury cosmetic products is fairly large. The structure of the Community industry is marked by the presence of firms of relatively modest size coexisting alongside large firms. In addition, some companies form part of groups which, directly or indirectly, control several firms operating in the sector. By contrast, distribution is relatively homogeneous in structure, with each producer distributing its top-of-the-range articles only through networks of selected retailers whose distribution agreements are based on comparable provisions.

Givenchy is one of the main luxury cosmetic products producers. In 1991, it held 3,1% of the Community market in luxury perfumery products and around 1% of the Community market in luxury skin care and beauty products. It is linked to other competing companies, in particular Parfums Christian Dior and Parfums Christian Lacroix. The Louis Vuitton Moët-Hennessy group thus holds, through its affiliated companies, over 10% of the Community market in luxury perfumery products. Lastly, it should be noted that a substantial proportion of the turnover of Givenchy derives from its sales within the Community other than France.

Givenchy distributes its products within the common market through a network of some 10 000 authorized retail outlets, which it supplies direct in France and through the intermediary of its subsidiaries or independent companies acting as exclusive agents in the other Member States.

C. The notified distribution network

The distribution network notified is based on a standard-form authorized retailer contract binding Givenchy or, where appropriate, the exclusive agents of Givenchy, to its specialized retailers established in the Community, and on the general conditions of sale attached thereto.

The standard-form contract has undergone certain amendments in response to comments made by the Commission and entered into force as from 1 January 1992. Essentially, its content is as follows:

(a) Selection criteria

The only retailers admitted into the selective distribution network are those approved by Givenchy or by its exclusive agents on the basis of the selection criteria set out below.

(i) Authorized retailers, or their sales staff, must have a professional qualification in perfumery, in the form either of a beauty specialist's diploma, or a certificate recognized by the relevant Ministry of professional perfumery training certificate issued by a chamber of commerce and industry of one of the Member States, or at least three years' sales experience in perfumery. In addition, authorized retailers undertake to attend the training or further training sessions organized by Givenchy, notably as regards the distribution of its skin care and beauty products and new products, and to

provide sufficient advisory and demonstration services with regard to the size of the sales area and the number of brands carried.

(ii) The location of the retail outlet must reflect the prestige of the Givenchy brand, having regard in particular to the geographical environment of the outlet and the nature and external appearance of neighbouring shops. The fittings of the retail outlet and the surroundings of the goods sold in the area set aside for the sale of the contract products must not detract from Givenchy's brand image. In particular, the fittings are assessed by reference to the quality of the facade and the internal fixtures such as the floor covering, the quality of the walls, ceilings and furniture, and the sales area and the fixtures and fittings of the beauty care cubicles. In addition, the shop-front must contain one or more shop windows whose quality and decoration must be in line with the usages governing the sale of luxury products. Lastly, the shop name must not, in the public's mind, be associated with any restriction in decoration or service. If the outlet is located in a department store with an area set aside for the sale of perfumery products, its fittings must reflect the prestige of Givenchy and satisfy the same qualitative criteria.

(iii) The products must be stored under satisfactory conditions for their preservation, notably in areas or premises making it possible to avoid extremes of humidity, temperature or light.

(iv) The area set aside for the sale of Givenchy 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, a location reflecting the standing of the Givenchy brand name. The authorized retail outlet must, within eighteen months of the date on which the distribution contract is concluded, carry a sufficient number of competing brands to reflect the image and reputation of Givenchy products. At the Commission's request, Givenchy deleted the clause under which the inclusion and/or maintenance of the retailer in the distribution network was subject to his being authorized to sell a minimum number of brands included on a restricted list drawn up by Givenchy.

(v) Authorized retailers must display and sell Givenchy products solely on the premises covered by the contract and must undertake to sell the products only in their original packaging.

(vi) Authorized retailers are required to provide their most effective assistance to the advertising campaigns organized by Givenchy or by its exclusive agent, by presenting under optimum conditions the display material provided by Givenchy and by ensuring periodically that the contract products are placed to best advantage in their shop windows. They must also actively canvass for customers to ensure their best efforts are directed towards seeing the contract products to the said customers.

(vii) Authorized retailers must agree to hold a stock in hand comprising two thirds of the references of each of the ranges marketed by Givenchy and at least one product of each of such references, including new products.

(viii) Authorized retailers must agree to achieve in the retail outlets covered by the contract a minimum amount of annual purchases from Givenchy or its exclusive agent. Following comments from the Commission, Givenchy agreed that the relevant figure should be set in such a way that its amount does not exceed 40% of the average purchase figure achieved the previous year by the authorized retail outlets established in the territory of each Member State.

(b) Procedure for admission to the distribution network

Under the contract provisions notified, the receipt of an application for the opening of an account is followed by an inspection visit to the retail outlet so as to determine whether it meets the qualitative selection criteria described above. Givenchy (or, where appropriate, its exclusive agent) undertakes to carry out such an inspection within a maximum period of three months as from the date on which the application for the opening of an account is made. Thereafter, if the application does not come anywhere near meeting the qualitative criteria, Givenchy (or, as the case may be, its exclusive agent) informs the applicant in writing that its application has been rejected, specifying the grounds on which its decision is based. Conversely, if the application is capable of meeting the qualitative selection criteria subject to certain work being carried out in the retail outlet, the applicant is informed accordingly in writing and, if the work is

carried out within a maximum period of three months (extendable to six months at its request), its account will be opened within a maximum period of nine months from the date of the inspection. Lastly, if the application entirely meets the qualitative selection criteria, the applicant is informed accordingly in writing and its account will be opened within a period of nine months as from the date of inspection.

This procedure entered into force on 1 January 1992 and replaces the former system for admission into the Givenchy distribution network. Under the former system, any application from a candidate whose retail outlet was situated in France was entered on a regional (departmental) waiting list, with applications being dealt with in the order in which they were entered on the list. However, decisions to accept appropriate applications were made only when the opening of a new account was considered by Givenchy to be justified, notably in terms of the economic potential of the geographical area in question. Although the admission system applied by Givenchy in Member States other than France did not include the establishment of waiting lists, the opening of a new account was also subject to similar considerations of economic opportuneness. In response to comments made by the Commission, Givenchy has agreed to clear the existing waiting lists during a transitional period ending on 31 December 1992.

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

The standard-form contract notified provides that each authorized retailer may resell Givenchy products to any other authorized retailer established in any Member State, including the country in which he is himself established. The provisions also stipulate that each authorized retailer is free to obtain supplies from other authorized retailers or exclusive agents of Givenchy products established in any Member State, including the country in which he is himself established.

Exercise of this right is subject to the following conditions:

(i) before selling Givenchy products to other network members, authorized retailers must take the necessary precautions in order to ensure that the products thus supplied do not leave the network of Givenchy authorized retailers in the Community. They must in particular ensure that the purchasers are indeed retailers authorized by Givenchy or one of its exclusive agents;

(ii) authorized retailers must keep copies of the invoices of such resales for one year. Givenchy (or, where appropriate, its exclusive agent) may consult them only where it has evidence involving directly the contractual liability of the authorized retailer;

(iii) only the value of the orders invoiced by Givenchy (or, where appropriate, by its exclusive agent) is taken into account in calculating the authorized retailer's minimum annual purchases figure, it being understood, however, that the amount of the price paid by the authorized retailer to Givenchy (or to its exclusive agent) for the purchase of products subsequently resold to another network member is not deducted in calculating the minimum purchases figure;

(iv) authorized retailers undertake, so as not adversely to affect campaigns for launching new Givenchy products, not to engage in active sale of such products in the territory of the Member State or Member States in which such products have not yet been launched, for a period of one year from the date on which the product is first launched in one of the Member States.

(d) Closed distribution network

Products bearing the Givenchy brand name are sold only within the framework of a network of retailers who have concluded an authorized retailer contract. So as to ensure consistency in the marketing of its products, Givenchy undertakes to withdraw such products from retail outlets that do not meet the conditions laid down in the selective distribution contract.

(e) No imposed prices

Givenchy (or, where appropriate, its exclusive agent) may not interfere in any way in the pricing policy of the authorized retailer, who is free to set the resale price of the 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 one year and are renewable by tacit agreement for successive periods of one year, unless notice is given three months before their date of expiry. They may be terminated before the end of their term, with or without notice having been given, where authorized retailers do not abide by their contractual obligations. If the retail outlet is disposed of or if there is a change in the control of the authorized retailing company, the new operator will be offered a new contract, which may be immediately terminated if the new operator is not able to meet the conditions for authorization.

D. Comments from third parties

Following publication of a summary of the content of the notified agreements, pursuant to Article 19(3) of Regulation No 17, the Commission received a number of comments from interested third parties.

Citing the need to ensure the homogeneity and tightness of the distribution networks, some producers and associations of producers criticized the approach adopted by the Commission, notably as regards the introduction of a system of automatic admission of new resellers into the network, the ceiling on the minimum annual purchases figure imposed on retailers and the arrangements governing resales between authorized retailers. On the other hand, while not disputing the need to have selective distribution for the products in question, some distributors and associations of distributors expressed reservations on the following main points:

- the minimum annual purchases figure, which should eventually be limited,
- the duration of the periods provided for under the procedure for admission to the distribution network, which were considered to be too long, and the duration of the period provided for retailers to acquire certain competing brands, which was considered to be too short,
- the vagueness of certain qualitative criteria, which could result in the selection of retail outlets being discretionary.

In addition, some representatives of the specialized distribution trade called for the retention of quantitative selection criteria. Among the undertakings operating in the non-specialized distribution field, however, some questioned the need for selective distribution of the products in question.

In the light of all the comments received, the Commission persuaded Givenchy to amend the standard-form contract with regard to the threshold for the figure for minimum annual purchases (see point C(a)(viii) above), the duration of the authorization procedure (see point C(b) above) and the period for the acquisition by retailers of certain competing brands (see point C(a)(iv) above). The other points raised by the other interested third parties are dealt with in the legal assessment below.

II. LEGAL ASSESSMENT

A. Article 85(1)

(1) Pursuant to Article 85(1) of the EEC Treaty, all agreements between undertakings which may affect trade

between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market are prohibited as incompatible with the common market.

(2) The standard-form contract notified, which covers relations between Givenchy or, as the case may be, its exclusive agents and the various authorized retailers established within the common market, provides for arrangements for cooperation between legally independent undertakings and constitutes an agreement between undertakings within the meaning of Article 85(1).

(3) The selective distribution contract notified by Givenchy imposes on the authorized retailers the requirement that they must resell the products covered by the contract only to final consumers or to other members of the Givenchy network. For their part, Givenchy and its exclusive agents undertake not to supply products bearing the Givenchy brand name to distribution undertakings not forming part of such network. These obligations constitute restrictions on competition, since access to the Givenchy distribution system is granted exclusively to traders who not only fulfil certain general professional and technical conditions, but are in addition willing to enter into subsequent commitments and to provide special services.

(4) As the Court of Justice has pointed out (Case 107/82, *AEG v Commission* [1983] ECR 3151, paragraph 33), agreements constituting a selective distribution system necessarily affect competition in the common market. However, it has always been recognized that certain products which are not ordinary products or services have properties such that they cannot properly be supplied to the public without the intervention of specialized distributors. A system of selective distribution may thus constitute an element of competition which is in conformity with Article 85(1), if it is established that the properties of the products in question necessitate the establishment of such a system in order to preserve their quality and ensure their proper use (Case 31/80, *L'Oreal v De Nieuwe AMCK* [1980] ECR 3775, paragraph 16) and provided that resellers are chosen on the basis of objective criteria of a qualitative nature relating to the technical qualifications of the reseller and his staff and the suitability of his trading premises and that such conditions are laid down uniformly for all potential resellers and are not applied in a discriminatory fashion (Case 26/76, *Metro v Commission* [1977] ECR 1875, paragraph 20).

(5) In this instance, the standard-form contract underlying the network for the selective distribution of Givenchy products is not covered by Article 85(1) in so far as it is limited to establishing, for access to distribution, qualitative criteria of a technical and professional nature laid down in a uniform manner for all potential resellers and in so far as such criteria are not applied in a discriminatory manner.

The articles in question are high-quality articles based on specific research, which is reflected in the originality of their creation, the sophistication of the ranges marketed and the qualitative level of the materials used, including their packaging. Their nature as luxury products ultimately derives from the aura of exclusivity and prestige that distinguishes them from similar products falling within other segments of the market and meeting other consumer requirements. This characteristic is, on the one hand, closely linked to the producer's capacity to develop and maintain an up-market brand image and, on the other, depends on appropriate marketing that brings out the specific aesthetic or functional quality of each individual product or line of products. This is all the more necessary as there exists, on the luxury cosmetic products market, a considerable number of competing brands and since, as a general rule, each retailer sells a wide range of brands. In this respect, it should be noted that, far from aiming at ensuring exclusive representation of Givenchy products, the selective distribution system notified is, on the contrary, based on Givenchy articles being sold alongside other competing high-quality brands.

Accordingly, having specialized technical advice available in the retail outlet is a legitimate requirement in so far as the knowledge specifically required is necessary in order to help consumers select the products best suited to their tastes and requirements and to provide them with the best information on their use and indeed the preservation of such products. In addition, the requirement that the authorized retailer undertake to have his staff attend the training sessions organized by Givenchy and which essentially concern Givenchy beauty and skin care products and new products, is intended merely to ensure that they have adequate knowledge of the contract products and is not such as to restrict the

authorized retailer's freedom to sell or promote competing brands.

Since the maintenance of a prestige brand image is, on the luxury cosmetic products market, an essential factor in competition, no producer can maintain its position on the market without constant promotion activities. Clearly, such promotion activities would be thwarted if, at the retail stage, Givenchy products were marketed in a manner that was liable to affect the way consumers perceived them. Thus, the criteria governing the location, fitting-out and window-dressing of the retail outlet constitute legitimate requirements by the producer, since they are aimed at providing the consumer with a setting that is in line with the luxurious and exclusive nature of the products and a presentation which reflects the Givenchy brand image. The obligation on retailers to provide technically adequate storage conditions for the contract products ensures, moreover, that the latter are always sold in a perfect state of freshness and preservation. In addition, the criterion relating to the shop name is designated to ensure that the name of the perfumery or shop or area within which the perfumery counter or perfumery is situated is compatible with the principles governing the distribution of the products in question. It should be stressed in this respect that the down-market nature of a retail outlet or of its name cannot be deduced from the retailer's habitual policy on prices.

The ban on selling goods which, through their proximity, are liable to detract from the Givenchy brand image is intended merely to safeguard, in the public's mind, the aura of prestige and exclusivity inherent in the products in question, thus preventing any association with lower-quality goods.

The Givenchy selective distribution system is also open to department stores with a specialized selling area. Consequently, in view in particular of the various forms of distribution which Givenchy has authorized at Community level, the qualitative requirements relating to the location, fittings and name of the retail outlet are not in themselves such as to exclude certain modern forms of distribution such as department stores or shopping malls.

The requirement that the authorized retailer should set aside for Givenchy products a location which, having regard to the other brands represented, corresponds to the standing of the Givenchy brand, is intended to meet the objective of ensuring that the products covered by the contract are presented in an up-market manner. In addition, since this requirement does not involve either binding contractual specifications as to the identity or number of the brands sold alongside Givenchy products or minimum quantitative requirements regarding the allocation of the space set aside for the sale of the contract products, such a selection criterion is not, in itself, liable to limit the retailer's freedom to sell and promote competing brands or liable to impede the development of new forms of distribution.

(6) However, the selective distribution contracts must be assessed from another angle where they contain authorization requirements and criteria that go beyond the limits indicated above. They are then caught by Article 85(1), although they may, where appropriate, be exempted under Article 85(3) (Case 99/79, *Lancome v Etos* [1980] ECR 2511). The contracts notified do contain such specific obligations.

(a) The procedure for dealing with applications for the opening of an account requires Givenchy to take a decision, within precise deadlines, on any request for authorization sent to it by interested resellers, admitting into its network all qualified retailers or, where appropriate, informing the applicant expressly of the ground on which its request has been rejected. To this extent, the procedure in question eliminates the risk of arbitrariness that was inherent in the admission system initially provided for in the contracts notified, where the producer had been given an exclusive and discretionary right to decide, as the final arbiter, on whether or not a new reseller should be integrated into its network. Nevertheless, the procedure has the effect of restricting access to the distribution network to resellers who are able and willing to carry out work on their retail outlets, while not being able to sell the contract products until the end of a period whose relative length is likely to discourage certain potentially qualified retailers. Thus, the duration of the periods provided for in this context is liable to affect competition between retailers of Givenchy products.

(b) The authorized retailers are required to achieve, in their retail outlets, a minimum annual purchases figure set periodically by Givenchy or, where appropriate, by the exclusive agent of the country in which the retail outlet is situated. This requirement goes beyond the requirements regarding the technical qualification of retailers or their sales

staff and the appropriate location and fitting-out of retail outlet that are necessary for proper distribution of luxury cosmetic products. It restricts competition, both within the Givenchy brand and between it and other competing brands, since it has the effect, on the one hand, of restricting access to the Givenchy distribution network to resellers who are able to enter into such a commitment and, on the other, of obliging authorized retailers to devote a significant proportion of their activities to selling the contract products. The requirement in question is, in addition, liable to affect the freedom of the members of the distribution network to obtain supplies, since only the value of the orders invoiced by Givenchy (or, where appropriate, by its exclusive agent) is taken into account in calculating the minimum purchases figure.

(c) The authorized retail outlet must, within eighteen months of the date on which the distribution is concluded, carry a sufficient number of competing brands to reflect the image and reputation of Givenchy products. Although the sole purpose of this clause, whether seen in isolation or in the framework of the Givenchy standard-form selective distribution contract, is to maintain a distribution system based on the sale of Givenchy products alongside other competing luxury brands without restructuring the freedom of choice of retailers in this respect, it could nevertheless have the effect of restricting the ability of authorized retailers to gain access to the selective distribution network as a result of the possible overlapping of the contractual obligations imposed by competing manufacturers, notably as regards the minimum annual purchases figure.

(d) The notified contracts also impose on the retailer specific obligations regarding stocks, and cooperation in advertising and promotion activities. These requirements constitute restrictions of competition, since they result, on the one hand, in firms which, while meeting the qualitative conditions for authorization, are not able to assume such additional commitments being significantly excluded from the distribution of Givenchy products and, on the other, in the autonomy of authorized retailers to determine their commercial policy being restricted.

(e) The distribution contracts require authorized retailers on whose territory a new Givenchy product has not yet been launched to refrain from engaging in active sale of it for one year as from the date on which the product was first launched in a Community country. The requirement constitutes a restriction of competition since it has the effect of limiting authorized retailers' freedom of commercial initiative and of impeding cross supplies between members of the distribution network.

(7) The verification requirements imposed on authorized retailers where they buy from or sell to members of the distribution network (checking of the invoices by Givenchy, checking that the customer belongs to the official distribution network) are designed to allow Givenchy to supervise the distribution system. Provided that they do not exceed what is necessary for appropriate verification, such requirements are the corollary of the principal obligation whose fulfilment they must ensure, and must be viewed in legal terms in the same way as such principal obligation (Case 26/76, *Metro v Commission* [1977] ECR 1875, paragraph 27). Since the ban on authorized retailers supplying non-authorized traders must in this instance be deemed to be restriction of competition, the same also applies to the verification requirements designed to ensure the application and supervision of such ban. However, the verification requirements are not in themselves a restriction of competition in so far as they are confined to what is strictly necessary in order to ensure the cohesiveness of the distribution system. In particular:

(i) the checking by Givenchy of the authorized retailer's invoices relating to the resale or purchase of Givenchy products to or from other members of the distribution network is expressly limited to cases where the producer has concrete evidence that the retailer has been involved in reselling the contract products outside the authorized distribution network. For the manufacturer, such monitoring is an indispensable means of taking action against possible breaches of the selective distribution contract and of ensuring the homogeneity and tightness of the system;

(ii) although the contract requires the authorized retailer, before supplying another member of the network, to ensure that the latter is indeed an authorized Givenchy retailer, the choice of appropriate means of fulfilling this requirement is left to the discretion of the authorized retailer. As Givenchy does not have to be consulted on this matter, the authorized retailer is free to supply another retailer without the knowledge of Givenchy.

(8) The Givenchy distribution system covers the whole of the Community. Since it restricts competition, it is liable to affect trade between Member States. As to whether or not the restriction is appreciable, the Court of Justice has ruled that an undertaking which supplies some 5% of a market is in a position to influence intra-Community trade through its conduct (Case 19/77, *Miller v Commission* [1978] ECR 131). It should be recalled in this respect that, given the low degree of substitutability, in the consumer's mind, between luxury cosmetic products and similar products falling within other segments of the sector, the relevant market is that for luxury cosmetic products. Givenchy's parent company, the Louis Vuitton Moët-Hennessy group, also controls Parfums Christian Dior and Parfums Christian Lacroix which, like Givenchy, operate on the market in luxury cosmetic products. Under such conditions, the relevant market share is that held in the Community market for luxury cosmetic products by Louis Vuitton Moët-Hennessy; as stated in Chapter I.B above, the share is well in excess of the abovementioned threshold. Consequently, the view must be taken that the barriers to competition encountered constitute an appreciable restriction of inter-Community trade. It should also be added that the agreements notified form part of an economic context in which selective distribution systems comprising restrictions of competition similar to those described above are the rule and that, consequently, the appreciable nature of the restrictions noted may be said to derive from the cumulative effect inherent in such a distribution structure.

B. Article 85(3)

(1) The contracts underlying the Givenchy system of selective distribution in the Community meet the conditions provided for in Article 85(3).

(2) Improving production and distribution

Luxury cosmetic products differ from similar products that meet other consumer requirements, *inter alia*, through the image of exclusivity and prestige which, in the consumer's mind, is associated with the brand under which they are sold. The manufacturer's capacity to create and maintain an original and prestigious brand image is thus a key factor in competition. It follows that a luxury cosmetics brand must be distributed on an exclusive basis. Experience shows that generalized distribution of a luxury cosmetic product can affect the consumer's perception of it and in the long term reduce demand for it.

Against this background, the procedure for dealing with applications for the opening of an account, as provided for under the amendments to the contract requested by the Commission, is intended to ensure flexible integration of new retailers into the Givenchy selective distribution network. The period laid down takes account, on the one hand, of the organizational requirements of Givenchy as regards in particular the inspection visits to retail outlets, the training sessions for sales staff, the adjustment of its own production programmes and the manufacture, usually by other undertakings, of the various advertising and presentation material for the new retail outlets. On the other hand, the procedure allows the retailer to carry out in a proper manner any refitting of the retail outlet that may be required to meet the qualitative criteria for authorization.

The minimum annual purchase requirement is intended to maintain continuous supplies and allows Givenchy (or, where appropriate, its exclusive agents) to concentrate distribution on the most effective retail outlets, thus rationalizing the spread of the costs associated with the distribution of its products and with the provision of assistance to retail outlets. In particular, this obligation is a means of ensuring, on the one hand, that the costs borne by the manufacturer will be covered by an adequate volume of business and, on the other, that the authorized retailer will contribute actively to enhancing the brand through customer service that is in line with the reputation of the contract products. The rationalization function inherent in the minimum annual purchase requirement also derives from the limits imposed on its implementation, with the minimum purchases figure being set annually by Givenchy (or by each of its exclusive agents) in such a way that its amount does not exceed 40% of the average purchases, during the previous year, of all the retail outlets operating in the territory of a Member State. Furthermore, given the level of this threshold, the view may be taken that the requirement in question is not such as to restrict unduly the retailer's freedom to sell or promote competing brands.

The requirement that authorized retailers carry, in their outlet, a sufficient number of competing brands to reflect the image and reputation of Givenchy products is intended to maintain a distribution system based on the sale of Givenchy products alongside other competing luxury brands, which ensures that retailers are able to run a specialized business that is capable of offering consumers a wide range of competing products and thereby attract customers. This also helps to ensure the enhanced presentation of the contract goods whilst stimulating inter-brand competition.

The requirements on the holding of stocks have the effect of extending the range of Givenchy products available through authorized retailers, so that consumers can always find, at each retail outlet, the main products in each of the ranges marketed by Givenchy and rely on the products which they desire being rapidly available.

The provisions on cooperation in advertising and promotional activities, which are generic obligations to support the Givenchy brand, are a necessary corollary, in each retail outlet, to the various advertising measures carried out at national or local level by Givenchy or, where appropriate, by its exclusive agents. The provisions make it possible in particular to coordinate, in the common interest of the contracting parties, the promotional measures taken by the manufacturer and its authorized retailers and thus to plan as rationally as possible coordinated advertising campaigns. Furthermore, the constraints imposed by such requirements are not such as to prevent Givenchy from taking advantage of inter-brand competition.

The requirement imposed on authorized retailers on whose territory a new product has not yet been launched to refrain from engaging in the active sale of such product for one year enables the manufacturer to test a new product on a given market and to reserve the right, in the light of the results obtained on that market, to extend or stop the marketing of the product. The launching of a new luxury cosmetic product is a complex industrial and commercial operation entailing large-scale investment and sophisticated advertising promotion. The success of such an operation presupposes close cooperation between the manufacturer and its authorized retailers, who, for their part, require specific training in order to provide final customers with the professional advice they expect.

Viewed as a whole, these benefits clearly outweigh the disadvantage that, amongst qualified traders, the only ones authorized are those who declare that they are willing to assume the additional obligations described above. These restrictions have the effect of ensuring that Givenchy products are distributed only under conditions that can preserve the high quality image and exclusivity associated with the fact that they are luxury cosmetic products.

(3) Benefits to consumers

Consumers derive direct advantage from the benefits inherent in the Givenchy selective distribution system.

The distribution system notified allows the exclusive character of the contract products to be safeguarded, such exclusive character being the main reason why consumers choose them. The consumer is thus assured that the luxury product will not become an everyday product as a result of a down-grading of its image and a decrease in the level of creation.

In addition, the establishment of such a system has the effect of focusing on factors of competition other than the price, such as the provision of an advisory service for customers and the constant availability of the essential products in the ranges, including new products, marketed by Givenchy. Furthermore, if customers regard as secondary the brand image or the services associated with sale within the selective distribution system, they can choose similar articles falling within an adjacent market and distributed without the use of selective distribution systems, thus penalizing the commercial strategy pursued by the producer. In addition, since the Givenchy distribution system is based on the products being sold alongside other prestige brands, and authorized retailers are no longer restricted in the choice of competing brands to be sold in their outlets, consumers can always decide not to buy the Givenchy brand if the level of its prices are considered no longer to correspond to the quality of its products. The clause requiring competing brands to be sold in the retail outlet gives customers the opportunity to compare a range of competing products when making a purchase.

Lastly, in view of the number of authorized retailers currently included in the Givenchy network and in view of the fact that the producer cannot refuse the inclusion of new retailers on the basis of purely quantitative criteria, the view may be taken that the system is not such as to restrict unduly intra-brand competition. Accordingly, consumers are allowed a fair share of the benefits resulting from the rationalization of distribution, particularly since the contracts notified provide for complete freedom in the setting of retail prices by authorized retailers.

(4) Indispensable nature of the restriction of competition

The Givenchy distribution system does not contain any restrictive obligation that is not indispensable to the attainment of the abovementioned benefits.

Prohibiting authorized retailers from supplying contract products to traders not previously authorized by Givenchy or by one of its exclusive agents is a necessary condition for ensuring the cohesiveness and tightness of the selective distribution system. In this context, the requirement incumbent on Givenchy or, where appropriate, its exclusive agents to market the products bearing the Givenchy brand name only in retail outlets that meet the conditions specified in the selective distribution contract is complementary on the specialization requirement imposed on authorized retailers and makes it possible to ensure uniform conditions of competition between resellers of the brand. Otherwise, competition would be distorted if Givenchy supplied traders which, not being subject to the same obligations, had to bear financial charges that were appreciably smaller than those borne by the members of the selective distribution network. In such a situation, it would no longer be possible to require authorized Givenchy retailers to continue to carry out their own obligations, with the result that the selective distribution system could no longer be maintained.

As a corollary to the requirements intended to ensure that the distribution network is closed, the verification by Givenchy of the authorized retailer's invoices for the resale or purchase of Givenchy products to or from other network members is an indispensable means of taking action against any breaches of the selective distribution contract, provided that such monitoring does not go beyond the limits expressly provided in the contract.

The authorization procedure does not go beyond the limits of what is necessary in order to ensure flexible integration of new resellers into the distribution network. It should be pointed out, in particular, that the procedure is applicable only in the case of requests from new candidates or from former authorized retailers whose distribution contracts have been terminated as a result of a breach of contract which they have committed. Consequently, the procedure cannot give rise to abuses during the periodical renewals of contracts. Furthermore, such a procedure is not liable to affect the retailer's freedom to dispose of his business, notably by selling it to third parties, since the extension of the distribution contract in the name of a new operator is automatic, subject to verification of the latter's professional qualifications. Lastly, since Givenchy is required to inform the retailer of the reasons for any rejection of his application, the retailer will always be able to challenge the implementation of the admission procedure with respect to him, notably where the selection criteria have been applied in a discriminatory manner. In addition, it should be observed that, while the periods currently provided for in the context of the aforesaid procedure are relatively long, they have nevertheless been regarded as acceptable in order to facilitate the transition from a closed distribution system, based on the application of quantitative criteria, to a system subject only to the application of certain qualitative criteria. In the light of this, the Commission considers it necessary to re-examine the question of the duration of the admission procedure at the end of the period of validity of this Decision.

The requirements regarding minimum annual purchases, the sale of competing brands, the holding of stocks and cooperation in advertising and promotional activities are also indispensable to the attainment of the abovementioned benefits. If there were no provisions specifying minimum purchases of supplies, giving authorization to all the retailers having the professional and technical qualifications required by Givenchy would result in a considerable extension in the distribution network which, however, given the relative stability of the market in question, would not result in a proportionate increase in sales. The producer would then be confronted not only with higher distribution costs, but also with a gradual deterioration in the image of the products. Moreover, the minimum annual purchases requirement may be considered reasonable in that the amount of purchases which Givenchy has undertaken to require from its retailers

cannot exceed 40% of the average purchases figure, during the previous year, of all the retail outlets concerned. Consequently, it may be considered that such limitation of the amount relating to the minimum annual purchases requirement is such as to safeguard the retailer's capacity to market a sufficiently broad range of competing brands as well as the access of new retailers to the network. However, the Commission considers it necessary to re-examine this aspect of the distribution system at the end of the period of validity of this Decision.

The clause requiring retailers to carry a sufficient number of competing brands is necessary in order to attract and retain the loyalty of consumers who expect to find, in each retail outlet, a specialized commercial environment allowing them to choose from a range of competing brands. It should also be stressed that, following amendments made by Givenchy at the request of the Commission, authorized retailers are no longer restricted in choice to the list drawn up by the manufacturer of the brands likely to constitute such an environment. Retailers are now free to choose from competing brands, which, forming part of the same market for luxury cosmetic products, are usually distributed through networks of authorized retailers. As regards the requirement that a sufficient number of brands be carried in the retail outlet, it seems that the minimum number of four brands imposed until now by Givenchy is not unduly high, given the degree of specialization that is currently a usual feature of the distribution of luxury cosmetic products in the Community.

It is also to be feared that, if there were no requirements regarding the holding of stocks, authorized retailers would decide to concentrate their promotion activities only on the brand leader products of each of the lines marketed by Givenchy. In addition, the retailer's cooperation in advertising and promotional activities is indispensable in ensuring maximum effectiveness in promotional campaigns, the cost of which represents a substantial proportion of the producer's investment. Lastly, the clause prohibiting active sale of new products while they are still being launched by Givenchy is necessary in order to allow the producer to limit the territory within which a new product is launched so as to gauge consumer reaction and decide, in the light of the results obtained, whether larger-scale production may be envisaged.

(5) Elimination of competition

The contracts on which the Givenchy selective distribution system is based do not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

Since, on the one hand, the contracts do not contain any no-competition clauses and since, on the other, the Community market comprises a large number of undertakings manufacturing or marketing luxury cosmetic products, authorized Givenchy retailers are able to take advantage of inter-brand competition.

In addition, authorized Givenchy retailers may compete with one another throughout the Community. They have the right to obtain their supplies wherever it is most advantageous to them, since they can procure Givenchy products from any exclusive agent within the Community, and supplies between authorized retailers are now allowed without any restriction within the Community distribution network. The Givenchy contracts no longer contain either the clause which prohibited resale between retailers established within one and the same Member State or the clause which provided that amounts relating to products resold by a retailer to other network members had to be deducted in calculating the annual purchases of such retailer. It may thus be hoped that such changes will help to prevent any rigidity in the structure of prices in the common market.

Similarly, the Commission has not been able to establish that the spread of selective distribution systems in the field of luxury cosmetic products impedes in principle certain modern forms of distribution, such as department stores. The selection criteria applied by Givenchy are not such that they cannot also be met by such forms of distribution, even if this requires some change in their particular marketing methods.

All the conditions for exemption under Article 85(3) are thus met.

C. Articles 6 and 8 of Regulation No 17

All the amendments made by Givenchy to its standard-form authorized retailer contracts entered into force on 1 January 1992. It therefore seems appropriate, pursuant to Article 6 of Regulation No 17, to give effect to the conditions for exemption granted under Article 85(3) of the EEC Treaty as from that date.

So as to be able, at the end of a relatively short period, to reexamine the effects of the Givenchy distribution system on competition, the Commission considers it appropriate, pursuant to Article 8(1) of Regulation No 17, to make this Decision applicable until 31 May 1997.

Lastly, this Decision should be accompanied by conditions and obligations so as to enable the Commission to check whether the amounts imposed on authorized Givenchy retailers under the minimum annual purchases requirement continue to meet the exemption laid down in Article 85(3) of the EEC Treaty. Accordingly, Givenchy is required to submit, every two years, detailed reports specifying, for each Member State, the amount set annually by Givenchy and by its exclusive agents in implementation of the abovementioned requirement and the average purchases of Givenchy products achieved by all the retail outlets concerned during each of the previous years. This Decision is based, in this respect, on Article 8(1) of Regulation No 17,

HAS ADOPTED THIS DECISION:

Article 1

The provisions of Article 85(1) of the EEC Treaty are hereby declared inapplicable, pursuant to Article 85(3), to the standard-form authorized retailer contract binding Givenchy or, where appropriate, its exclusive agents, to its specialized retailers established in the Community, and to the general conditions of sale annexed thereto.

This Decision shall apply from 1 January 1992 to 31 May 1997.

Article 2

Parfums Givenchy SA shall present to the Commission every two years, starting on 1 June 1993, reports specifying:

-- the total amount of purchases of Givenchy products achieved, during each of the previous years, by all the authorized retail outlets in each Member State of the Community, the increases made in prices and the launching of new products or the withdrawal from the market of old products,

-- the number of authorized retail outlets in each Member State as at 31 December of each of the previous years, and

-- the amounts set annually by Givenchy or, where appropriate, by its exclusive agents, pursuant to the minimum annual purchases requirement incumbent on authorized retailers.

Article 3

This Decision is addressed to:

Parfums Givenchy SA

74 Rue Anatole France

F-92300 Levallois-Perret

This is Exhibit G referred to in the
Affidavit of Jeanie Lee
Sworn before me at Richmond, British Columbia
this 9th day of March A.D. 2007



A Commissioner for taking Affidavits for British
Columbia

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Fine fragrances

**A report on the supply in the UK
for retail sale of fine fragrances**



MONOPOLIES AND MERGERS COMMISSION

Fine fragrances

A report on the supply in the UK
for retail sale of fine fragrances

Presented to Parliament by the Secretary of State for
Trade and Industry by Command of Her Majesty
November 1993

**Members of the Monopolies and Mergers Commission as at
18 August 1993**

Mr G D W Odgers (*Chairman*)
Mr P H Dean CBE (*Deputy Chairman*)
Mr D G Goyder (*Deputy Chairman*)
Mr H H Liesner CB (*Deputy Chairman*)
Mr A Armstrong
Mr C C Baillieu
Mr I S Barter
Professor M E Beesley CBE
Mrs C M Blight¹
Mr F E Bonner CBE¹
Mr P Brennan
Mr J S Bridgeman
Mr R O Davies
Professor S Eilon¹
Mr J Evans¹
Mr A Ferry MBE
Mr N H Finney OBE
Sir Archibald Forster
Sir Ronald Halstead CBE
Ms P A Hodgson
Mr M R Hoffman
Mr D J Jenkins MBE
Mr A L Kingshott
Miss P K R Mann
Mr G C S Mather
Mr N F Matthews
Professor J S Metcalfe CBE
Mrs D Miller MBE
Professor A P L Minford
Mr J D Montgomery¹
Dr D J Morris
Mr B C Owens
Professor J F Pickering
Mr L Priestley
Dr A Robinson
Mr J K Roe
Dr L M Rouse
Mr D P Thomson
Professor G Whittington

Mr S N Burbridge CB (*Secretary*)

¹ These members formed the group which was responsible for this report under the chairmanship of Mr J D Montgomery.

Note by the Department of Trade and Industry

In accordance with section 83(3) and (3A) of the Fair Trading Act 1973, the Secretary of State has excluded from the copies of the report, as laid before Parliament and as published, certain matters, publication of which appears to the Secretary of State to be against the public interest, or which he considers would not be in the public interest to disclose and which, in his opinion, would seriously and prejudicially affect certain interests. The omission is indicated by a note in the text.

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1 Summary

1.1. On 19 November 1992 the Director General of Fair Trading (DGFT) asked us to investigate the supply in the UK for retail sale of fine fragrances (see Appendix 1.1).

1.2. Fine fragrances are defined in our terms of reference to mean perfumes, eaux de parfum, eaux de toilette, eaux de cologne and aftershave lotions which are supplied to retailers at a resale price exceeding £15 per 50ml. The fragrance houses supply these products only to retail outlets which, in principle, provide an ambience which accords with the luxury image of the products. This is a form of selective distribution.

1.3. Some aspects of the selective distribution systems operated by the fragrance houses are caught by Article 85(1) of the Treaty of Rome which, in summary, prohibits agreements which prevent, restrict or distort competition. The EC Commission has recently granted exemptions under Article 85(3) to the standard retailer agreements of two fragrance houses. In doing so it effectively laid down the conditions for the operation of selective distribution in the supply of fine fragrances. A key point is that any retailer meeting the qualitative criteria laid down by a given supplier must, on application, be accepted as an authorized stockist. In our inquiry we have examined the effects of the selective distribution systems on the UK public interest.

1.4. We estimate that total sales of fine fragrances in the UK in 1992 were some £230 million at wholesale prices. Two-thirds of the total consisted of sales by fragrance houses to their authorized domestic retailers, over a fifth were sales by fragrance houses to duty-free retailers and the rest were grey-market supplies, ie products which had been sold outside the authorized network. The supply is relatively unconcentrated: the largest supplier, the L'Oréal group, has about [*] per cent of the total and the top five have some 60 per cent between them. The main types of retailer are department stores and chemists, the three largest being Boots The Chemists Ltd (Boots), Debenhams PLC (Debenhams) and House of Fraser (Stores) Limited (HoF).

1.5. There is no scale monopoly but we found that a complex monopoly situation existed in that all the leading fragrance houses refuse to supply retailers whom they have not authorized. All but one of them also recommend resale prices, which most leading authorized retailers observe for most of the time.

1.6. Fine fragrances are marketed as luxury products and we accept that the suppliers need to be able to control their distribution in order to protect the brand images which consumers evidently value. There is no shortage of other fragrances at much lower prices. We found that the UK had until recently been a relatively high-price market. This situation has changed as a result of increased competition among suppliers, the fall in demand during the recession, the entry of prominent retailers selling grey-market supplies at a discount and the development of the single EC market. Wholesale prices have fallen slightly in real terms since 1990 and suppliers' profitability is variable. We noted, however, that wholesale prices to duty-free retailers are well below the level of prices to domestic retailers, and we believe that the duty-free regime generally distorts the market. Although authorized retailers place the emphasis on non-price competition, there is currently an increasing amount of price

*Figure omitted. See note on page iv.

competition as well. The market is competitive and we concluded that the selective distribution systems as a whole were not operating against the public interest.

1.7. We looked closely at the fragrance houses' arrangements for assessing retailers' applications for authorized status, giving particular attention to complaints which we received from Superdrug Stores PLC (Superdrug) and Tesco Stores Ltd (Tesco) that suppliers were exercising unfair discrimination in refusing to supply them. Although we found some anomalies, we were not persuaded that the fragrance houses were failing to implement in good faith the new arrangements approved by the EC Commission. We found no clear evidence that suppliers were using their selective distribution systems as an indirect means of seeking to maintain resale prices.

1.8. The EC Commission exemptions permit a supplier to require authorized retailers to stock at least two-thirds of the products in each brand range which they sell, and to purchase at least 40 per cent of the average level of purchases from that fragrance house achieved by all authorized outlets in the same member state in the previous year. A supplier may also require an authorized retailer to stock a number of competing brands. There is some evidence that these requirements may deter some retailers from applying for authorized status.

1.9. We have reached no adverse finding as regards the public interest. The present time is a period of transition as the fragrance houses implement the revised arrangements approved by the EC Commission. The exemptions apply until 1997 and we consider that their effects on competition should be thoroughly reviewed at that time. Meanwhile we suggest that the Office of Fair Trading (OFT) should monitor complaints from retailers and the effect of the range-stocking and minimum purchase requirements. We also suggest that the fragrance houses should set up a straightforward scheme of independent arbitration for cases where a retailer considers that any issue relating to the grant or withdrawal of authorized status has not been handled in accordance with the procedures approved by the EC Commission.

2 Background

The product

2.1. Perfumery has existed for thousands of years. Perfume containers were made in a variety of substances in ancient Egypt, Persia, Greece and Rome. The use of perfumed ointments, creams and oils preceded the use of perfumes simply for their fragrance, which developed with the introduction of alcohol as a solvent base for fragrant natural essences. Toilet waters, the less concentrated forms of perfume, originated in Cologne-which gave the name Eau de Cologne-at the end of the 17th century. More sophisticated perfumes were developed in the second half of the 19th century, when chemists began to extract fragrant substances from natural essences and to synthesize fragrance components. One of the earliest modern perfumes-still available-was Jicky, introduced by Guerlain in 1889. In the years leading up to the First World War other famous parfumeurs, such as Coty and Houbigant, followed suit. During this period luxury packaging of perfumes was introduced. After the war fashion designers began to adopt perfumes to complement their fashions and enhance their revenue. The first was Chanel, with Chanel N° 5, followed by Lanvin with My Sin and Arpège. This development gained impetus after the Second World War with the entry to the perfume market of Rochas, Dior, Givenchy and Yves Saint Laurent. More recent developments have been the growth of fragrant products for men and the launching of perfumes under the names of film stars and other celebrities.

2.2. Perfumes, or fragrances, in general use are described according to their strength, that is, the concentration of perfumed essence:

- perfumes or concentrates (15 to 40 per cent concentration of essence);
- eau de parfum (EDP) or parfum de toilette (7 to 15 per cent);
- eau de toilette (EDT) (3 to 8 per cent);
- eau de cologne (EDC) (1.5 to 6 per cent); and
- male fragrances which include aftershave lotions.

These are the products specified in our terms of reference (see Appendix 1.1) where they have a resale price exceeding £15 per 50ml. They are described in this report as reference products and their brand names are referred to as reference brands. Reference brand ranges normally include some non-reference products as well (see paragraph 2.6).

2.3. The upper end of the fragrance market is occupied by premium-priced 'fine fragrances' from the leading fragrance houses. These fine fragrances are expensively packaged and presented, and marketed with strong brand images linked to the perfume characteristics and to the reputation of the house. Their retail distribution is generally restricted to outlets considered to provide a retail ambience, including specialist sales staff, which accords with the luxury brand image. The adoption of such restrictions by suppliers, involving refusal to supply outlets which do not meet the requirements, is usually referred to as 'selective distribution'. The resale price of £15 per 50ml specified in our terms of reference as the lower price limit brings virtually all such fragrances within the scope of the inquiry.

2.4. At the lower end of the market and outside the scope of the inquiry are low-priced, mass-distributed and mass-merchandised brands, whose retail distribution is not restricted. There are also imitations of the premium-priced fine fragrances, known as replica fragrances, which are sold at prices well below those for the genuine article.

2.5. While the upper and lower ends of the market are fairly strongly differentiated, a limited number of medium-priced fragrances, sometimes known as volume prestige brands, are generally distributed on a less restrictive basis than premium brands. Some products in these brand ranges have resale prices above the limit mentioned in paragraph 2.1 and therefore fall within our terms of reference.

2.6. The industry for personal care and beauty products covers several product categories, including toiletries (bath and shower products, deodorants, etc), skincare products and colour cosmetics, as well as fragrances. Manufacturers and distributors of fragrances (fragrance houses) generally sell perfumed products such as soap, bath gel and body lotion as part of their fine fragrance ranges, under the reference brand names. These products do not fall within the scope of the inquiry and are described as non-reference fine fragrance products. For some brands the number of such items is small, but for some there are as many non-reference products as reference products. In terms of sales, non-reference products represent about 13 per cent by value of the total sales of fine fragrance brands.

2.7. A number of fragrance houses also sell cosmetics and skincare products (which in some cases form the principal part of their trade). These products, which are usually sold in the same outlets as fragrances, often alongside them, are also outside the scope of the inquiry.

The origins of the inquiry

2.8. The reference was made following representations to the OFT by certain multiple retailers-in particular Superdrug, a subsidiary of Kingfisher plc, and Tesco-that they had been refused supplies of fine fragrances by certain fragrance houses. These retailers were selling fine fragrances, at prices discounted from the recommended resale prices (RRPs), which they obtained from the so-called 'grey market', discussed in Chapter 3, which appears to be created by authorized wholesalers or retailers of fine fragrances selling supplies to traders outside the authorized network in breach of their agreements with their suppliers. Superdrug and Tesco applied to a number of fine fragrance houses for authorized retailer status at branches where they had created special sales points which were intended to meet the suppliers' requirements. At the time the reference was made only one of the smaller suppliers of fine fragrances had agreed to supply them. Other retailers, including Asda Group plc (Asda), The Littlewoods Organisation PLC and The Perfume Shop Ltd (Perfume Shop), were reported as selling discounted fine fragrances obtained from the 'grey market', but they did not approach the OFT.

2.9. In making the reference, the DGFT expressed particular concern that the restrictions on supply of fine fragrances to retailers might be accompanied by a lack of effective competition at retail level and that the MMC should investigate the allegation that the restrictions were being applied in order to maintain resale prices in a manner that would be illegal if undertaken directly.

2.10. A related issue to which the DGFT drew attention in his press statement concerns the refusal of certain magazine publishers to accept advertisements from Superdrug for its selling of fine fragrances, allegedly on the grounds that this would jeopardize their advertising revenues from the fine fragrance houses.

The EC aspect

2.11. Agreements between suppliers and their authorized retailers may be subject to Article 85(1) of the Treaty of Rome (the Treaty), which prohibits agreements between undertakings which may affect trade between EC member states and which have as their object or effect the prevention, restriction or distortion of competition. Such agreements are void unless exempted under Article 85(3) of the Treaty, either individually or by category.

2.12. The selective distribution contracts of two fine fragrance houses-Yves Saint Laurent Parfums SA (YSL Parfums) and Parfums Givenchy SA (Parfums Givenchy)-were granted exemptions from the provisions of Article 85(1) of the Treaty by the EC Commission in December 1991¹ and July 1992² respectively. The

¹ Commission Decision of 16 December 1991 relating to a proceeding under Article 85 of the EEC Treaty (Case No IV/33.242-Yves Saint Laurent Parfums), *Official Journal of the European Communities*, No L12, 18 January 1992, pp 24-35.

² Commission Decision of 24 July 1992 relating to a proceeding under Article 85 of the EEC Treaty (Case No IV/33.542-Parfums Givenchy system of selective distribution), *Official Journal of the European Communities*, No L236, 19 August 1992, pp 11-22.

Decisions embodying these exemptions allow the companies concerned to take account of a number of factors in deciding whether to supply a retail outlet with luxury cosmetic products, including fine fragrances. These include:

- the qualifications and experience of the staff;
- whether the location, name, external appearance and internal fittings of the outlet reflect the prestige of the supplier's brand;
- the scale and nature of other retailing activities in the outlet;
- the area set aside for selling the supplier's products; and
- the range of luxury cosmetic products stocked.

The standards by which these factors are assessed are to be applied in a non-discriminatory fashion. The Decisions do not permit refusal of supplies because of the pricing policy of the retailer or because of the number of authorized outlets in a given area. The supplier may require the retailer to accept certain obligations, notably to participate in the supplier's promotional activities, to carry a minimum range of stock and to achieve a minimum annual level of purchases from the supplier. The retailer must be permitted to sell on the products to other authorized retailers throughout the EC. The text of the Decision relating to YSL Parfums is set out in Appendix 2.1. The text of the Decision on the Parfums Givenchy contract is similar in almost all respects; the differences are mentioned where relevant later in the report.

2.13. In granting these exemptions the EC Commission accepted the promotion of a prestige brand image as 'an essential factor' in marketing fine fragrances and other luxury beauty products. It acknowledged the need for appropriate facilities, including 'specialized technical advice', at retail outlets as 'a legitimate requirement'. The Decisions are specific to the two companies. Other companies which operate in accordance with the terms of either Decision may effectively regard themselves as meeting the requirements of European law and the EC Commission has said that they may apply for 'letters of comfort' confirming that this is indeed the case. We were informed during the inquiry that a number of fine fragrance houses were in discussion with the EC Commission about their selective distribution arrangements. The findings of our examination of the various houses' current arrangements are set out in Chapter 4.

2.14. In making the reference, the DGFT said that it was not intended as an expression of disagreement with the exemptions granted by the EC Commission. He noted that some features of the distribution practices of fine fragrance houses were not covered by Article 85(1) and some were not covered by the exemptions. He wanted the MMC to assess the public interest effect of these restrictions and the even-handedness of application of the criteria outlined in paragraph 2.12. The DGFT informed the Director General for Competition in the EC Commission of the inquiry and its terms of reference.

Refusal to supply

2.15. Refusal to supply goods to persons or classes of persons requiring them for business purposes was the subject of a report by the MMC in 1970.¹ The MMC took the view that the main scope for damage to the public interest occurred in three situations:

- (a) where supplies were refused in order to avoid supplying a known or suspected price cutter;
- (b) where supplies were refused to a new distributor because the supplier's existing distributors threatened to boycott him; and
- (c) where the supplier was not operating under reasonably competitive conditions.

¹ *Refusal to Supply: a report on the general effect on the public interest of the practices of refusing to supply goods required for business purposes and of entering into certain exclusive supply agreements*, Cmnd 4372, July 1970.

2.16. The first of these situations was made unlawful by the Resale Prices Act 1964 and is currently prohibited by section 11 of the Resale Prices Act 1976. However, section 13 of the 1976 Act permits a supplier to withhold goods from a dealer if he has reasonable cause to believe that dealer has been using such goods as loss leaders. The MMC said that in considering possible remedies the second of the situations could be considered with the first in so far as a threat to boycott was made in order to prevent supplies going to a price cutter. In the third situation the acts of a supplier might fall within the scope of monopolies legislation and, if so, refusals could be investigated thereunder and appropriate action recommended.

2.17. The MMC considered that no conflict need arise with the public interest under reasonably competitive conditions when supplies were restricted for the following reasons:

- (a) demand might exceed supply and, being unwilling to raise prices, a supplier might select his customers or impose some system of rationing involving refusal to supply;
- (b) a supplier might estimate that to add to the number of outlets he supplied would increase his distribution costs without compensatory advantages in terms of more sales and increased profits;
- (c) a supplier might estimate that he would do better by catering for a limited class of customer who would pay for exclusiveness than by extending his outlets and risking the loss of his exclusive trade; and
- (d) the product might need technical or other services (such as advertising or stockholding) to be provided by distributors or be appropriate only to users employing a certain level of technology.

The MMC added that the circumstances to which (a) related would for the most part occur only in the short term.

2.18. In the EC Commission Decisions exempting the YSL Parfums and Parfums Givenchy selective distribution contracts, account was taken of 'the aura of exclusivity and prestige' attached to the articles in question and of a need for 'specialised technical advice available in the retail outlet' (Section II A 5 of the YSL Decision). These factors relate to the considerations described in paragraph 2.17(c) and (d). The EC Commission did not, however, consider that it would be justifiable to grant exemption under Article 85(3) to the application of 'quantitative' restrictions on the number of retail outlets in any given area (the sort of approach described in paragraph 2.17(b)). Before the Decisions it had been the practice of some fragrance houses to restrict the number of authorized outlets in this way.

Advertising and promotion

3.59. We found that total advertising and promotional expenditure in support of reference brands in 1992 was about £76 million, which is about 44 per cent of the value of suppliers' sales to retailers. Of this, expenditure on media advertising was about £25 million, including about £11 million on magazine advertising, £9 million on television advertising, £2.3 million on newspaper advertising and almost £2 million on advertising on commercial radio. The other main expense was that of the beauty consultants and their training and support. The total cost of this in 1992 was about £30 million, of which payments to consultants and other direct costs accounted for £26 million (some 28 per cent of which was recovered from retailers), and training costs for about £2.4 million. Other promotional expenditure included gifts with purchase (GWPs) at about £6 million, and point-of-sale material at about £15 million (including £5 million for testers and samples).

3.60. Changes in the levels of advertising expenditure from year to year, and the pattern of advertising expenditure in any one year, are heavily influenced by product launches or specific promotion campaigns. This is reflected in the considerable variation of expenditure by individual fragrances houses from one year to the next. Advertising fragrances, whether new or established, does not guarantee success, though it is probably the case that substantial advertising support is an essential ingredient in the promotion of any new fragrance. With the importance of image in the fragrance market, the types and location of advertisements for fine fragrances are important. Suppliers try to ensure that fragrance advertising-whether mass-market or fine brands-is usually of the highest quality. Most fine fragrance advertisers are very selective in the type of media in which the advertising image is presented, with greater use being made of press advertising, particularly in those publications that have what are considered to be both the appropriate image and print quality (see also Appendix 3.1).

3.61. All fragrance houses engage in significant promotional activities. The main categories are in-store sales consultants, other point-of-sale services and promotions. The promotional strategy emphasis is on training of sales consultants, and on ensuring that products are displayed and available for testing by the consumer in an appropriate retail environment. Methods of product promotion used widely include the offering of GWPs, offering a related product (for example, a bath product from the same fragrance brand) at a reduced price (purchase with purchase or PWP) and special promotions in the approach to key dates in the fragrance market year (such as Christmas, Easter and Mother's Day).

3.62. Within this overall context, the fragrance houses consider selective distribution to be an essential aspect in positioning their brands within the market, and closely tied in to the way in which the fragrance is promoted and perceived by the consumer. The fragrance houses believe that their images are supported and enhanced by ensuring that retailers have an appropriate shop sign (they favour the French word *enseigne* which encompasses both the name and the goodwill that goes with it), a high level of retail sales support in the form of sales consultants, a high level of decor and other in-store facilities for the sale of their brands. In summary, the fragrance houses' policy is to try to ensure that the retail environment and presentation of the product reflect and enhance the status of their brands in the eyes of consumers.

3.63. But in requiring such, often expensive, point-of-sale support for their brands at the retail level, the fragrance houses face a trade-off between a desire to enhance the image and exclusivity of their brands and the desire for higher sales volumes. While selective distribution of one form or another is usual, no two fragrance houses adopt exactly the same standards, and the precise requirements laid down by the supplier, and the inclination of different retailers to agree to meet those criteria, vary between suppliers and between retailers.

Selective distribution

3.64. The two EC Decisions exempting the YSL Parfums and Parfums Givenchy authorized retailer agreements from the provisions of Article 85(1) (see paragraph 2.12) set out the main arguments for and against selective distribution agreements of these kinds. The first point to note about the Decisions is that it was necessary at all to exempt them from Article 85(1). All such selective distribution agreements include provisions which by their very nature affect competition, and the fact that the two agreements have been exempted from the provisions of Article 85(1) shows that the agreements do have as part of their object or

their effect the prevention, restriction or distortion of competition within the EC. However, the two Decisions go on to say that certain products:

which are not ordinary products or services have properties such that they cannot be properly supplied to the public without the intervention of specialized distributors. A system of selective distribution may thus constitute an element of competition which is in conformity with Article 85(1), if it is established that the properties of the products in question necessitate the establishment of such a system in order to preserve their quality and ensure their proper use ... and provided that resellers are chosen on the basis of objective criteria of a qualitative nature relating to the technical qualifications of the reseller and his staff and the suitability of his trading premises and that such conditions are laid down uniformly for all potential resellers and are not applied in a discriminatory fashion

3.65. The Decisions also note that the relevant market for assessing the effects on competition of these particular agreements is the market for luxury cosmetic products, somewhat wider than the market for fine fragrances on which the MMC's inquiry has concentrated. The Decisions note too that both YSL Parfums and the LVMH group (which owns Parfums Givenchy) had shares of the market for luxury cosmetic products in several member states 'well in excess' of the 5 per cent level that, according to the European Court of Justice, puts a company in a position to influence intra-EC trade.

3.66. Another point made in the Decisions is that the two agreements which were exempted had to be seen in the context of a market where such restrictions on supply were usual. Consequently, the impact on competition in part derived from the cumulative effect of such a distribution structure.

3.67. In justifying the acceptance of selective distribution for luxury cosmetic products (perfumery, skincare and beauty products) the Decisions, taking the YSL Parfums example, set out a number of benefits, including the following:

Improving production and distribution

- (a) The manufacturer is able to create and maintain an original and prestigious brand image.
- (b) The procedure for dealing with new applications is intended to ensure the flexible integration of new retailers into the distribution network, including the training of staff and any refitting of the shop that may be required.
- (c) The minimum annual purchase per outlet requirement (for each EC country this is set at 40 per cent of the average annual purchases of the domestic retail outlets in that country) rationalizes costs of distribution and ensures that each retailer will contribute actively to enhancing the brand through customer service.

Consumer benefits

- (d) The consumer is assured that the luxury products will not become everyday products.
- (e) Competition is focused on factors other than price, such as provision of advisory services for customers, and the constant availability of the essential products in the ranges (suppliers can require retailers to hold, as a minimum, two-thirds of the SKUs of the reference brands stocked).
- (f) As new outlets cannot be refused on the basis of purely quantitative criteria, the system does not unduly restrict intra-brand competition, particularly as retailers have complete freedom to set retail prices.

3.68. In the questionnaire we sent to the suppliers we asked each company to explain its approach to the marketing and distribution of its fine fragrances in the UK and, in particular, if they did not agree to supply all retailers who wished to stock their brands, why not, and what were the qualities they were looking for in retail outlets. Secondly, we asked each supplier what it considered to be the effects of a policy of limited or restricted distribution on:

- (a) its sales of fine fragrances;
- (b) retailers, the competition between which might, as a result, be restricted; and
- (c) consumers, whose choice as to where they could buy these products might be restricted.

The replies to these two questions by the parties to the provisionally determined complex monopoly (see paragraph 8.18) are fundamental to understanding the main issues raised in this inquiry and are summarized in Appendix 3.2.

3.69. In essence, and noting also the companies which made the particular points most clearly, the suppliers argued that selective distribution:

- (a) maintained and enhanced brand image and reputation by concentrating on retail outlets with an appropriate environment and good standards of service, pre- and post-sale (Chanel, Dior, Lauder, Givenchy, Guerlain, P&C);
- (b) ensured that brands and products were consistently presented (Chanel);
- (c) maximized consumer choice by ensuring that all outlets offered an adequate range of product types and sizes (Chanel, Lauder);
- (d) ensured continuous availability of products to the consumer throughout the year (Chanel);
- (e) provided reassurance to consumers that stocks were authentic and in prime condition (Chanel, Klein);
- (f) provided retailers with a stock control service (Lauder);
- (g) allowed suppliers to allocate promotional resources to retailers to maximize their sales (Klein, P&C); and
- (h) enabled retailers to benefit generally from enhanced image and prestige (Dior).

Muelhens made the point, which should perhaps be considered with (c), that retailers which do not meet the standards set by the fragrance houses would have difficulty in selling the range of products which authorized outlets are expected to stock. This seemed to tie in with the information which emerged from the Research International Limited (RI) report (see paragraph 4.44), which suggested that one of the reasons why small retailers looked to the grey market was because they did not expect to have sufficient turnover to justify the cost of meeting the fragrance houses' standards.

3.70. The various fragrance houses have adopted two different attitudes to exclusive launches (indeed, individual houses may vary their policies in this respect even between their different brands). While the following fragrance houses said that they normally made use of exclusive launches:

Creative Fragrances;
 Giorgio;
 Klein;
 Lancaster;
 Lauder (but only occasionally, not as a general policy);
 P&C (occasionally for some brands);
 Revlon International Corporation (Revlon); and
 Sanofi;

the following said that they offered new brands to all their authorized outlets:

Chanel;
 Guerlain;
 Muelhens (except for a three-week preview in Harrods);
 Procter & Gamble (Cosmetics & Fragrances) Limited (Procter & Gamble) (except for Boss Spirit, which at first was exclusive to Boots); and
 YSL.

3.71. The formal relationships between suppliers and retailers are looked at in more detail in Chapter 4. Suffice it here to note that in the past most suppliers have more often than not followed informal criteria and procedures in determining which retail outlets should be admitted to their selective distribution networks, and have also tended not to have formal supply agreements with those retailers which they have agreed to supply. But since the EC Decisions, suppliers have introduced new and formal retailer agreements, and have put together formal retailer assessment check-lists as part of a more open and regularized retailer admission procedure.

3.72. While selective distribution of one form or another is thus followed by all fine fragrance houses, the precise approach adopted by different suppliers varies significantly. For example, whereas P&C delivers to 576 out of 1,084 Boots outlets, and to about 935 out of 12,000 chemists outlets, Lauder supplies Aramis Classic and Tuscany brands through 113 Boots and 84 other chemists shops, and its female fragrances through only 18 Boots outlets and 45 other individual chemists shops. One result, as Table 3.14 shows, is that the number of individual retail outlets, or 'doors' (as they are known in the trade), varies considerably not only between different suppliers, but even between the different brands of the same supplier. It should be noted, though, that there are various reasons, other than differences in distribution criteria, for the differences. These include whether or not the brand has been recently launched in the UK (and is therefore only available in a limited number of outlets either as part of the supplier's launch programme, or simply because the brand is new and retailers have yet to be persuaded of the demand for it), and how popular the brand is (retailers are more likely to want to stock the popular brands). Table 3.14 compares the number of retail doors through which various, but not all, fragrance houses market their products in the UK.

TABLE 3.14 Numbers of doors (individual domestic retail outlets) selling particular fragrances in the UK, 1992*

<i>Fragrance house and brand</i>	<i>Number of doors</i>
Muelhens:	
All brands	249
Patou:	
Joy	355
Giorgio:	
VIP	386
Original (for women)	454
Red (for men)	482
Lauder:	
Beautiful	372
Aramis Classic	498
Parim:	
Lancôme	632
Klein:	
Eternity for Men	649
Eternity for Women	685
Guerlain:	
Héritage	554
Samsara	709
Chanel:	
each main brand	772
Arden:	
Blue Grass	777
Dior:	
each main brand	1,084
Givenchy:	
all brands	1,150
Sanofi:	
Tsar	476
Volupté	608
Roger & Gallet	1,179
YSL:	
each brand	1,179
P&C:	
Gio	887
Cacharel Homme	1,671
Loulou	1,707
Anaïs Anaïs	1,729
Golden:	
Vanderbilt	1,978

Source: MMC, based on data from suppliers.

*As at 31 December 1992.

3.73. Selective distribution also shows its effects when sales of fine fragrances through different types of retail outlet are looked at (see Table 3.15). Fine fragrances are mostly sold in two types of retail outlet in the UK: in department stores (which account for about 53 per cent of suppliers' sales) and in chemists shops or pharmacies (accounting for about 40 per cent of suppliers' sales). The rest are sold through beauty salons and a limited number of specialist perfume shops. This pattern of sales does not appear to have changed very much over the last few years. Boots is the largest single retailer of fine fragrances in the UK. With purchases of about £40 million in 1992, Boots' share of net manufacturers' sales of reference products to authorized domestic retailers was about 26 per cent. If grey-market sales through unauthorized retailers are taken into account Boots' share of purchases by retailers would fall to about 22 per cent. Taking into account sales through UK-based duty-free outlets as well would cause Boots' share to fall further, to about 17 per cent. Amongst grey-market retailers, whose total share of all domestic retail sales in 1992 was about 16 per cent, sales by Superdrug, Tesco and the Perfume Shop (a small specialist chain) accounted for about 30 per cent.

TABLE 3.15 **Sales of fine fragrance reference products through different types of authorized domestic retailer, 1992**

<i>Retailer</i>	<i>Percentage of manufacturers' sales to retailers</i>
<i>Department stores</i>	
Debenhams	16.6
HoF	10.2
John Lewis	4.4
Harrods	2.1
Selfridges	1.3
Others	<u>18.2</u>
Sub-total	52.9
<i>Chemists shops</i>	
Boots	26.4
Others	<u>13.9</u>
Sub-total	40.4
<i>Others</i>	6.8
Total	100.0

Source: MMC.

3.74. While in the UK virtually all fine fragrance retail sales are through non-specialized outlets (that is, in department stores or pharmacies), in other EC countries the importance of such outlets is significantly lower and specialist perfume shops are much more prominent. In Italy, Belgium and Luxembourg virtually no fine fragrances are sold through non-specialist shops, with most being sold through specialist perfumery outlets. In France, Portugal, Germany and Greece about 15 to 25 per cent is sold through non-specialized outlets, and most is, again, sold through specialist perfumery outlets (for example, in France about 66 per cent of fine fragrance sales are through specialist perfumery outlets). In Spain and the Netherlands the share of the non-specialist outlets is higher, at about 35 per cent, and in Denmark it is about 75 per cent. In Japan, the USA and Canada fine fragrances are sold mostly through department stores (in the USA, chemists shops which dispense prescriptions are known as drugstores, unlike the UK where drugstores are not operated by pharmacists, and some of the more prestigious drugstores in the USA are authorized stockists of fine fragrances).

Grey market

3.75. The grey market is the trade in fine fragrance products outside the selective distribution network of authorized distributors and retailers supplied by the fragrance houses. Although grey-market supplies have been sold in the UK for many years, there is no doubt that the demand for, and supply of, grey-market fine fragrance products has increased over the last few years. However, by its very nature the supply of products on the grey market is uncertain both in terms of the quantities that may be available at any moment, and also the particular brands and SKUs. Sources of supply, being mostly authorized stockists who (in breach of their agreements with the fragrance houses) sell outside the selective distribution network, are unpredictable. For example, grey-market supplies in recent years may well have been

enhanced by the effects on international travel of the Gulf War in 1991, political and economic upheaval in Eastern Europe and in countries of the former Soviet Union, as well as the recession affecting retailers' sales in the USA. Increased trading in grey-market supplies in the UK in recent years may also be the result of the entry into the market of important new buyers such as Superdrug and Tesco. While most reference brands and products have been available on the grey market in the UK at one time or another, the number of different SKUs available at any particular moment may be small.

3.76. We were given the names and addresses of some 30 grey-market suppliers in the UK by a number of the retailers which have been approached by them or have bought from them. We sent a questionnaire to those that we had identified, although because of their very nature we did not expect a big response (grey-market wholesalers are either quite small businesses, or businesses which are reluctant to be publicly identified). We did, however, receive a number of helpful replies from them. We found that of the 30 or so grey-market suppliers which had been identified, only four or five were regularly selling fine fragrances on any significant scale. Those grey-market suppliers which did respond to our questionnaire, including three of the main ones, reported sales of fine fragrances to UK retailers in 1992 of £23.8 million. On this basis we estimate that total grey-market sales of reference products to retailers in the UK in 1992 were at least £25 million and possibly as much as £30 million (probably about three-quarters of these sales were of EDTs and aftershaves). (It should be noted that because some of these grey-market supplies may come from certain duty-free and other retailers in the UK, these estimates of the size of the grey market may involve some double counting with authorized supplies in the UK. The extent of this is, however, believed to be small.) Although figures for earlier years were very patchy, they suggest that grey-market sales increased by perhaps 50 per cent between 1990 and 1992. Grey-market sales of non-reference fine fragrance products were very much less, at about £2 million.

3.77. Grey-market products are usually sold in retail outlets which the fragrance houses do not supply, either because the retailer has been refused, or has not applied for, authorized retailer status. This means that the products may be sold to consumers in conditions which the fragrance houses would generally consider to be inadequate for their products (eg a down-market image, poor decor, or staff lacking qualifications or training).

3.78. The fragrance houses argued that the availability of fine fragrance products on the grey market undermined their reputation among consumers for several reasons. Firstly, they claimed that grey-market products were, by the time they reached the consumer, often in poor condition. They might well be somewhat older than the products sold by authorized distributors, as they were quite likely to have been transported over considerable distances (eg it was not uncommon for supplies in the UK to have been obtained from the Middle East, Russia and India). They might have been stored incorrectly (for example, at high temperatures), which could lead to a deterioration in their quality. Retail sales of products which had deteriorated harmed the reputation of the brands concerned.

3.79. The fragrance houses have been taking steps to make their products traceable, for example by using pin, ink and laser codings and specialized packaging in order to identify the authorized distributors or retailers diverting products into the grey market. Equally, grey-market suppliers develop new means of defacing or removing such markings or codes. Thus, grey-market suppliers usually have to obscure or remove the country of origin or batch coding on the packaging in order to conceal the source of their supplies. This may mean that, to the extent that they contravene the requirements of The Cosmetic Products (Safety) Regulations 1989 (SI 1989 No 2233), Article 6(1)(g), the products are then unlawfully sold in the UK. In case of any investigation arising from the condition of the product, it would be impossible for the originating fragrance house or for a Trading Standards Officer to determine the date and place of manufacture of the product, or its batch. The fragrance houses have had some success in stopping leaks from their authorized networks, and we understand from the grey-market wholesalers that some brands (eg Chanel, Klein and Guerlain) are difficult to obtain in this way. In general, however, the fragrance houses appeared to accept that it was unlikely that it would be possible to eradicate the grey market completely.

4. Formal relationships between suppliers and retailers in the UK

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Suppliers' agreements with retailers

4.1. The EC Commission has exempted the selective distribution arrangements for luxury cosmetic products (including fine fragrances) of two companies, YSL Parfums and Parfums Givenchy, from the application of Article 85(1) of the Treaty of Rome (see paragraph 3.64). In announcing its Decisions in these two cases, the EC Commission made it clear that the principles and criteria by which it had arrived at them would be the basis for deciding on similar luxury perfumery goods cases. This does not mean, however, that all agreements between the suppliers of luxury cosmetics products and their authorized retailers, and the retailer admission criteria adopted by the various fragrance houses, have been standardized, or will have to be standardized.

4.2. YSL Parfums and Parfums Givenchy, having received indications from the EC Commission that it would not introduce block exemptions under Article 85(3) for the selective distribution agreements in this industry, decided to apply for individual exemptions because their agreements did not fit the block exemptions within the terms of either EC Commission Regulation 1983/83, concerning exclusive distribution agreements, or 1984/83, concerning exclusive purchasing agreements (both of 22 June 1983). It appears that while a number of criteria are common to these two Regulations and to the YSL Parfums and Parfums Givenchy systems (eg requirements on retailers to stock representative ranges, to buy minimum quantities and to engage in promotion, and a prohibition on suppliers setting retail prices), the main focuses are rather different. The more important elements of the YSL Parfums and Parfums Givenchy systems are the qualitative criteria and the procedure for admission to the selective distribution system. In the case of the 1983/83 and 1984/83 Regulations, territorial issues (absent from the YSL Parfums and Parfums Givenchy agreements) are a major concern. Furthermore, the Parfums Givenchy agreement requires that retailers stock competing products, while the 1983/83 and 1984/83 Regulations allow agreements to prohibit dealers from distributing competing goods.

4.3. The Decisions by the EC Commission give complete exemption to the YSL Parfums and Parfums Givenchy 'standard-form authorized retailer contracts'. The exemptions became applicable on 1 June 1991 in the case of YSL Parfums and on 1 January 1992 in the case of Parfums Givenchy, and remain so until 31 May 1997 in both cases. The EC Commission has indicated its intention to re-examine two aspects of the exemptions in particular at the end of this period:

- (a) the minimum annual purchases requirement; and
- (b) the duration of the admission procedure.

In the meantime YSL Parfums and Parfums Givenchy were each required (on 1 June in the years 1993, 1995 and 1997) to provide the EC Commission with the following information:

- total purchases of YSL/Givenchy products achieved (during each of the previous years) by all the authorized retail outlets in each member state of the EC, any increases made in prices, and the launching of new products or the withdrawal from the market of old products;
- the number of authorized retail outlets in each member state as at 31 December in each of the previous years; and
- the minimum annual purchase amounts set annually by YSL/Givenchy or (where appropriate) by their exclusive agents, for their authorized retailers.

4.4. A number of other suppliers have recently modified, or are in the process of modifying, their retailer supply agreements to make them consistent with the Decisions, and have formally notified their new agreements to the EC Commission with a view to receiving letters of comfort, in regard to their acceptability under Article 85. Several suppliers told us, however, that the changes that had been, or were likely to be, made were not very far-reaching compared with their previous policies. One of the fragrance houses, Parfums Rochas SA (Parfums Rochas), told us that it wanted its agreement to differ from the YSL/Givenchy pattern (particularly in that it wanted its French agreement, but not the UK one, to provide for a waiting list of retailers seeking authorization) and that it had sought what was termed a 'negative attestation' or, in case of a refusal from the EC Commission, an exemption on the basis of Article 85(3) of the Treaty, or alternatively a *lettre de classement*. However, Parfums Rochas told us that it did not expect to receive any response from the EC Commission while three cases appealing against the YSL Parfums and Parfums Givenchy Decisions were pending before the EC Court of First Instance.¹

4.5. The contractual relations between a number of the suppliers and their retailers in the UK, as well as in other EC countries, are therefore currently undergoing a process of change. While we analysed in some detail the old and the new agreements where they existed, and our findings are summarized below, it was not practicable to record comprehensively every change in these formal arrangements. We noted, too, that while a number of the suppliers are now signing up their UK retailers to the new agreements, some retailers had not yet decided to sign. Most of the suppliers told us that they would eventually have to cease supplying any retailers, even large ones, which refused to sign the new agreements.

4.6. The key features of the YSL Parfums and Parfums Givenchy systems are as follows:

- all purely quantitative criteria for limiting the numbers of retailers admitted to the network are eliminated;
- a procedure is introduced for the automatic admission of new retailers, subject only to the application of certain qualitative criteria and a delay of not more than 12 months;
- retailers must meet certain specific and objective qualitative criteria for both staff and premises if they are to be admitted to the system;
- any retailer which meets these criteria and is willing to accept the obligations in the retailer agreement will be admitted to the system;
- authorized retailers must meet minimum annual purchase requirements, carry a minimum range of stock, and undertake various promotion and advertising activities;

¹The three cases are: (a) *Groupement d'Achat Edouard Leclerc* [of Paris] v *Commission of the European Communities* (Case T-19/92) brought on 9 March 1992 (which requests that the Court annul the EC Commission's decision on the YSL Parfums case on the grounds that, among other things, it was based on an inadequate analysis and understanding of the market and of consumers); (b) *Groupement d'Achat Edouard Leclerc* [of Paris] v *Commission of the European Communities* (case T-88/92) brought on 21 October 1992 (which requests that the Court annul the EC Commission's decision on the Parfums Givenchy case on similar grounds); and (c) *Kruidvat BVBA* [of Sint-Niklaas, Belgium] v *the Commission of the European Communities* (case T-87/92) brought on 19 October 1992 (which requests that the Court declare void the EC Commission's Decision on the Parfums Givenchy case on similar grounds).

- subject to the above, retailers are free to decide which luxury perfume brands and products they wish to sell alongside each other;
- authorized retailers must obtain their supplies from authorized distributors or other authorized retailers, and may only sell to consumers on or from their premises or to other authorized retailers whether in their own country or elsewhere in the EC; and
- it is clearly stated that retailers are free to set their own retail prices.

4.7. Among the fine fragrance suppliers in the UK, nine (including YSL and Givenchy) include in their agreements the bulk (ie between 10 and 14) of the 15 clauses exempted by the EC Decisions (these are listed in Table 4.2). These nine are all currently using retailer contracts which have been drawn up taking into account the YSL Parfums and Parfums Givenchy Decisions. Another five suppliers, each planning to introduce a new agreement consistent with the EC Decisions, include between four and nine of the provisions in their existing agreements. Four of the suppliers include between one and three of these provisions, and ten suppliers currently do not have a contract which contains any of the exempted clauses. Table 4.1 summarizes the situation for the different companies.

TABLE 4.1 Summary of types of retailer agreements in use and proposed

Already using agreements based on the YSL Parfums and Parfums Givenchy exemptions

Chanel Givenchy PAL
Dior Klein P&C
Giorgio Armani* YSL

Using some form of agreement and/or terms and conditions of sale but planning broadly to change to the YSL Parfums and Parfums Givenchy systems

Arden Hermès§ Procter & Gamble
Alfred Dunhill† Lancaster Ricci
Golden Parim Sanofi
Guerlain‡

No agreement or terms and conditions of sale but planning broadly to introduce YSL Parfums and Parfums Givenchy systems

Douek Patou

Using terms and conditions of sale; no significant change proposed

Green¶ Revlon Shiseido
Muelhens

No agreement/terms and conditions of sale (other than those relating to each individual order) and none proposed

Creative Fragrances= Diana de Silva Houbigant

Source: MMC, based on an analysis of information from the companies.

*Lauder finalized its new pan-EC store agreement in January 1993, and began signing up retailers in the UK in June 1993.

†Changes will take account of the outcome of the MMC inquiry; no specific mention of the YSL Parfums or Parfums Givenchy Decisions.

‡Guerlain said that while it was planning to change to an agreement which bore a similarity to the YSL Parfums and Parfums Givenchy agreements, and in so doing (where appropriate) taking account of the principles contained therein, it did not consciously seek to identify with those agreements.

§Changes were being made to its French agreement. Any consequential changes to the UK agreement were unlikely before 1994.

¶Green, a new company, was awaiting retailers' contracts from its principal supplier companies in Paris.

=Parfums Rochas (whose wholly-owned subsidiary in the UK, Rochas Perfumes Ltd (Rochas), is its representative on the UK market through the assistance (*prestataire de services*) of Creative Fragrances) has notified its standard authorized retailer agreement to the EC Commission, and is awaiting a response.

4.8. The provisions exempted in the cases of YSL Parfums and Parfums Givenchy which appear to be most important from a competition point of view are summarized in Table 4.2. They include a number of basically quantitative provisions (eg minimum annual purchases and certain limitations on the acquisition and sale of the products) which are subject to Article 85(1) but which have been exempted under Article 85(3), and other provisions of a qualitative nature. These provisions are all listed in full in Appendix 4.1 (this appendix summarizes the contents of the agreements for only those companies which we found to be part of the complex monopoly). In preparing this analysis we examined the formal retailer agreements (and conditions of sale where appropriate) provided in time by 28 suppliers of fine fragrances to the UK market. (It should be noted that the absence of a 'tick' in Appendix 4.1 in respect of those companies which do not have formal supply agreements may not necessarily mean that the company concerned does not apply the relevant provisions, because some are included in miscellaneous other documents such as distribution policy letters, etc.)

TABLE 4.2 Summary of clauses in the exempted YSL Parfums and Parfums Givenchy authorized retailer contracts which are important from a competition point of view, and the frequency of their occurrence in UK suppliers' contracts with retailers

Clause*	Frequency†
I.i.a Recognized qualification/experience	9
I.i.b Training	8
I.ii Location, name and fittings of outlet	10
I.iii Prohibition of sale of other goods which might detract from image	8
I.iv Sales area, including availability of competing brands	10
I.v Selling requirements: sales permitted from authorized premises only, ‡ original packaging to be retained	13
I.vi Stocks: quantity and freshness	12
I.vii Promotion and advertising, including stocking new products	12
I.viii Minimum annual purchases	9
II.i Admission procedure: application followed by inspection re qualitative criteria	6
III.i Authorized retailers may resell to other authorized retailers throughout the EC	15
IV.i Authorized retailers will not sell to or obtain supplies from any wholesaler or retailer not included in supplier's distribution network	15
V No imposed prices	9
VI Competing products may be purchased	-
VII.i Term and renewal of contracts	11

Source: As Table 4.1.

*The YSL Parfums and Parfums Givenchy exemptions are very similar but not identical. All exemptible clauses from either Decision are included in the list of provisions against which the agreements have been analysed. Clause numbering reflects the more detailed listing of provisions in Appendix 4.1.

†These numbers relate to a total of 28 companies. It should be remembered that a number of companies are in the process of revising their agreements, or have already said that they do not intend to introduce agreements which incorporate the principles set out by the EC Commission in its YSL Parfums and Parfums Givenchy Decisions (see Table 4.1). In the case of Lauder, the analysis in both this table and in Appendix 4.1 includes information from its British store agreement, and this was superseded in June 1993 by Lauder's new pan-EC store agreement containing provisions which were drawn up in the light of the EC Decisions on YSL Parfums and Parfums Givenchy.

‡See also paragraph 4.13.

4.9. While both Table 4.2 and Appendix 4.1 show that we did not find any explicit provision in the agreements allowing retailers to stock competing products, the absence of any provision prohibiting them from doing so implies that they can do so if they wish. Indeed, unlike the standard-form contract in the YSL Parfums Decision, that in the Parfums Givenchy Decision explicitly requires that the 'authorized retail outlet must, within eighteen months carry a sufficient number of competing brands to reflect the image and reputation of Givenchy products'. This, the EC Commission explained in its Decision, was necessary in order to attract and retain the loyalty of consumers who expect to find, in each retail outlet, a specialized commercial environment allowing them to choose from a range of competing brands. In satisfying this condition, retailers are free to choose which brands to stock (provided only that they are brands of luxury cosmetic products which are usually distributed through selective distribution networks). In the EC Commission's view, as expressed in the Parfums Givenchy Decision, the minimum number of four competing brands, in addition to the supplier's brand(s), imposed by Parfums Givenchy up until the Decision, was 'not unduly high, given the degree of specialization that is currently a usual feature of the distribution of luxury products' in the EC.

4.10. Again, while only nine agreements expressly stated that authorized retailers are free to set the resale prices of their products, all suppliers indicated, in response to a question in our questionnaire, that this was the case. On both this point and that in paragraph 4.9, some suppliers told us that when the opportunity arose (eg when reprinting their documentation) they would be modifying their agreements to make these two points more clearly.

4.11. On a related point, there was no sign in the agreements that the legal opinion in the YSL Parfums and Parfums Givenchy Decisions that 'the down-market nature of a retail outlet or of its name cannot be deduced from the retailer's habitual policy on prices' was being disregarded (though see paragraph 7.129, where we note that a suggestion to this effect was included in Lancôme's draft evaluation report for assessing the suitability of new retail outlets). Several agreements (eg Givenchy, Dior, Jean Patou Limited (Patou)) expressly stated that the normal pricing policy followed by a retailer should not be considered as a prestige- or value-reducing factor.

4.12. We discussed particular points arising from their individual retailer agreements with a number of the companies. For example, the agreements of two suppliers (namely YSL and P&C) stated that if an authorized retailer decided to transfer the point of sale and thus to change the location from which the products were sold, it should be able, once the transfer had taken place, to obtain the authorization of the exclusive distributor for the new point of sale subject to a number of conditions, of which one was that: 'The new point of sale must be located in the same town, and if the town is divided into districts, in the same district as the point of sale which has been closed or in the surrounding districts.' This seemed to be a territorial restriction not covered in the exemptions and could in certain circumstances have the effect of territorial exclusivity. YSL told us that rather than being an additional restriction, this was a limited exception to the conditions in that it enabled an existing retailer to move premises locally without having to go through the full evaluation routine for new outlets (which might involve a wait of up to nine months before obtaining new supplies). P&C similarly regarded this as a more relaxed rather than a tighter restriction, but anyway said that the relevant clause in its standard agreement was no longer applied and that this was mentioned in the covering letter sent out with the agreement.

4.13. One of the differences between the YSL Parfums and Parfums Givenchy contracts assessed in the EC Decisions is the treatment of mail order sales. The YSL Parfums contract states that authorized retailers 'must display and sell Yves Saint Laurent products only on the premises covered by the contracts and must refrain in particular from selling them by mail order'. The Parfums Givenchy contract states that authorized retailers 'must display and sell Givenchy products solely on the premises covered by the contract'. We questioned a number of the fragrance houses about whether they considered that these provisions meant that fine fragrances could only be sold to customers during their visits to authorized retail outlets. We were told that customers could order fine fragrance products by telephone or mail and receive them in postal deliveries, provided that the orders were placed directly with, and processed by, authorized retail outlets where qualified and experienced consultants were available to handle customer queries at the time of ordering.

4.14. Having noted that Dior's agreement specifically states that the retailer 'undertakes not to resort to mail order, catalogue sales, or any sale or order or delivery of products outside the point of sale', we questioned the company about what this meant in practice given that we had been shown a copy of a 1991 Harrods mail order advertisement specifically for several Dior perfumes leading with its (then) newly launched Dune brand. (Harrods runs such mail order advertisements in the national press for other brands too.) Dior told us that while in principle mail order sales were not permitted, Harrods' mail order activities were seen as an extension of customer service to its existing customers, and that the wording of its contract needed clarifying in this respect.

4.15. While some suppliers said that in determining the suitability of new retailers they did not discriminate in favour of or against any particular category of retailer (and some maintained that their admission criteria now applied consistently to different types of outlet throughout the EC), we also noted that several indicated in their answers to our questions that they were only interested in allowing certain categories of retailer into their selective distribution network. For example, Guerlain told us that the primary criterion for deciding on whether to supply a particular company with reference products was whether the retailer was a department store, retail pharmacy, perfumery or beauty salon. If not, it was not accepted. While Lauder stated that its authorized sales outlets would be either prestigious retailing units or within the

perfumery section of a department or speciality store, it also said that its new criteria for assessing potential new entrants to its selective distribution network would apply consistently to different types of outlets throughout the EC, including supermarkets, and that some supermarkets might be sufficiently prestigious to qualify for selection under its criteria. See also the reference to Muelhens' policy in paragraph 4.23.

4.16. A number of companies (including P&C, Klein, Lauder, Lancaster, Sanofi, Revlon, Muelhens, Diana de Silva and Creative Fragrances) indicated that they regularly or occasionally had temporary exclusive launches (over a period of anything from around three weeks to one year) of their products in one or more stores. Only one of these companies, P&C, also has a clause in its agreement which states that authorized distributors shall stock all new brands of the products launched by it from the date of launch in the UK. In P&C's view, this ensured that consumers could be certain that they could sample and buy new brands launched in the UK, and that both the supplier and the retailer derived maximum benefit from the advertising and promotional expenditure in support of the new brand. This, P&C said, was consistent both with the EC Commission Decisions on YSL Parfums and Parfums Givenchy, which accepted generally that retailer co-operation in advertising and promotional activities was important in ensuring their success, and with the view set out in the Parfums Givenchy Decision that the successful launch of a new luxury cosmetic product 'presupposes close cooperation between the manufacturer and its authorized retailers, who, for their part, require specific training in order to provide final customers with the professional advice they expect'.

4.17. We noted that the Dior agreement states that: 'no food or household products may be sold at the point of sale, or, in the case of department stores or multi-purpose stores, within 50 feet of the perfumery and beauty department and/or visible therefrom'. As it may seem that if taken literally, not only Boots, but possibly also department stores like Harrods, would fail to meet this criterion, we asked the company to explain what this restriction meant in practice. Dior said that while Boots did sell sandwiches (mostly in its London outlets), this was a very minor part of its business and did not detract from the very high image and authority that Boots had in the beauty and healthcare markets; similarly in the case of Harrods, whose very high reputation in the sale of cosmetics and perfumery was not debased in any way by its food hall. This would all be in contrast to stores such as Tesco, where food sales predominated.

Criteria for admitting new retailers

4.18. The first part of this chapter examined retailer agreements and related documentation of 26 suppliers of fine fragrances to the UK market. We now turn to the criteria used by the suppliers to determine whether or not a particular retail outlet appears to them to be suitable premises from which consumers should buy fine fragrances. For this purpose many suppliers have now put together check-lists which set out a number of criteria to be assessed and scored. We reviewed these retailer check-lists and compared them with the selection criteria in the retailer agreements. We also looked at the suppliers' responses to a number of questions that we put to them about the selection of retailers. Our findings are summarized below and in Appendix 4.2.

4.19. Ten companies used some form of check-list, and we found that all these, except Muelhens', were in line with the EC criteria. A further six companies indicated that they were already drafting, or intended to introduce, a check-list (Arden, Guerlain, Patou, Maurice Douek Limited (Douek), Ricci and Sanofi). Ten suppliers did not use, and were not planning to use, a check-list. Apart from Muelhens (which does not have a formal retailer supply agreement against which to compare the provisions of its check-list), the check-lists were broadly consistent with the criteria contained in the retailer agreements in terms of headings and matters covered, although the check-lists were often considerably more detailed than might have been expected. We found a considerable variation in the number of questions included in the check-lists: for example, while Givenchy's has 15 (scored) questions, Chanel's has 45.

4.20. All but one of the check-lists (that of Muelhens-see paragraph 4.23) used some form of point-scoring system, including an overall minimum score (and sometimes also a minimum score for certain subsets of questions) which the outlet must achieve in order to join the supplier's selective distribution network. In about three-quarters of cases, the suppliers automatically eliminate applicants scoring the minimum point in the range for several key questions. In addition to scored questions most check-lists also included a number of additional questions which were not explicitly scored. The influence of the answers to these questions on the final decision as to whether or not to supply reference products to an applicant was not always clear.

4.21. In addition, many companies required a number of photographs (up to 14 or 15) of various aspects of the store environment, exterior, interior and staff. The selection criteria are usually made known to the applicant (including several cases where no check-list was used), mostly prior to evaluation. We found that the final decision as to whether or not to admit a new retail outlet was most commonly in the hands of the Sales Director but there were quite a few variations on this. A number of suppliers mentioned referring to the Managing Director in difficult cases. The letters to unsuccessful applicants usually highlighted features of the store which were given low scores.

4.22. We found that the check-lists varied greatly in detail and complexity, and that a few were difficult to follow at first sight. Nearly all the suppliers used the same check-lists for all types of outlet. However, when using their check-lists to assess pharmacy or perfumery outlets, rather than department stores and other outlets where there are one or more dominant activities other than the sale of perfumery products, a few suppliers miss out several of the questions. Only Dior used two separate check-lists for chemists and department stores. Dior also used an additional questionnaire in situations where the shop was located in an arcade/shopping centre.

4.23. Muelhens described its account opening process as follows. First, its strategy was to have no more than 200 to 300 outlets, confining distribution to department stores and very top quality perfumeries. Second, the selected accounts to be opened were individually known by its (Muelhens') management team, including the positioning in town, its neighbourhood, the retail offer, the quality and training of the staff, the quality of the environment, and whether a broad selection of competitive brands were stocked. Third, a site visit was undertaken to check whether the outlet met Muelhens' documented account-opening criteria, and an assessment would be made during the visit to see whether or not it would be profitable for Muelhens to open the account. This selection process, Muelhens said, followed the arrangements approved in the YSL Parfums and Parfums Givenchy Decisions.

4.24. A number of the suppliers provided us with examples of completed check-lists for both successful and unsuccessful applicants. In these cases, the assessments appeared to have been carried out even-handedly. However, it is difficult to challenge the scoring in any given case without good photographs and, preferably, a site visit.

4.25. The suppliers claimed to achieve consistency in applying the criteria in a variety of ways—sometimes by several ways in combination. The most commonly cited means was having the final decision taken by one and the same person. Having a standard check-list and/or standard criteria was also cited. Other methods included having all the area representatives visit a similar mix of retail types, various types of training, briefing and guidelines, and spot checks. Only YSL had a single representative visiting all applicants (see paragraph 4.26). Klein had only four representatives, and several suppliers (eg Patou and Douek) which were introducing new systems in the future also intended having only one inspector.

4.26. YSL told us that when its standard authorized retailer agreement was first introduced in the UK, evaluations were carried out by area managers, each of whom was responsible for a different part of the UK. Although the evaluators used standard check-lists and were given training prior to beginning their evaluations, comparison of the evaluations carried out in the early months indicated that the criteria were not being applied consistently by the different evaluators. YSL had now appointed a single evaluator, and was undertaking a reappraisal of all outlets.

4.27. P&C, too, told us that it had found, during the course of responding to our questionnaire, that its admission policy had not, on a number of occasions in 1992, been applied correctly. P&C said it had found that despite the fact that some point-of-sale evaluation reports indicated that the retailers concerned stocked grey-market supplies of P&C's competitors' brands, the applications had been approved without further investigation. As well as requiring the assessor to show for each major fine fragrance brand currently in stock whether it was obtained from official or from unofficial (ie grey-market) sources, P&C's check-list contains a question on alternative or copy fragrances, but none of these are scored and they are not in themselves eliminating factors. P&C told us that while it would not admit a retailer which continued to sell unofficial P&C products, it might or might not refuse to supply retailers which continued to stock unofficial supplies of other suppliers' brands, depending on the quality of the outlet's presentation of fine fragrances generally.

4.28. It is perhaps inevitable that there are some teething problems in the introduction by the various fragrance houses of these new agreements and the corresponding retailer check-lists. Even so, given the extent of judgment involved in assessing many of the individual criteria it is not clear whether it could ever be guaranteed that they could be applied even-handedly either across a variety of retail categories at any moment in time or, more generally, over time as the assessing personnel change, standards change in the design and fitting out of retail outlets, and the general public's expectations about the quality and service standards they can expect from the various categories of retailer evolve.

The Verdict Research survey

4.29. In January 1993 we commissioned Verdict Research Limited (Verdict), an experienced firm of retail analysts and consultants, to undertake a field survey of fine fragrance retailers (the Verdict report). Verdict visited 101 retail outlets selling fine fragrance products, evaluated each using a check-list (see paragraph 4.30), and prepared an audit of the range of physical and other conditions under which fine fragrance products were sold in the UK during February 1993. As the Verdict report was intended to cover a wide range of outlets selling fine fragrances, and as consumers are not necessarily aware of the distinction between authorized and unauthorized retailers, no attempt was made either during the survey or in the formal presentation of the results to distinguish between authorized and unauthorized outlets. However, Verdict estimated (based on the fine fragrance presentation in the store and the extent of point-of-sale support from authorized distributors) that 33 of the outlets it visited were unauthorized (including the Asda, Superdrug, Tesco and Perfume Shop outlets, and a few of the chemists outlets), and a further seven may have been unauthorized. Relevant extracts from the Verdict report are reproduced in Appendix 4.3.

4.30. Verdict put together a pro forma check-list setting out the criteria (as shown at the end of Appendix 4.3) against which the retail outlets were to be assessed. This check-list included what Verdict considered to be the most relevant and appropriate criteria after first analysing a number of the quite diverse check-lists used by the fragrance houses for assessing potential new retailers (see paragraph 4.18). The aim was not to produce assessments which were either consistent with or in conflict with those done by the perfume houses, but to develop a check-list which could be used to evaluate a disparate range of retail outlets consistently and on a directly comparable basis. In our brief to Verdict we said that we considered it was essential that the check-list should enable the various conditions found in retail outlets to be compared, the range of conditions readily summarized and assessed, and that the scoring system should be applied objectively and even-handedly as between all types of retail outlet encountered.

4.31. The qualifications and training of consultants was handled separately, and during the visits that Verdict made to the retail outlets it surveyed, brief questionnaires were left for the perfume counter staff to complete and return to the MMC (this approach was agreed between Verdict and the MMC because it was thought that beauty consultants would not readily provide personal information about themselves to Verdict's field staff). The questionnaire asked about the respondent's length of experience, and types of training and other qualifications. The MMC received 312 completed questionnaires from 43 different retail outlets (an average of 7.3 questionnaires per outlet).

4.32. In analysing these results, scores were allocated to each retail outlet according to the consultants' length of work experience and the type of training (the scores covered all consultants, and did not distinguish between those consultants employed by the retailer and those employed by the perfume houses). Possible total scores for each individual store ranged from 2 (the minimum score) to 25 (the maximum score). The scores in fact ranged from 4 to 19, with a mean score of 11.2, and a mode of 13. Almost two-thirds of the stores achieved a score in the range 10 to 13. The three highest scores (19, 18 and 17) were achieved by stores in two multiple department store chains, and the lowest score (4 points) was achieved by two supermarket outlets. The five Superdrug stores (out of seven visited) which provided completed questionnaires achieved scores in the range 7 to 12, with an average of 10.4.

4.33. As Table 1 in Appendix 4.3 shows, Verdict's scores in the main survey ranged widely from 94 (being 97 per cent of a possible maximum score of 97) for the Debenhams department store in Leicester to 37 (being 45 per cent of a possible maximum score of 82) for the Asda supermarket in Nottingham. The mean score for all the outlets was 69 per cent. For the 33 outlets identified by Verdict as being unauthorized, the mean score was 60 per cent (the range being from 78 per cent each for three Perfume Shop outlets and a Superdrug outlet, to 42 per cent for an independent chemist). The score achieved by the lowest rated authorized outlet in the survey appears to have been 53 per cent, for an independent department store.

4.34. Among the different categories of retailers, the highest-scoring category was airport duty-free shops (with a mean score of 85 per cent), and the lowest were independent chemists (56 per cent) and supermarkets (54 per cent): see Table 4.3. Verdict noted some considerable variations in the quality of presentation within some of these categories. For example, the main department store category (which encompassed 32 stores) included both the highest-rated outlet in the survey (with a score of 97 per cent) and two stores each with scores of 57 per cent. In the multiple chemists category (with 17 stores) there were five stores each with scores of 80 per cent or more, and two stores with scores of 58 per cent and 49 per cent respectively.

TABLE 4.3 Verdict survey results showing outlet scores by category of retailer

Category of retailer	Score*
%	
Duty-free shops at airports	85
Perfume specialists†	78
Department store groups	75
Drugstores‡	72
Multiple chemists shops	71
Independent department stores	67
Independent chemists	56
Supermarkets	54
Average score for all outlets	69

Source: MMC, based on Verdict survey results.

*Scores as a percentage of the maximum possible score for the respective categories.

†That is, four Perfume Shop outlets.

‡That is, seven upgraded Superdrug outlets.

4.35. The range in quality already noted was also seen even for different stores under the same ownership. For example, the scores for the five Alders department stores ranged from 93 per cent down to 61 per cent. Scores for the seven Lloyds Chemists plc (Lloyds) outlets surveyed ranged from 82 per cent down to 49 per cent. The scores given to the ten Boots stores that Verdict visited ranged from 85 per cent down to 65 per cent, and the HoF stores' scores ranged from 88 per cent down to 60 per cent.

4.36. Among known unauthorized retailers, the seven Asda stores selling fine fragrances which Verdict visited were given scores ranging from 60 to 45 per cent, and the seven Tesco stores ranged from 63 to 48 per cent. Verdict also visited seven Superdrug stores selling fine fragrances, and gave these scores ranging from 78 per cent down to 67 per cent. Of four outlets of the Perfume Shop—a small chain of specialist perfumeries which at the time of our survey was selling fine fragrances, obtained entirely from grey-market sources, at discounted prices—one scored 77 per cent and the other three 78 per cent each.

4.37. Though not part of its brief, Verdict suggested that, as a rough guide, 60 per cent might be regarded as a pass mark. Any individual fragrance house using Verdict's check-list (as discussed earlier in this chapter, the houses have their individual check-lists which differ both from each other and from Verdict's) might, of course, choose a different pass mark depending on the particular standards it wished to see achieved. However, if 60 per cent is taken to be the pass mark, each of the seven Superdrug outlets would have passed, as would four of the 14 supermarket outlets (three of Tesco's and one of Asda's). More generally, 22 of the 101 outlets surveyed by Verdict were given scores of less than 60 per cent and of these, ten were supermarkets, seven were independent chemists, three were authorized department stores and two were outlets of a multiple chemist (Lloyds). Givenchy told us that 62 of the 101 outlets were among its

authorized stockists, including only three of the ten independent chemists surveyed. Of the 62, four were scored by Verdict below 60 per cent. YSL noted that its authorized retailers had generally scored very well in the Verdict survey, and commented that the few that had not (being among those which had not yet been re-evaluated by YSL using its new check-list) might well be among those which YSL would have to cease supplying.

4.38. As an extension of the main survey, we also asked Verdict to visit a number of retail outlets which we knew had applied for, and been refused, authorized status by one or more of the perfume houses. Of these, Verdict found that a number were no longer trading, or perhaps had never begun to trade having made an unsuccessful approach to one or more of the perfume houses. However, Verdict was able to visit 18 stores whose applications had been refused by one or more of the perfume houses. The resulting scores are shown at the end of Table 1 in Appendix 4.3. The scores ranged from 78 per cent (for a beauty salon in Leeds which was an authorized stockist for many of the perfume houses but which in 1991 had been refused supplies by one of the main fragrance houses) to 37 per cent (for an independent drugstore in London). Twelve of the 18 stores visited were independent chemists shops, and these were given scores ranging from 65 per cent down to 40 per cent. Verdict noted that independent chemists were usually small businesses with limited resources, often located in neighbourhood settings or in secondary high streets. The scores given reflected these limitations. One Tesco supermarket and one Superdrug store were also visited as part of this additional survey, and each scored over 60 per cent (the Tesco store at New Malden was rated at 63 per cent, and the Superdrug store in the Epsom shopping centre was rated at 76 per cent).

4.39. We showed the results of the main Verdict survey, and the results of the subsequent analysis of consultants' experience and training, to the main fragrance houses. We also showed the survey methods and the particular results for their outlets to some of the main retailers mentioned in the survey. The comments on the Verdict report varied a good deal. Some criticized it extensively, while others considered that, given the nature of the task, Verdict's report was a sound piece of work and in some cases accorded fairly closely with their own evaluation approach. Many of the suppliers pointed out that Verdict had not taken account of the shop name, or *enseigne*, which they regarded as an essential criterion. The Verdict survey, it should be noted, was intended simply as a physical audit of retail outlets selling fine fragrances, and the scoring system was specifically designed by Verdict to avoid any prejudgments that might arise if consideration was given to the type of outlet or the shop name.

4.40. Among other comments made to us were the following:

- Verdict omitted a number of criteria which were permitted in the EC exemption Decisions and which were important, eg height of display cabinets and length of windows;
- on the other hand Verdict included one factor, parking, which most suppliers did not include and regarded as irrelevant;
- Verdict had evaluated some aspects in a broad way (eg condition of decoration, whereas the supplier check-list specified the date of last redecoration) and so entailed greater subjectivity (Verdict commented that that in the context of its survey finding out the date of a store's last decoration would have been very time-consuming);
- Verdict appeared to place undue emphasis on the newness of the shop or its fittings;
- some of the individual outlet scores were thought to be difficult to reconcile, eg Superdrug stores scoring ahead of John Lewis's Peter Jones store in Sloane Square: this cast some doubt on the validity of the scoring system (this comment shows how easy it can be for some prejudgment to enter into the assessment of retail outlets in the absence of a scoring system, such as that devised by Verdict).

The Research International postal survey

4.41. While we were readily able to obtain information and views from the major retailers of fine fragrances, eg the department stores, duty-free retailers and the multiple chemists shops, we also thought it important to find out more from a random sample of smaller retailers, all of them independent pharmacies or drugstores. We therefore commissioned RI, a specialist market research company, to conduct a postal survey for us. The relevant parts of the RI report are set out in Appendix 4.4.

4.42. The survey was carried out in February and March 1993, and involved sending questionnaires to some 3,000 independent retailers (comprising 2,750 pharmacies and 250 drugstores), these having been selected (by Nielsen Marketing Research) as a geographically representative random sample of about one in three independent pharmacies and about one in four independent drugstores. RI received 995 replies, giving a response rate of 33 per cent.

4.43. About three-quarters of those which replied said that they did sell fine fragrance products, and most had been doing so for several years. We particularly noted that the vast majority (93 per cent) of those selling fine fragrances acquired some or all of their stocks from the grey market. About one-third said that they used both grey-market and authorized suppliers, and only 6 per cent relied solely on authorized suppliers.

4.44. The main reason given by retailers for using the grey market was that their annual sales were too low to justify seeking authorized stockist status. About 71 per cent of the respondents had an average annual turnover for all products of less than £40,000, and 78 per cent had annual sales of fine fragrances of less than £10,000. A retailer having, or expecting, only a relatively modest annual turnover from fine fragrance products would not only find it very difficult to obtain authorized status simply because of the low turnover, but could also find the stock level and other obligations required of authorized retailers financially onerous (especially with a requirement to stock competing brands). Fifty respondents had applied for authorization and three-quarters of those had been turned down. The reasons given were usually that there were other authorized distributors too near their outlet or that the fragrance house was not planning to expand (it should be noted that such reasons are no longer compatible with the principles behind EC-approved selective distribution systems for fine fragrances). Thus, obtaining supplies from the grey market appeared to be the only means open to such retailers to obtain the small quantities of the stock they were able to sell.

4.45. Some 37 per cent (ie 282) of the respondents were currently authorized stockists for one or more fragrance houses. Asked how the fragrance houses responded when they first applied for authorization, 17 per cent said that they were refused without explanation, while the rest were either accepted straight away, received visits from the fragrance house and/or were asked to make changes before they could be authorized. Of those asked to make changes, 41 per cent were asked to train their existing staff to a higher standard while the other requested changes were to do with the shop's physical condition and fittings.

4.46. We sent a copy of the RI report to the main fragrance houses, and a number sent us their comments, some in considerable detail, on its findings. Some noted that the survey found that 36 per cent of authorized retailers were selling at less than RRP, and that there was no sign of other retailers being unaware of their ability to undercut recommended prices. It was also noted that opinion had been divided on whether retail gross margins were relatively high or low on fine fragrances. One supplier said that the survey results suggested that the fine fragrance market was highly competitive, with no evidence that retailer demand for fine fragrance products was not being fully satisfied. This supplier also believed that the RI survey pointed to the unwillingness on the part of unauthorized retailers to comply with suppliers' requirements as being the main barrier to authorization, rather than the fragrance houses' reluctance to grant it. Another of the main suppliers considered that as most of the respondents had probably applied for authorized status more than two years ago, before the YSL/Givenchy systems had been approved by the EC Commission, their experiences were based on the previous supply arrangements and hence some of their comments were no longer valid (eg that supply had been refused on quantitative grounds).

4.47. The suppliers' criticisms of the RI report included:

- mention of the fact that the survey had been commissioned by the MMC might have affected the response rate (in the view of one supplier, it was inevitable that respondents would be conscious of the debate surrounding the MMC inquiry, and that, being placed on notice that the survey was being undertaken within that context, respondents' replies to questions would be coloured accordingly);
- the phrasing of certain questions was insufficiently neutral, and might have affected responses;
- that it was a postal survey, and that surveys of this kind tended to draw out responses only from those with strong feelings; and
- concern about the low response rate (33 per cent), which had implications for the representativeness of some of the findings.

4.48. We showed some of the more detailed comments to RI for its reactions. It emphasized that while it was given a short time-scale in which to conduct the postal survey, it had been given a very detailed brief by the MMC and had followed the usual professional practices to ensure that, as far as possible, the survey results were representative. We recognize that postal surveys, as with other types of survey, have their potential limitations, but they are nevertheless needed as a cost-effective source of market information about relatively large numbers of respondents. We have borne in mind the various comments we received when interpreting and making use of the results of this particular survey.

Reference products	Perfumes (otherwise known as concentrates), EDP, EDT, EDC and aftershave lotions which are supplied to retailers at a resale price exceeding £15 per 50 millilitres.
References	See SKUs .
Replica fragrances	Low-priced fragrances which try to imitate particular fine fragrance brands in the design of the packaging, the brand name and sometimes in their scents. Also known as copycat fragrances .
RRP	Recommended resale prices.
Shop name	The reputation and image attaching to a retail trader's name. The YSL selective distribution contract approved by the EC Commission requires that, for a retailer to be authorized, its trading name, style and reputation should be compatible with the prestige of the YSL brand name; the Givenchy contract has a similar provision. The French word <i>enseigne</i> , which means the sign attached to the front of a shop, is also used to describe this concept.
SKUs	Stock-keeping units: individual product lines, for example 50ml EDT natural spray, 7.5ml perfume spray. Also known as references .

The reference and conduct of the inquiry

1. On 19 November 1992 the Director General of Fair Trading sent to the MMC the following reference:

The Director General of Fair Trading in exercise of his powers under sections 47(1), 49(1) and 50(1) of the Fair Trading Act 1973 hereby refers to the Monopolies and Mergers Commission the matter of the existence or the possible existence of a monopoly situation in relation to the supply in the United Kingdom for retail sale of fine fragrances.

The Commission shall investigate and report on the questions whether a monopoly situation exists and if so

- (a) by virtue of which provisions of sections 6 to 8 of the said Act that monopoly situation is taken to exist;
- (b) in favour of what person or persons that monopoly situation exists;
- (c) whether any steps (by way of uncompetitive practices or otherwise) are being taken by that person or persons for the purpose of exploiting or maintaining the monopoly situation and if so by what uncompetitive practices or in what other way;
- (d) whether any action or omission on the part of that person or persons is attributable to the existence of that monopoly situation and if so what action or omission and in what way it is so attributable; and
- (e) whether any facts found by the Commission in pursuance of their investigations under the preceding provisions of this paragraph operate or may be expected to operate against the public interest.

For the purpose of this reference:

'fine fragrances' means perfumes (otherwise known as concentrates), eaux de parfum, eaux de toilette, eaux de cologne and after-shave lotions which are supplied to retailers at a resale price exceeding £15 per 50 millilitres;

'resale price' has the meaning given to it by section 11(2) of the Resale Prices Act 1976; and

where a container of perfume, eau de parfum, eau de toilette, eau de cologne or after-shave lotion which if supplied alone would be supplied to retailers at a resale price exceeding £15 per 50 millilitres is supplied in combination with any other goods at an inclusive resale price for the container and those goods, the inclusive resale price of the container and those goods is to be treated as the resale price of the container.

The Commission shall report upon this reference within a period of nine months from the date hereof.

19 November 1992

(signed) BRYAN CARSBURG
Director General of Fair Trading

2. The questions in the reference are answered in the following paragraphs of the report:

whether a monopoly situation exists: paragraphs 8.16 and 8.32.

- (a) paragraph 8.32;
- (b) paragraph 8.33;
- (c) paragraphs 8.63, 8.118, 8.125, 8.175;

(d) paragraph 8.186; and

(e) paragraph 8.186.

3. The composition of the group of members responsible for the present investigation and report is indicated in the list of members which prefaces this report.

4. Notices inviting interested parties to submit evidence to the MMC were placed in the *Financial Times*, *Chemist & Druggist* and *Beauty Counter*. In addition we sought information and views from suppliers and retailers of fine fragrances, trade associations and consumer bodies. Written evidence received from these parties is summarized in Chapters 6 and 7. We held 25 hearings of which 12 were with suppliers, nine were with retailers (including two with Superdrug Stores PLC), three were with publishers and one with a public relations consultancy. We commissioned two surveys: the first, a field survey of fine fragrance retail outlets by Verdict Research Limited; the second, a postal survey of smaller retailers by Research International Limited. Details of these surveys are given in Chapter 4.

5. Members and staff of the MMC visited Parfums Givenchy Limited's offices at Hersham, the fragrance manufacturing plant of Avon Cosmetics Ltd (which supplies Giorgio Beverly Hills Incorporated) at Northampton and the John Lewis Partnership's Peter Jones store in Sloane Square, London SW1.

6. Some of the evidence received during the course of our inquiry was of a commercially confidential nature and our report contains only such information as we consider necessary for a proper understanding of our conclusions.

7. We thank all those who helped with our inquiry, particularly the companies principally involved.

The EC Commission Decision on Yves Saint Laurent Parfums

COMMISSION DECISION

of 16 December 1991

relating to a proceeding under Article 85 of the EEC Treaty

(IV/33.242-Yves Saint Laurent Parfums)

(Only the French text is authentic)

(92/33/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Whereas:

Having regard to the Treaty establishing the
European Economic Community,

Having regard to Council Regulation No 17 of 6
February 1962, First Regulation implementing
Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended
by the Act of Accession of Spain and Portugal, and in
particular Articles 6 and 8 thereof,

Having regard to the application for negative
clearance or, alternatively, exemption submitted by
Yves Saint Laurent Parfums SA on 6 July 1989 in
respect of the standard form selective distribution
contracts which the company has drawn up for the
retail sale of its products in the European Economic
Community,

Having regard to the summary of the notification
published pursuant to Article 19 (3) of Regulation No
17 ⁽²⁾,

Having consulted the Advisory Committee on
Restrictive Practices and Dominant Positions,

1. THE FACTS

A. The undertakings

Yves Saint Laurent Parfums SA, Neuilly-surSeine
(France), is wholly owned by Yves Saint Laurent SA,
whose activities include the manufacture and
marketing of luxury cosmetic products (perfumery,
skin care and beauty products), through Yves Saint
Laurent Parfums, and haute couture and high-quality
ready-to-wear clothing, through Yves Saint Laurent
Couture. Yves Saint Laurent SA is, in its turn, wholly
owned by Groupe Yves Saint Laurent, a partnership
limited by shares. The net turnover of Groupe Yves
Saint Laurent in 1988 was FF 2,633 million, of which
FF 2,261 million derived from the sale of cosmetic
products. The retail sale of Yves Saint Laurent
Parfums cosmetic products in the Member States is
carried out by a network of authorized retailers,
whose contractual conditions are laid down in the
agreements to which this proceeding relates.

⁽¹⁾ OJ No 13, 21. 1. 1962, p. 204/62.

⁽²⁾ OJ No C 320, 20. 12. 1990, p. 11.

B. Distribution structure and position of Yves Saint Laurent Parfums on the market

Cosmetic products cover a wide variety of articles intended for many different uses and include in particular perfumery, skin care and beauty products and hair-care and toiletry products. A study carried out for the Commission⁽¹⁾ confirms that, within the overall category of cosmetic products, luxury products constitute a specific market segment. Luxury cosmetic products are high-quality articles, sold at a relatively high price and marketed under a prestige brand name. The extent to which they are substitutable for similar products falling within other market segments is generally limited.

The segmentation of the sector is accompanied by differentiation in distribution channels: cosmetic products are marketed, under various brands, either through authorized retailer networks (perfumeries and department stores), or through pharmacies and similar establishments, or through general and mass marketing outlets (supermarkets, 'drogueries' selling household products and toiletries grocery shops, etc.), or through direct sale (mail order, etc.).

Generally speaking, luxury cosmetic products, particularly top-of-the-range perfumery, skin care and beauty products, are sold only through retailer networks. According to the abovementioned study, products marketed in this way accounted, in 1987, for 24.7% of all cosmetic products sold in the Federal Republic of Germany, 30.3% in France, 36.2% in Italy and 22.4% in the United Kingdom.

On the supply side, the number of both producers and distributors of luxury cosmetic products is fairly large. The structure of the Community industry is marked by the presence of firms of relatively modest size coexisting alongside large firms. In addition, some companies form part of groups which, directly or indirectly, control several firms operating in the sector. By contrast, distribution is relatively homogeneous in structure, with each producer distributing its top-of-the-range articles only through networks of selected retailers whose distribution agreements are based on comparable provisions.

Yves Saint Laurent Parfums is one of the main luxury cosmetic products producers. It is not linked, either directly or indirectly, to any other

competing companies. In 1987, it held 8.7 per cent of the Community market in luxury perfumery products and less than 5 per cent of the Community market in luxury skin care and beauty products. Its market shares that year were higher in certain Member States such as France, the United Kingdom, Spain and Belgium. A substantial proportion of the turnover of Yves Saint Laurent Parfums derives from its sales in Member States other than France.

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 Member States, are supplied through the intermediary of its subsidiaries or independent companies acting as exclusive agents.

C. The network of notified agreements

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

- the standard-form authorized retailer contract binding Yves Saint Laurent Parfums to its specialized retailers established in France, and on the general conditions of sale attached to it; and
- the standard-form authorized retailer contract binding 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 entered into force in their amended form on 1 June 1991. Essentially, the two types of standard-form contract comprise similar provisions, whose content is as follows:

(a) Selection criteria

The only retailers admitted into 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.

⁽¹⁾ 'Les systèmes de distribution sélective dans la Communauté du point de vue de la politique de la concurrence: le cas de l'industrie des parfums et des produits cosmétiques', André-Paul Weber, 1988.

- (i) Authorized retailers, or their sales staff, must have a professional qualification in perfumery, in the form of a beauty specialist's 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, authorized retailers undertake to have their staff attend the training sessions organized by Yves Saint Laurent Parfums and to provide, in their retail outlets, adequate advisory and demonstration service for customers.
- (ii) The location, name and fittings of the retail outlet must reflect the prestige of the Yves Saint Laurent Parfums brand. In particular, the quality of the outlet 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 in the retail outlet, 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 retailers are prohibited from offering for sale on their 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, a location reflecting the prestige of the Yves Saint Laurent brand and allowing it to be identified by the consumer.
- (v) Authorized retailers must display and sell Yves Saint Laurent products only on the premises covered by the contracts and must refrain in particular from selling them by mail order. They also agree to sell the products only in their original packaging and not by weight, capacity or otherwise.
- (vi) Authorized retailers agree 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 these references. They also agree to present 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 factor of two.
- (vii) Authorized retailers are required to promote the image of the Yves Saint Laurent brand, notably by having available within their shops new products launched by Yves Saint Laurent Parfums, by endeavouring to participate in the various promotion activities and by displaying within their shops and the shop windows the advertising material, display units and products of Yves Saint Laurent.
- (viii) Authorized retailers agree to achieve in the retail outlets covered by the contracts a minimum amount of annual purchases either from the exclusive agent for Yves Saint Laurent products in the country in which the retail outlet is situated or directly from Yves Saint Laurent Parfums if the retail outlet is situated in France. This condition applies both to the admission and the maintenance of the retailer in the network. The purchase figure is set annually by Yves Saint Laurent Parfums, or, where appropriate, by its exclusive agents, in such a way that its amount does not exceed 40 per cent of the average purchase figure achieved the previous year by all the retail outlets situated within a Member State.

(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 8 regional (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 agreed to amend its contracts with effect from 1 June 1991, with the existing waiting lists having to be used up during a transitional period ending on 31 May 1992.

Under the new provisions, 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 retail outlet to determine whether it meets the qualitative selection criteria. Yves Saint Laurent Parfums (or, where appropriate, its exclusive agent) undertakes to carry out such an inspection within an average period of three months and a maximum of five months as from the date on which the application is made for the opening of an account. Such average period of three months has to be understood as the mathematic average of the duration relating to inspections carried out within each period of reference. Thereafter, if the application does not come anywhere near 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, specifying the points that do not comply with the criteria. Conversely, if the application is capable of meeting the qualitative selection criteria subject to certain work being carried out in the retail outlet, the applicant is informed accordingly in writing and, if the work is carried out within a period of three months (which can be extended up to six upon request of the applicant), its account will be opened within a maximum

period of nine months 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 nine months as from the date of inspection.

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

In respect 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 such authorized retailers to resell Yves Saint Laurent products to network members established in the same country as themselves. 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 Member State, including the country in which he is himself established. 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 Member State.

Exercise of this right is subject to the following conditions:

- (i) Before reselling Yves Saint Laurent products to other network members, authorized retailers must ensure that the purchasers are indeed authorized Yves Saint Laurent Parfums retailers. They undertake to check this under their entire responsibility and to consult Yves Saint Laurent Parfums where there is doubt as to the status of the purchaser.
- (ii) Authorized retailers must keep copies 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 a retailer is reselling Yves Saint Laurent products outside the authorized retail 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 deleted provisions under which authorized retailers had to communicate systematically to Yves Saint Laurent Parfums (or, where appropriate, to its exclusive agents) copies of the invoices or vouchers for each resale to or supply from other authorized retailers.

- (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 authorized retailer's minimum annual purchases figure. 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 was not taken into account in calculating the above mentioned minimum purchases figure.
- (iv) Any authorized retailer on whose territory a new Yves Saint Laurent product has not yet been launched undertakes, so as to avoid adversely affecting 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 a Member State. 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 Member State. Yves Saint Laurent Parfums amended this clause along the above lines in response to comments made by the Commission.

(d) Closed distribution network

Authorized retailers agree not to sell to or obtain supplies from any wholesaler or retailer not included within the Yves Saint Laurent Parfums distribution network. For its part, Yves Saint Laurent Parfums undertakes to market products bearing the Yves Saint Laurent brand name only in retail outlets which meet the conditions stipu-

lated 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, with or without notice having been given, where authorized retailers do not abide by their contractual obligations or where they cease to be responsible for the actual running of their businesses, subject to the rights of their directly descendant heirs. However, where the operator or owner of an authorized retail outlet ceases to operate his sales outlet, Yves Saint Laurent Parfums undertakes to inform the new owner or operator, within a maximum period of three months, whether he meets the professional criteria required for authorization. If such is the case, he will be authorized without delay. The procedure for admission to the distribution network, as described in point C(b) above, does not apply to the periodic renewals of the distribution contract.

D. Comments from third parties

Following publication of a summary of the content of the notified agreements, pursuant to Article 19 (3) of Regulation No 17, the Commission received a large number of comments from interested third parties.

Citing the need to ensure the homogeneity and tightness of the distribution networks, some producers and associations of producers criticized the approach adopted by the Commission, notably as regards the introduction of a system of automatic admission of new resellers into the network and the arrangements governing resales between authorized retailers. On the other hand, while not disputing the need to have selective distribution for the products in question, some distributors and associations of distributors expressed reservations on the following main points:

- the vagueness of the criteria governing determination of the figure for minimum annual purchases, an excessive increase in which could impede the penetration of competing brands, especially if they are new or not well-known on a given market;
 - the duration of the periods provided for under the procedure for admission to the distribution network, which were considered to be too long and, in the particular case of the disposal of a business, not justified;
 - the vagueness of certain qualitative criteria, which could result in the selection of retail outlets being discretionary and could hamper the development of new forms of distribution.
2. The standard-form contracts notified, which cover relations between Yves Saint Laurent Parfums or, as the case may be, its exclusive agents and the various authorized retailers established within the common market, provide for arrangements for cooperation between legally independent undertakings and constitute agreements between undertakings within the meaning of Article 85 (1).
 3. The selective distribution contracts notified by Yves Saint Laurent Parfums impose on the authorized retailers the requirement that they must resell the products covered by the contract only to final consumers or to other members of the Yves Saint Laurent Parfums network. For their part, Yves Saint Laurent Parfums and its exclusive agents undertake not to supply products bearing the Yves Saint Laurent brand name to distribution undertakings not forming part of such network. These obligations constitute restrictions of competition, since access to the Yves Saint Laurent Parfums distribution system is granted exclusively to traders who not only fulfil certain general professional and technical conditions, but are in addition willing to enter into subsequent commitments and to provide special services.

Among the undertakings operating in the non-specialized distribution field, some questioned the need for selective distribution of the products in question. Conversely, the consumer associations which submitted comments do not dispute the principle of selective distribution for luxury perfumery products; however, they stress that, while consumers prefer such products to be sold only in high-quality retail outlets by qualified staff, they do not want such a requirement to result in an undue restriction in the number of retail outlets or in an arbitrary limitation in the number or type of products available to the public.

In the light of all the comments received, the Commission got Yves Saint Laurent Parfums to amend the standard-form contracts with regard to the criteria governing the setting of the figure for minimum annual purchases (see C(a) (viii)), the requirement that the producer should give reasons for any refusal of authorization (see C(b)) and the procedure applicable where a business is transferred (see C(g)). The other points raised by other interested third parties are dealt with in the legal assessment below.

II. LEGAL ASSESSMENT

A. Article 85 (1) of the Treaty

1. Under Article 85 (1), all agreements between undertakings which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market are prohibited as incompatible with the common market.
4. As the Court of Justice has pointed out (Case 107/82 AEG v. Commission (1983) ECR 3151, ground 33), agreements constituting a selective distribution system necessarily affect competition in the common market. However, it has always been recognized that certain products which are not ordinary products or services have properties such that they cannot be properly supplied to the public without the intervention of specialized distributors. A system of selective distribution may thus constitute an element of competition which is in conformity with Article 85 (1), if it is established that the properties of the products in question necessitate the establishment of such a system in order to preserve their quality and ensure their proper use (Case 31/80 L'Oréal v. De Nieuwe [1980] ECR 3775, ground 16) and provided that resellers are chosen on the basis of objective criteria of a qualitative nature relating to the technical qualifications of the reseller and his staff and the suitability of his trading premises and that such conditions are laid down uniformly for all potential resellers and are not applied in a discriminatory fashion (Case 26/76 Metro v. Commission [1977] ECR 1875, ground 20)

5. In this instance, the contracts underlying the network for the selective distribution of Yves Saint Laurent Parfums products are not covered by Article 85 (1) in so far as they are limited to establishing, for access to distribution, qualitative criteria of a technical and professional nature laid down in a uniform manner for all potential resellers and in so far as such criteria are not applied in a discriminatory manner.

The articles in question are high-quality articles based on specific research, which is reflected in the originality of their creation, the sophistication of the ranges marketed and the qualitative level of the materials used, including their packaging. Their nature as luxury products ultimately derives from the aura of exclusivity and prestige that distinguishes them from similar products falling within other segments of the market and meeting other consumer requirements. This characteristic is, on the one hand, closely linked to the producer's capacity to develop and maintain an up-market brand image and, on the other, depends on appropriate marketing that brings out the specific aesthetic or function quality of each individual product or line of products. This is all the more necessary as there exists, on the luxury cosmetic products market, a considerable number of competing brands and since, as a general rule, each retailer sells a wide range of brands. In this respect, it should be noted that, far from aiming at ensuring exclusive representation of Yves Saint Laurent products, the selective distribution system notified is on the contrary based on Yves Saint Laurent Parfums articles being sold alongside other competing high-quality brands.

Accordingly, having specialized technical advice available in the retail outlet is a legitimate requirement in so far as the knowledge specifically required is necessary in order to help consumers select the products best suited to their tastes and requirements and to provide them with the best information on their use and indeed the preservation of such products. In addition, the requirement that the authorized retailer undertake to have his staff attend the training sessions organized by Yves Saint Laurent Parfums is intended merely to ensure that they have adequate knowledge of Yves Saint Laurent Parfums products and is not such as to restrict the authorized retailer's freedom to sell or promote competing brands.

Since the maintenance of a prestige brand image is, on the luxury cosmetic products market, an essential factor in competition, no producer can maintain its position on the market without constant promotion activities. Clearly, such promotion activities would be thwarted if, at the retail stage, Yves Saint Laurent products were marketed in a manner that was liable to affect the way consumers perceived them. Thus, the criteria governing the location and aesthetic and functional qualities of the retail outlet constitute legitimate requirements by the producer, since they are aimed at providing the consumer with a setting that is in line with the luxurious and exclusive nature of the products and a presentation which reflects the Yves Saint Laurent brand image. In addition, the criterion relating to the shop-name is designed to ensure that the name of the perfumery or shop or area within which the perfumery counter or perfumery is situated is compatible with the principles governing the distribution of the products in question and thus to exclude any name whose image would be associated with an absence of or restriction in customer service and in standing and with a lack of attention to decoration. It should be stressed in this respect that the down-market nature of a retail outlet or of its name cannot be deduced from the retailer's habitual policy on prices.

The ban on selling goods which, through their proximity, are liable to detract from the Yves Saint Laurent brand image is intended merely to safeguard, in the public's mind, the aura of prestige and exclusivity inherent in the products in question, thus preventing any association with lower-quality goods. A similar objective is also pursued by the selection criteria designed to ensure that, in the retail outlets where a variety of activities are carried out, the area set aside for the sale of perfumery products is proportionate and sufficiently separate from the area intended for the sale of other products. It should be stressed in this respect that, since the Yves Saint Laurent Parfums distribution system is open to shops having a specialized counter and given the various forms of distribution which Yves Saint Laurent Parfums has authorized at Community level, these criteria are not in themselves such as to exclude certain modern forms of distribution such as department stores.

The requirement that the authorized retailer should set aside for Yves Saint Laurent Parfums products a location which, having regard to the other brands represented, corresponds to the standing of the Yves Saint Laurent brand and allows it to be identified by the consumer is intended to meet the objective of ensuring that the products covered by the contract are presented in an enhancing manner. In addition, since this requirement does not involve either binding contractual specifications as to the identity or number of the brands sold alongside Yves Saint Laurent Parfums products or minimum quantitative requirements regarding the allocation of the space set aside for the sale of the contract products, such a selection criterion is not in itself liable to limit the retailer's freedom to sell and promote competing brands or liable to impede the development of new forms of distribution.

Although the ban on selling Yves Saint Laurent Parfums products by mail order is in itself liable to limit the commercial autonomy of the authorized retailer, it cannot be deemed to be an appreciable restriction of competition. On the one hand, supplying the products under optimum conditions presupposes direct contact between customers and a sales staff that is capable of suggesting a choice between the various products and various brands, taking account of the personal requirements of each consumer. On the other, the requirement in question is a necessary corollary to the criteria designed to ensure that the contract products are presented in as homogeneous a way as possible and that the producer can continuously supervise the qualitative level of its distribution network.

6. However, the selective distribution contracts must be assessed from another angle where they contain authorization requirements and criteria that go beyond the limits indicated above. They are then caught by Article 85 (1), although they may, where appropriate, be exempted under Article 85 (3) (Case 99/79 *Lancôme v. Etos* [1980] ECR 2511). The contracts notified do contain such specific obligations.

(a) The procedure for dealing with applications for the opening of an account requires Yves Saint Laurent Parfums to take a decision, within precise deadlines, on any request for authorization sent to it by interested resellers, admitting into its network all qualified retailers or, where

appropriate, informing the applicant expressly of the grounds on which its request has been rejected. In this measure, the procedure in question eliminates the risk of arbitrariness that was inherent in the admission system initially provided for in the contracts notified, where the producer had been given an exclusive and discretionary right to decide, as the final arbiter, on whether or not a new reseller should be integrated into its network. Nevertheless, the procedure has the effect of restricting access to the distribution network to resellers who are able and willing to carry out work on their retail outlets while not being able to sell the contract products until the end of a period whose relative length is likely to discourage certain potentially qualified retailers. Thus, the duration of the periods provided for in this context is liable to affect competition between retailers of Yves Saint Laurent Parfums products.

(b) The authorized retailers are required to achieve, in their retail outlets, a minimum annual purchases figure set periodically by Yves Saint Laurent Parfums or, where appropriate, by the exclusive agent of the country in which the retail outlet is situated. This requirement goes beyond the requirements regarding the technical qualification of retailers or their sales staff and the appropriate location and fitting out of the retail outlet that are necessary for proper distribution of luxury cosmetic products. It restricts competition, both within the Yves Saint Laurent brand and between it and other competing brands, since it has the effect, on the one hand, of restricting access to the Yves Saint Laurent Parfums distribution network to resellers who are able to enter into such a commitment and, on the other, of obliging authorized retailers to devote a significant proportion of their activities to selling the contract products. The requirement in question is in addition liable to affect the freedom of the members of the distribution network to obtain supplies, since 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 purchases figure.

- (c) The notified contracts also impose on the retailer specific obligations regarding stocks, stock rotation and cooperation in advertising and promotion activities. These requirements constitute restrictions of competition, since they result, on the one hand in firms which, while meeting the qualitative conditions for authorization, are not able to assume such additional commitments being significantly excluded from the distribution of Yves Saint Laurent products and, on the other, in the autonomy of authorized retailers to determine their commercial policy being restricted.
- (d) The distribution contracts require authorized retailers on whose territory a new Yves Saint Laurent product has not yet been launched to refrain from engaging in active sale of it for one year as from the date on which the product was first launched in a Member State.

Though the non-export clause initially provided for here has been removed, this requirement nevertheless constitutes a restriction of competition, since it has the effect of limiting authorized retailers' freedom of commercial initiative and of impeding cross supplies between members of the distribution network.

7. The verification requirements imposed on authorized retailers where they buy from or sell to members of the distribution network (checking of the invoices by Yves Saint Laurent Parfums, checking that the customer belongs to the official distribution network) are designed to allow Yves Saint Laurent Parfums to supervise the distribution system. Provided that they do not exceed what is necessary for appropriate verification, such requirements are the corollary of the principal obligation whose fulfilment they must ensure, and must be viewed in legal terms in the same way as such principal obligation (Case 26/76 Metro v. Commission [1977] ECR 1875, ground 27). Since the ban on authorized retailers obtaining supplies from non-authorized traders must in this instance be deemed to be a restriction of competition, the same also applies to the verification requirements designed to ensure application and supervision of such ban. However, the verification requirements are not in themselves a restriction of competition in so far as they are confined to what is strictly necessary

in order to ensure the cohesiveness of the distribution system. In particular:

- (i) Following the incorporation into the contracts of the amendments requested by the Commission, the checking by Yves Saint Laurent Parfums of the authorized retailer's invoices relating to the resale or purchase of Yves Saint Laurent products to or from other members of the distribution network is expressly limited to cases where the producer has concrete evidence that the retailer has been involved in reselling the contract products outside the authorized distribution network. For the manufacturer, such monitoring is an indispensable means of taking action against possible breaches of the selective distribution contract and of ensuring the homogeneity and tightness of the system.
 - (ii) Although the contract requires the authorized retailer, before supplying another member of the network, to ensure that the latter is indeed an authorized Yves Saint Laurent Parfums retailer, the choice of appropriate means of fulfilling this requirement is left to the discretion of the authorized retailer. Yves Saint Laurent does not have to be consulted on this matter unless the authorized retailer has been able, by his own means, to establish the status of the purchaser. This does not prejudice the authorized retailer's ability to supply another retailer without the knowledge of Yves Saint Laurent.
8. The Yves Saint Laurent Parfums distribution system covers the whole of the Community. Since it restricts competition, it is liable to affect trade between Member States. As to whether or not the restriction is appreciable, the Court of Justice has ruled that an undertaking which supplies some 5 per cent of a market is in a position to influence intra-Community trade through its conduct (Case 19/77 Miller v. Commission [1978] ECR 131). It should be recalled in this respect that, given the low degree of substitutability in the consumer's mind between luxury cosmetic products and similar products falling within other segments of the sector, the relevant market is that for luxury cosmetic products. On that market, Yves Saint Laurent Parfums has, in several Member States, market shares well in excess of the above-mentioned threshold. Consequently, the view

must be taken that the barriers to competition encountered constitute an appreciable restriction of intra-Community trade. It should also be added that the modified agreements form part of an economic context in which selective distribution systems comprising restrictions of competition similar to those described above are the rule and that, consequently, the appreciable nature of the restrictions noted may be said to derive from the cumulative effect inherent in such a distribution structure.

B. Article 85 (3) of the Treaty

1. The contracts underlying the Yves Saint Laurent Parfums system of selective distribution in the Community meet the conditions provided for in Article 85 (3).

2. Improving production and distribution

Luxury cosmetic products differ from similar products that meet other consumer requirements, *inter alia*, through the image of exclusivity and prestige which, in the consumer's mind, is associated with the brand under which they are sold. The manufacturer's capacity to create and maintain an original and prestigious brand image is thus a key factor in competition. It follows that a luxury cosmetics brand must be distributed on an exclusive basis. Experience shows that generalized distribution of a luxury cosmetic product can affect the consumer's perception of it and in the long term reduce demand for it.

Against this background, the procedure for dealing with applications for the opening of an account, as provided for under the amendments to the contract requested by the Commission, is intended to ensure flexible integration of new retailers into the Yves Saint Laurent Parfums selective distribution network. The periods laid down take account, on the one hand, of the organizational requirements of Yves Saint Laurent as regards in particular the inspection visits to retail outlets, the training sessions for sales staff, the adjustment of its own production programmes and the manufacture, usually by other undertakings, of the various advertising and presentation material for the new retail outlets. On the other hand, the procedure allows the retailer to carry out in a proper manner any refitting of the retail outlet that may be required to meet the qualitative criteria for authorization.

The minimum annual purchase requirement is intended to maintain continuous supplies and allows Yves Saint Laurent Parfums (or, where appropriate, its exclusive agents) to concentrate distribution on the cost effective retail outlets, thus rationalizing the spread of the costs associated with the distribution of its products and with the provision of assistance to retail outlets. In particular, this obligation is a means of ensuring, on the one hand, that the costs borne by the manufacturer will be covered by an adequate volume of business and, on the other, that the authorized retailer will contribute actively to enhancing the brand through customer service that is in line with the reputation of the contract products. The rationalization function inherent in the minimum annual purchase requirement also derives from the limits imposed on its implementation, with the minimum purchases figure being set annually by Yves Saint Laurent Parfums (or by each of its exclusive agents) in such a way that its amount does not exceed 40 per cent of the average purchases, during the previous year, of all the retail outlets operating in the territory of a Member State. Furthermore, given the level of this threshold, the view may be taken that the requirement in question is not such as to restrict unduly the retailer's freedom to sell or promote competing brands.

The requirements on the holding of stocks have the effect of extending the range of Yves Saint Laurent products available through authorized retailers, so that consumers can always find, at each retail outlet, the main products in each of the ranges marketed by Yves Saint Laurent Parfums and rely on the products which they desire being rapidly available. In addition, the requirements relating to stock rotation make it possible to ensure that the products sold are always in a perfect state of freshness and preservation. Proper stock rotation is also necessary in order to ensure that products such as articles of make-up are frequently renewed in line with fashion trends.

The provisions on cooperation in advertising and promotional activities, which are generic obligations to support the Yves Saint Laurent brand, are a necessary corollary, in each retail outlet, to the various advertising measures carried out at national or local level by Yves Saint Laurent Parfums or, where appropriate, by its exclusive agents. The provisions make it possible in particular to coordinate, in the

common interest of the contracting parties, the promotional measures taken by the manufacturer and its authorized retailers and thus to plan as rationally as possible coordinated advertising campaigns. Furthermore, the constraints imposed by such requirements are not such as to prevent Yves Saint Laurent retailers from taking advantage of inter-brand competition.

The requirement imposed on authorized retailers on whose territory a new product has not yet been launched to refrain from engaging in active sale of such product for one year enables the manufacturer to test a new product on a given market and to reserve the right, in the light of the results obtained on that market, to extend or stop the marketing of the product.

The launching of a new luxury cosmetic product is a complex industrial and commercial operation entailing large-scale investment and sophisticated advertising promotion. The success of such an operation presupposes close cooperation between the manufacturer and its authorized retailers, who, for their part, require specific training in order to provide final customers with the professional advice they expect.

Viewed as a whole, these benefits clearly outweigh the disadvantage that, amongst qualified traders, the only ones authorized are those who declare that they are willing to assume the additional obligations described above. These restrictions have the effect of ensuring that Yves Saint Laurent products are distributed only under conditions that can preserve the high quality image and exclusivity associated with the fact that they are luxury cosmetic products.

3. Benefits to consumers

Consumers derive direct advantage from the benefits inherent in the Yves Saint Laurent Parfums selective distribution system.

The distribution system notified allows the exclusive character of the contract products to be safeguarded, such exclusive character being the main reason why consumers choose them. The consumer is thus assured that the luxury product will not become an everyday product as a result of a downgrading of its image and a decrease in the level of creation.

In addition, the establishment of such a system has the effect of focusing on factors of competition other than the price, such as the provision of an advisory service for customers and the constant availability of the essential products in the ranges, including new products, marketed by Yves Saint Laurent Parfums. Furthermore, if customers regard as secondary the brand image or the services associated with sale within the selective distribution system, they can choose similar articles falling within an adjacent market and distributed without the use of selective distribution systems, thus penalizing the commercial strategy pursued by the producer. In addition, since the Yves Saint Laurent Parfums distribution system is based on the products being sold alongside other prestige brands, consumers can always decide not to buy the Yves Saint Laurent brand, if the level of its prices are considered no longer to correspond to the quality of its products.

Lastly, in view of the number of authorized retailers currently included in the Yves Saint Laurent Parfums network and in view of the fact that the producer cannot refuse the inclusion of new retailers on the basis of purely quantitative criteria, the view may be taken that the system is not such as to restrict unduly intrabrand competition. Accordingly, consumers are allowed a fair share of the benefits resulting from the rationalization of distribution, particularly since the contracts notified provide for complete freedom in the setting of retail prices by authorized retailers.

4. Indispensable nature of the restriction of competition

The Yves Saint Laurent Parfums distribution system does not contain any restrictive obligation that is not indispensable to the attainment of the above mentioned benefits.

Prohibiting authorized retailers from obtaining supplies of contract products from traders not previously authorized by Yves Saint Laurent or by one of its exclusive agents is a necessary condition for ensuring the cohesiveness and tightness of the selective distribution system. In this context, the requirement incumbent on Yves Saint Laurent Parfums or, where appropriate, its exclusive agents to market the products bearing the Yves Saint Laurent brand name only in retail outlets that meet the conditions specified in the selective distribution contract is complementary

to the specialization requirement imposed on authorized retailers and makes it possible to ensure uniform conditions of competition between resellers of the brand. Otherwise, competition would be distorted if Yves Saint Laurent Parfums supplied traders which, not being subject to the same obligations, had to bear financial charges that were appreciably smaller than those borne by the members of the selective distribution network. In such a situation, it would no longer be possible to require authorized Yves Saint Laurent retailers to continue to carry out their own obligations, with the result that the selective distribution system could no longer be maintained.

As a corollary to the requirements intended to ensure that the distribution network is closed, the verification by Yves Saint Laurent Parfums of the authorized retailer's invoices for the resale or purchase of Yves Saint Laurent products to or from other network members is an indispensable means of taking action against any breaches of the selective distribution contract, provided that such monitoring does not go beyond the limits expressly provided in the contract.

The authorization procedure does not go beyond the limits of what is necessary in order to ensure flexible integration of new resellers into the distribution network. It should be pointed out, in particular, that the procedure is applicable only in the case of requests from new candidates or from former authorized retailers whose distribution contracts have been terminated as a result of a breach of contract which they have committed. Consequently, the procedure cannot give rise to abuses during the periodical renewals of contracts. Furthermore, such a procedure is not liable to affect the retailer's freedom to dispose of his business, notably by selling it to third parties, since the extension of the distribution contract in the name of a new operator is subject only to verification of the latter's professional qualifications, within a maximum period of three months. Lastly, since Yves Saint Laurent is required to inform the retailer of the reasons for any rejection of his application, the retailer will always be able to challenge the implementation of the admission procedure with respect to him, notably where the selection criteria have been applied in a discriminatory manner. In addition, it should be observed that, while the periods presently provided for in the context of the aforesaid procedure are relatively long, they have

nevertheless been regarded as acceptable in order to facilitate the transition from a closed distribution system, based on the application of quantitative criteria, to a system subject only to the application of certain qualitative criteria. In the light of this, the Commission considers necessary to re-examine the question of the duration of the admission procedure, at the end of the period of validity of this Decision.

The requirements regarding minimum annual purchases, the holding of stocks and cooperation in advertising and promotional activities are also indispensable to the attainment of the above mentioned benefits. If there were no provisions specifying minimum purchases of supplies, the authorization given to all the retailers having the professional and technical qualifications required by Yves Saint Laurent Parfums would result in a considerable extension in the distribution network which, however, given the relative stability of the market in question, would not result in a proportionate increase in sales. The producer would then be confronted not only with higher distribution costs, but also with a gradual deterioration in the image of the products. Moreover, the minimum annual purchases requirement may be considered reasonable, in that the amount of purchases which Yves Saint Laurent Parfums has undertaken to require from its retailers cannot exceed 40 per cent of the average purchases figure, during the previous year, of all the retail outlets concerned. Consequently, it may be considered that such limitation of the amount relating to the minimum annual purchases requirement is likely to safeguard the retailer's capacity to market a sufficiently broad range of competing brands as well as the access of new retailers to the network. However, the Commission considers necessary to re-examine this aspect of the distribution system, at the end of the period of validity of this Decision.

It is also to be feared that, if there were no requirements regarding the holding of stocks and stock rotation, authorized retailers would decide to concentrate their promotion activities only on the brand leader products of each of the lines marketed by Yves Saint Laurent Parfums. In addition, the retailer's cooperation in advertising and promotional activities is indispensable in ensuring maximum effectiveness in promotional campaigns, the cost of which represents a substantial proportion of the producer's investment. Lastly, the clause prohibiting active sale of new products while they are still being

launched by Yves Saint Laurent Parfums is necessary in order to allow the producer to limit the territory within which a new product is launched so as to gauge consumer reaction and decide, in the light of the results obtained, whether larger-scale production may be envisaged.

5. Elimination of competition

The contracts on which the Yves Saint Laurent Parfums selective distribution system is based do not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

Since, on the hand, the contracts do not contain any no-competition clauses and since, on the other, the Community market comprises a large number of undertakings manufacturing or marketing luxury cosmetic products, authorized Yves Saint Laurent Parfums retailers are able to take advantage of interbrand competition.

In addition, authorized Yves Saint Laurent Parfums retailers may compete with one another throughout the Community. As a result of the amendments made to the standard-form selective distribution contracts, they have the right to obtain their supplies wherever it is most advantageous to them, since they can procure Yves Saint Laurent products from any exclusive agent within the EEC, and supplies between authorized retailers are now allowed without any restriction within the Community distribution network. The Yves Saint Laurent contracts no longer contain either the clause which prohibited resale between retailers established within one and the same Member State or the clause which provided that amounts relating to products resold by a retailer to other network members had to be deducted in calculating the annual purchases of such retailer. It may thus be hoped that such changes will help to prevent any rigidity in the structure of prices in the common market.

Similarly, the Commission has not been able to establish that the spread of selective distribution systems in the field of luxury cosmetic products impedes in principle certain modern forms of distribution, such as department stores. The selection criteria applied by Yves Saint Laurent Parfums are not such that they cannot also be met by such forms of distribution, even if this

requires some change in their particular marketing methods.

All the conditions for exemption under Article 85 (3) are thus met.

C. Articles 6 and 8 of Regulation No 17

All the amendments made by Yves Saint Laurent Parfums to its standard-form authorized retailer contracts entered into force on 1 June 1991. It therefore seems appropriate, pursuant to Article 6 of Regulation No 17, to give effect to the exemption granted under Article 85 (3) of the Treaty as from that date.

So as to be able, at the end of a relatively short period, to re-examine the effects of the Yves Saint Laurent Parfums distribution system on competition, the Commission considers it appropriate, pursuant to Article 8 (1) of Regulation No 17, to make this Decision applicable until 31 May 1997.

Lastly, the Decision should be accompanied by conditions and obligations so as to enable the Commission to check whether the amounts imposed on authorized Yves Saint Laurent Parfums retailers under the minimum annual purchases requirement continue to meet the conditions for exemption laid down Article 85 (3) of the Treaty. Accordingly, Yves Saint Laurent Parfums is required to submit, every two years, detailed reports specifying, for each Member State of the Community, the amount set annually by Yves Saint Laurent Parfums and by its exclusive agents in implementation of the above mentioned requirement and the average purchases of Yves Saint Laurent products achieved by all the retail outlets concerned during each of the previous years. The Decision is based in this respect on Article 8 (1) of Regulation No 17.

HAS ADOPTED THIS DECISION:

Article 1

The provisions of Article 85 (1) of the EEC Treaty are hereby declared inapplicable, pursuant to Article 85 (3):

- to the standard-form authorized retailer contract binding Yves Saint Laurent Parfums to its specialized retailers established in France, and to the general conditions of sale annexed thereto; and
- to the standard-form authorized retailer contract binding the exclusive agents of Yves Saint Laurent Parfums established in a Member State other than France to their specialized retailers, and to the general conditions of sale annexed thereto.

This Decision shall apply from 1 June 1991 to 31 May 1997.

Article 2

Yves Saint Laurent Parfums SA shall present to the Commission reports every two years, starting on 1 June 1993, reports specifying:

- the total amount of purchases of Yves Saint Laurent Parfums achieved, during each of the previous years, by all the authorized retail outlets in each Member State of the Community, the increases made in prices and the

launching of new products or the withdrawal from the market of old products;

- the number of authorized retail outlets in each Member State as at 31 December of each of the previous years; and
- the amounts set annually by Yves Saint Laurent Parfums or, where appropriate, by its exclusive agents pursuant to the minimum purchases requirement incumbent on authorized retailers.

Article 3

This Decision is addressed to:

Yves Saint Laurent Parfums SA,
28-34 boulevard du Parc,
F-92521 Neuilly sur Seine.

Done at Brussels, 16 December 1991.

For the Commission

Leon BRITTAN

Vice-President

APPENDIX 3.1
(referred to in paragraphs 3.7 and 3.60)

**Product characteristics in the different categories of fragrances:
fine, volume prestige and mass-market fragrances**

<i>Fine fragrances</i>	<i>Volume prestige fragrances</i>	<i>Mass-market fragrances</i>
Product quality		
Premium quality, expensive ingredients	As fine	Less expensive ingredients
Wide selection of strengths of perfume content	As fine	Reduced selection of strength of perfume
Long-lasting tenacity of fragrance notes on wearer	As fine	Shorter tenacity of fragrance notes
Product presentation		
Unique, premium quality bottle and cap design	As fine	Mix of some standard and non-standard components
Premium quality packaging and printing	As fine	Standard printing and packaging
Retail price		
More than £20 entry	Less than £20 entry	Less than £10 entry
Image		
Fashion linked parentage	May still have fashion linked	Focused on price and promotions, designer endorsement
Customer awareness of individual	Lifestyle rather than personality	
Established authority of individual as designer		
Endorsement of heritage and history of house name		
Exclusivity of fashion creations	Broader distribution of fashion creations	
In-store presentation		
Counter and backwall or island	As fine	Self-selection gondola runs
Front of store	As fine	Front half of store
Adjacent to cosmetics counters	As fine	Adjacent to toiletries, self-selection cosmetics and bath products
Display lighting, house identification plaques and image shots	As fine	
Glass shelving		Standard or glass shelving
Price information on-shelf or pack		
Typical marketing support		
Trained permanent consultant service	As fine	
Testers and units for each fragrance on counter	As fine	Testers
Free samples of bath/body/other fragrance lines	As fine	
Selection of monthly promotional activities on counter, focusing on gift sets and product promotions	As fine, but focuses on gift with purchase/free incentive	Monthly promotional activity on specialist sites or from normal stock location, focused on price/extra value
Use of windows/specialist sites in-store	As fine	
Additional temporary consultant support for promotions	As fine	
Advertising of imagery of brand through selective use of:	Slightly broader use of advertising, including promotional incentives as well as imagery through:	Wide use of:
(a) monthly periodicals and journals which profile	(a) monthly women's and men's ship profile	(a) weekly and monthly women's
(b) colour supplements for Sunday press	(b) colour supplements	(b) national daily press
(c) TV	(c) national daily press	(c) some TV, focused on Christmas
(d) TV	(d) TV	
Typical UK distribution		
Less than 1,500 retail outlets	Less than 2,000 retail outlets	More than 2,000 retail outlets
Usual product source		
Europe, particularly France/USA	Europe/USA	UK/USA

Source: MMC, based on a table originally supplied by Boots.

APPENDIX 3.2
(referred to in paragraph 3.68)

Suppliers' comments on the marketing and distribution of fine fragrances and on the effects of selective distribution

	P & C	E L	Y S L	C K	C C	C D	E A	Gy	G B H	G	S B	N R	C F	R	M	P & G	L G
<i>Comments on marketing and distribution of fine fragrances</i>																	
The company does maintain a selective distribution network	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
The company does make use of limited launches	✓	-	-	✓	-	-	-	-	✓	-	✓	-	✓	✓	-	✓	✓
Selective distribution is essential to the prestige and quality image	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	-	✓	✓	✓
Selective distribution is essential in maintaining high-quality staff	-	✓	✓	-	✓	✓	-	✓	✓	✓	-	-	-	-	✓	-	✓
The company's arrangements satisfy EC criteria for retailer agreements	✓	✓	✓	✓	✓	✓	✓	✓	-	✓	-	-	-	-	-	✓	-
Instigate intense advertising and marketing campaigns	✓	✓	-	✓	-	✓	-	✓	-	✓	✓	-	✓	-	✓	-	-
Selective distribution is essential in maintaining fresh stock	✓	✓	-	-	✓	✓	-	✓	-	✓	-	-	-	-	-	-	-
<i>Comments on the effects of selective distribution on:</i>																	
<i>(a) Sales of fine fragrances</i>																	
Essential to maintaining sales and image	✓	✓	✓	-	✓	✓	✓	✓	✓	✓	✓	✓	-	-	✓	-	-
Improves brand image and sales	-	✓	✓	-	✓	✓	-	✓	-	✓	-	-	-	-	✓	✓	-
Enhances/maximizes sales	-	✓	-	✓	✓	✓	✓	-	-	✓	-	-	✓	-	✓	-	-
Lowers the cost of the distribution infrastructure	-	-	-	-	✓	-	-	-	-	✓	-	-	-	-	✓	-	-
Essential to long-term sales growth	-	-	-	-	✓	✓	-	✓	✓	✓	-	✓	-	-	✓	✓	✓
Allows intensive promotional and advertising support	-	-	-	✓	✓	✓	✓	✓	-	✓	✓	-	-	-	-	-	-
Does not inhibit sales	-	-	-	-	✓	-	-	✓	-	✓	✓	-	-	-	-	✓	-
Improves stock control	-	✓	-	-	-	✓	-	✓	-	✓	✓	-	-	-	-	-	-

	P & C	E L	Y S L	C K	C	C D	E A	Gy	G B H	G	S B	N R	C F	R	M	P & G	L G
<i>(b) Retailers of fine fragrances</i>																	
Very competitive market-place for authorized sales	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	-	-	-	✓	-	-
Inter-brand competition is very fierce	✓	✓	✓	-	✓	✓	-	✓	✓	✓	✓	-	-	-	-	-	✓
Adequate competition in the market-place	-	-	-	✓	-	-	-	-	-	-	✓	-	-	-	-	-	✓
Competition is based on price, service and ambience	✓	✓	-	✓	✓	✓	-	✓	-	-	-	✓	-	-	✓	-	-
Enhances retailer's prestige and image	-	-	-	-	-	✓	-	✓	-	-	-	-	✓	-	-	-	-
Consumers have a wide choice of outlets	✓	-	-	-	✓	✓	-	✓	-	-	✓	-	-	-	-	-	✓
Allows fair competition between committed retailers	✓	✓	-	-	-	-	-	✓	-	-	-	-	-	-	-	-	-
Retailers receive significant advertising and marketing support	✓	✓	-	-	✓	✓	✓	✓	-	-	✓	-	-	-	-	-	-
Retailers can concentrate resources effectively	-	-	-	-	-	✓	✓	-	-	-	-	-	-	-	-	-	-
<i>(c) Consumers of fine fragrances</i>																	
'Expert' sales staff available for the consumer	✓	✓	✓	-	✓	✓	✓	✓	✓	✓	✓	✓	-	-	-	✓	-
Adequate supplies available to consumers	✓	✓	-	✓	✓	✓	-	✓	-	✓	✓	-	✓	✓	✓	✓	✓
Full range of products is available at each outlet	✓	✓	-	✓	-	✓	-	-	✓	-	-	✓	-	-	-	-	-
Ensures product is genuine and fresh	✓	✓	✓	✓	✓	✓	✓	✓	-	✓	✓	✓	-	-	-	-	-
Consumers benefit from intense inter- and intra-brand competition	-	✓	-	-	✓	✓	-	✓	-	✓	✓	-	-	-	-	-	-
Selective distribution has no effect on the consumer	✓	-	-	-	-	-	-	-	-	-	-	-	-	-	✓	✓	-
Improves the quality of the retail outlets	-	✓	-	✓	-	-	✓	✓	-	✓	-	-	-	-	✓	-	-
Creates an image of exclusivity for the consumer	-	✓	-	-	✓	✓	-	✓	✓	✓	✓	-	-	-	-	-	-
Increasing sales indicate consumer support for selective distribution	-	-	-	-	✓	-	-	-	-	-	-	-	-	-	-	-	-

Source: MMC, based on suppliers' responses to a questionnaire.

Notes: P&C = Prestige & Collections (UK) Ltd
 EL = Estée Lauder Cosmetics Ltd
 YSL = Parfums Yves Saint Laurent Ltd
 CK = Calvin Klein Cosmetics (UK) Limited
 C = Chanel Limited
 CD = Parfums Christian Dior (UK) Ltd

EA = Elizabeth Arden Limited
 Gy = Parfums Givenchy Limited
 GBH = Giorgio Beverly Hills Incorporated
 G = Guerlain Ltd
 SB = Sanofi Beauté Ltd
 NR = Nina Ricci (UK) Ltd

CF = Creative Fragrances Ltd
 R = Revlon International Corporation
 M = Muelhens Ltd
 P&G = Procter & Gamble (Cosmetics & Fragrances) Limited
 LG = Lancaster Group Ltd

APPENDIX 3.3
(referred to in paragraphs 3.81 and 3.91)

Suppliers' views on recommended resale prices

	P & C	E L	Y S L	C K	C D	E A	Gy	G B H	G	S B	N R	C F	R	M	P & G	L G
<i>Includes RRP's in its price lists</i>	-	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<i>Comments on recommended resale prices for domestic sales</i>																
Customary in the industry to set RRP's	-	-	-	✓	✓	✓	✓	✓	-	✓	-	-	-	-	-	-
Helpful to retailers if manufacturers set RRP's	✓	✓	-	-	✓	✓	✓	✓	-	✓	-	-	-	-	-	-
Provide consumers and retailers with information	✓	✓	-	-	✓	-	✓	✓	✓	-	-	-	-	✓	-	✓
Establishes correct market position of (new) product	✓	✓	✓	-	-	-	✓	✓	✓	-	-	✓	-	✓	-	-
Indicates satisfactory margins to manufacturer and retailer	-	✓	-	-	✓	-	-	✓	-	-	-	-	✓	✓	-	-
Ensures pricing strategy is competitive	-	✓	✓	-	-	-	-	-	-	-	-	✓	-	-	✓	-
Acts as a guide to the retail price	-	✓	-	-	-	-	✓	-	✓	✓	-	-	-	-	✓	✓
Allows the setting of uniform wholesale prices as a % of RRP's	-	-	-	✓	-	-	-	-	-	-	-	-	-	-	-	-
Does not now issue wholesale price lists showing RRP's	✓	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Source: MMC, based on the suppliers' responses to a questionnaire.

Notes: P&C = Prestige & Collections (UK) Ltd
 EL = Estée Lauder Cosmetics Ltd
 YSL = Parfums Yves Saint Laurent Ltd
 CK = Calvin Klein Cosmetics (UK) Limited
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 NR = Nina Ricci (UK) Ltd

CF = Creative Fragrances Ltd
 R = Revlon International Corporation
 M = Muelhens Ltd
 P&G = Procter & Gamble (Cosmetics & Fragrances) Limited
 LG = Lancaster Group Ltd

APPENDIX 4.1
(referred to in paragraphs 4.8 and 4.9)

Summary of provisions contained in retailer agreements

Provisions referred to in the Decisions	Suppliers																			
	Chan el	Dior	Laud er	Given chy	P&C	Gold en	Parim	Klein	Arde n	YSL	Giorg io	Guerl ain*	Lanc aster	P&G	Creat ive Fragr ance s	Muel hens	Ricci	Revl on	Sanof i	
I Selection criteria																				
(i) Staffing: training and consultation + demonstration																				
(a) Recognized qualification or experience (minimum three years)	✓	✓		✓	✓		✓	✓		✓			✓							
(b) Training	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓									
(c) Advisory or demonstration service	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓							
(ii) Location, name, fittings, etc, of outlet																				
(a) Nature, location, standing of environs	✓	✓		✓	✓		✓	✓	✓	✓										
(b) Name, shop sign	✓	✓		✓	✓			✓	✓	✓										
(c) Facade, shop windows, etc	✓	✓		✓	✓			✓	✓	✓										
(d) Interior fixtures and fittings, etc	✓	✓		✓	✓		✓	✓	✓	✓	✓									
(e) Scale, presentation, separation of other activities	✓	✓		✓	✓				✓	✓	✓									
(f) Appearance, competence, etc, of staff	✓			✓	✓			✓		✓	✓									
(iii) Prohibition on sale of other goods whose proximity might detract from image of products	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓									
(iv) Sales area																				
(a) Area proportionate to brands sold	✓	✓		✓				✓		✓			✓							
(b) Prestigious or visible location	✓	✓		✓	✓	✓		✓		✓	✓		✓							
(c) Availability of competing brands ²	✓ ²	✓		✓	✓ ²		✓			✓	✓		✓							

<i>Provisions referred to in the EC Decisions</i>	<i>Chan el</i>	<i>Dior</i>	<i>Laud er</i>	<i>Given chy</i>	<i>P&C</i>	<i>Gold en</i>	<i>Pari m</i>	<i>Klei n</i>	<i>Arde n</i>	<i>YSL</i>	<i>Giorg io</i>	<i>Guert ain</i>	<i>Lanc aster</i>	<i>P&G</i>	<i>Crea tive Fragr ances</i>	<i>Muel hens</i>	<i>Ricci</i>	<i>Revl on</i>	<i>San ofi</i>
(v) Selling																			
(a) Sales only on premises covered by contract (no mail order)	✓	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓						✓
(b) Sale to final consumer only (except to other authorized retailers or exclusive agents)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓			
(c) Retention of original packaging	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓			✓			
(vi) Stocks																			
(a) Two-thirds of references of each range, one product of each reference ³	✓	✓	✓ ³	✓	✓	✓	✓ ⁴	✓		✓	✓	✓ ³	✓ ³						✓ ³
(b) Perfect freshness	✓	✓		✓	✓		✓	✓		✓	✓	✓							
(c) Storage to achieve this	✓	✓		✓	✓		✓			✓	✓	✓							
(d) Stock rotation: minimum of twice a year		✓			✓					✓	✓								
(vii) Promotion and advertising⁵																			
(a) Stocking and selling new products	✓	✓		✓	✓					✓	✓	✓	✓ ⁶						
(b) Participation in promotional and advertising activities	✓	✓		✓	✓			✓	✓	✓	✓	✓	✓						
(c) Displays in store and in shop windows	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓						✓
(viii) Minimum annual purchases⁷	✓	✓	✓	✓ ⁷	✓			✓ ⁷		✓	✓								
II Admission procedure + timing																			
(i) Application followed by inspection re qualitative criteria	✓	✓		✓	✓ ⁸					✓									
(ii) Nowhere near meeting	✓	✓		✓	✓					✓									
(iii) Capable of meeting with additional work	9	✓		✓	✓					✓									
(iv) Meets entirely	✓	✓		✓	✓					✓									
<i>Note: The timing is essentially an inspection within an average of 3 months (max 5) and account opened within 9 months (max) from date of inspection if satisfactory.</i>																			

Provisions referred to in the EC Decisions	Chanel	Dior	Lauder	Givenchy	P&C	Goldan	Panini	Klein	Arden	YSL	Giorgio	Guerlain	Lancaster	P&G	Creative Fragrances	Muelhens	Ricci	Revlon	Sanofi
III Freedom of cross-supplies between network members																			
(i) Authorized retailers: may resell to any other authorized retailer throughout EC; may obtain supplies from authorized retailers or exclusive agents throughout EC	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓ ¹⁰	✓			✓			
Subject to:																			
(a) ensuring purchasers are authorized	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓				✓			
(b) keeping copies of invoices from such retailers for one year (similarly re obtaining supplies)	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓ ¹¹			✓			
(c) only value of orders invoiced by suppliers/agents to count in minimum annual purchase figures	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓					✓			
(d) authorized retailers will not engage in active sale, for one year, of products not launched in his territory (similarly re obtaining new products)	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓ ¹²	✓			✓			
IV Closed distribution network																			
(i) Authorized retailer will not sell to or obtain supplies from any wholesaler or retailer not included in supplier's distribution network	✓	✓	✓	✓	✓		✓	✓		✓	✓		✓			✓	✓ ¹³		
(ii) Supplier undertakes to market products only in retail outlets which meet conditions in the selective distribution contract	¹⁴	✓		✓			✓	✓		✓						✓			
V No imposed prices	✓	✓		✓	✓			✓		✓	✓		✓						
VI Competing products may be purchased																			
VII Duration of contracts																			
(i) Specific term/renewal ¹⁵		✓	✓ ¹⁵	✓	✓	✓	✓	✓		✓	✓	✓ ¹⁵							
(ii) Early termination for failing to fulfil contract		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓							
(iii) Transfer to new owner/operator ¹⁷	✓	✓		✓ ¹⁷	✓ ¹⁷	✓ ¹⁶	✓	✓		✓	✓	✓				✓			

Source: MMC.

*Guerlain was of the view that, by sticking closely to the terms of its agreement with retailers, this appendix presented a rather formalistic view of its arrangements by not taking account of its 'background' documentation and policies, all of which were part of the relationship. In Guerlain's view, if these were taken into account this appendix would also show not only that Guerlain insisted on its own consultants being fully trained, but that it actively encouraged the training of retailer-employed consultants (item I(i)(b)), and that Guerlain does have standards as to outlets and their interiors (items I(ii)(a) and I(ii)(b)).

Notes:

1. Lancaster made a general comment that the premises must be compatible with the style and prestige of the products.
2. The time limit within which retailers must carry a sufficient number of competing brands was set at 18 months in the Parfums Givenchy Decision (though this requirement is not mentioned in the earlier YSL Parfums Decision). Chanel and P&C specify 12 months (though Chanel said that it was now its practice to follow the Parfums Givenchy criterion in this respect, and that this would be shown in its agreement when it was next reprinted, and P&C told us that it had now extended the period to 18 months).
3. Lauder, Lancaster and Ricci require 'fully representative' stock and Guerlain requires a range of products in regular demand.
4. The Parim agreement provides for stock levels as agreed between the agent and the company.
5. Many of the agreements included a wide range of requirements concerning promotion and advertising. The three listed in the table seemed to be the most important and widely required.
6. Lancaster requires a sufficient stock of all products launched in the UK in the preceding 12 months.
7. The minimum purchase figure is set annually by supplier/exclusive agents in such a way that its amount does not exceed 40 per cent of the average purchase figure achieved the previous year by all retail outlets situated within a member state (as in the YSL Parfums and Parfums Givenchy Decisions). Klein specifies a figure not exceeding 20 per cent. Givenchy's standard sales terms state that on opening a new account the retailer must place a minimum opening order amounting to one and a half times the minimum annual sales required by Givenchy (ie $1.5 \times \pounds[\text{†}]$ for a fragrances outlet, or $1.5 \times \pounds[\text{†}]$ for an outlet selling both cosmetics and fragrances from the range of Givenchy products), comprising all the product lines produced by Givenchy.
8. P&C's agreement refers to additional premises of an authorized dealer. Application by a new retailer is covered in a separate document on general approval conditions. Procedure is essentially the same.
9. Although Chanel's retailer admission criteria do not state that applications capable of meeting the criteria with additional work will be held open pending the completion of such work, Chanel told us that this was how it operated in practice, and that this would be reflected in its authorized retailer agreement when it was next reprinted.
10. Guerlain's agreement refers to authorized retailers in *other* EC countries.
11. Lancaster requires invoices to be kept for a minimum of two years.
12. While Guerlain's contract does not formally permit a UK retailer to sell to other UK-based retailers (as opposed to other EC-based retailers), it told us that this was permitted and that it had not, and would not, impose any penalties on retailers which did this. It expected that its new UK agreement would expressly allow such trading. However, Guerlain's new agreement has an export ban for one year (at variance with the YSL Parfums Decision).
13. The stockist agrees not to export any Ricci goods to outlets outside the UK which are not officially appointed stockists within EC countries.
14. Chanel said that it was axiomatic from the terms of its authorized retailer agreement that it would only market its products through retail outlets which satisfied its selection criteria. To avoid any doubt, this would be stated in its agreement when it was next reprinted.
15. The specific term is normally one year. Lauder indicated that it would continue in force until determined by either party. For Guerlain the contract is initially valid for two years, thereafter continuing on an annual basis.
16. The transfer of Golden's authorized status is not a matter of right but is subject to consideration and approval by Golden.
17. The YSL Parfums Decision says that the supplier/agent will inform the new owner/operator within three months whether he meets the professional criteria. If so, he will be authorized without delay. Givenchy offers a new agreement to the new owner/operator provided all the conditions are met. P&C allows the existing agreement for six months, then inspects the premises within a maximum of five months.

†Details omitted. See note on page iv

APPENDIX 4.2
(referred to in paragraph 4.18)

Application of criteria in assessing retailer requests for authorized status

Features analysed	Suppliers																		
	Chanel	Dior	Lauder	Givnchy	P&C	Golden	Parim	Klein	Ardan	YSL	Giorgio	Guerrain	Lancaster	P&G	Creative Fragrances	Muelhens	Ricci	Revlon	Sanofi
A. Selection criteria included in retailer agreement	✓	✓	✓ ¹	✓	✓	1		✓	✓ ¹	✓	✓	1	✓		1			1	1
B. Use of written check-list i. Consistent with criteria in agreement	✓ ¹	✓ ¹	✓ ²	✓ ¹	✓ ¹		✓	✓ ¹	2	✓ ¹	✓ ¹					✓ ¹			
C. Point scoring system in check-list: i. Type (A: 0, 3, 7, 10; B: 2, 4, 7, 10; C: other) ii. Minimum pass score specified (A: total; B: both subsection and total) iii. Required minimum varies for different brands iv. Elimination for minimum scores in key questions v. Weighting	C ²	A	C ³	A ²	C ²		C ¹	B		B	B								
	B ³	B ²	A ⁴	A	A ³		2	A		A	A								
		✓ ³	✓ ⁶	✓ ³	✓ ⁴			✓ ²		✓ ²	✓ ³								
D. Criteria made known to applicant	✓	✓	✓	✓	✓ ⁵		3	✓	✓ ³	✓	✓	✓	✓		✓	✓	✓		
E. Person(s) taking decision to supply outlet*	SD	FAM	MD/GM	SD	MD ⁶		3	SD/MD	NSM	SD	SMD	SM/MD	SM ¹	P ¹	SD	MT	AM/SD ²	SD	
F. Consistency in applying criteria claimed to be achieved by: i. One person visiting all outlets ii. Area representatives visiting similar mix of retail types iii. Final decision in hands of one (or two) person(s) iv. Use of standard check-list and/or criteria v. Training/briefing/guidelines/seminars vi. Spot checks or regular field visits							3	3		✓ ³									
	✓	✓		✓	✓			✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	
	✓	✓	✓	✓	✓ ⁷			✓		✓	✓	✓	✓						
		✓		✓	✓					✓	✓	✓	✓		✓	✓		✓	
G. Criteria/check-lists used are: i. Same criteria/check-lists for all types of applicant ii. Essentially same criteria/check-lists but minor differences in scoring iii. Different for different types of outlet	✓		✓	✓	✓		✓	✓ ⁴	✓	✓ ⁴	✓ ⁴	✓	✓		✓	✓		✓	
H. Sample check-lists for accepted applicants supplied to MMC	✓	✓ ⁴			✓	2	4	✓		✓		2				✓ ¹	3	2	
I. Sample check-lists for rejected applicants supplied to MMC	✓	✓ ⁴		✓ ⁵	✓	2	4	✓		6									

Source: MMC.

*Key to feature (E)

AM	Area Manager	NSM	National Sales Manager
FAM	Finance and Administration Manager	P	President
GM	General Manager	SD	Sales Director
MD	Managing Director	SMD	Sales and Marketing Director
MT	Management Team		

Notes:

Chanel

1. Its check-list, which contains around 45 scored questions in six groupings (environment, exterior, interior, point of sale (perfumery department), Chanel at point of sale, and staffing/service), has been in use since July 1992.
2. Most questions of 'excellent/good/poor' type, scoring points 2, 1, 0, or 'yes/no', which appear to score 2 or 0. Two questions rate 10 if satisfied.
3. Minimum scores for each of six groups of questions, plus minimum total pass score.

Dior

1. Dior uses separate check-lists for chemists and department stores. There are 11 scored questions for chemists and 19 for department stores. Several questions are on the professional competence of staff but these are not scored. There are several other conditions which must be met in either case (eg no food or household products must be within 50 feet of the perfumery and beauty department and/or visible therefrom in a department store). Where relevant, a separate additional evaluation is completed for the sales arcade/shopping centre in which a shop is located.
2. For chemists there is a minimum acceptable score of 77 out of a possible 110, and for department stores there are minima for three subgroups of questions plus a total minimum score of 118 out of 190.
3. If a chemist scores two or more zeros it is eliminated, whereas a department store is eliminated for three or more zeros.
4. Because the new agreement was only introduced in November 1992, Dior submitted examples for existing authorized retailers after re-evaluation using the new forms. While overall the assessments appeared even-handed, the Dior check-list included, in addition to a range of scored questions, apparently important questions-for example, on the professional competence of staff-which are not explicitly scored. It also had several conditions which must specifically be met for authorization to be granted but which are only partially covered (without scoring) or not directly covered in the check-list (these conditions are, however, included in the retailer agreement which the applicant receives prior to the site visit).

Lauder

1. Retailer agreement includes criteria relating to staffing and services but little relating to premises. Lauder has been using a rather broader set of criteria for selecting retailers. These are consistent with the check-list.
2. There are several parts to the check-list, introduced in January 1993. In particular, Section C contains 12 image-related questions for yes/no answers (only applicants meeting the image-related criteria remain eligible for further evaluation); Section D, Part I (23 questions) relates to environment and staffing and is scored; Section D, Part II (on various objective criteria relating to sales floor and staff expertise), is for self-completion by the retailer (Lauder does not reveal to the retailer the scores it uses in assessing the responses to these questions).
3. Scoring for Section D, Part I, is 0, 2, 5, 8.
4. There is a minimum score for Section D, Parts I and II combined (see Note 5 below).
5. To stock Estée Lauder, Clinique and Prescriptives the outlet must score 150, but only 125 to stock Aramis.
6. Automatic elimination if two or more zeros are scored in nine specified questions (relating to key elements of neighbourhood, exterior, interior, and other products on which the store concentrates and their separation from fragrances).

Givenchy

1. The check-list, introduced in early 1993, contains 15 questions relating primarily to premises and staff.
2. Scoring is mainly 0, 3, 7, 10, with some minor variations.
3. Four zeros result in automatic elimination (four zeros could be achieved by eg tiles or linoleum on the floor, 'ordinary' walls and ceiling, shop area of less than 20 m (*sic*) exclusively given over to perfume and beauty sales, and the perfumery business being a minority part of the total business (and not well displayed), ie by a relatively down-market store, whose main business is other than perfumes/cosmetics and which devotes a fairly small area to these products).
4. Weightings of between 1 and 3 are applied to each question.
5. Givenchy used its new form to assess Superdrug, and showed us the completed form.

P&C

1. P&C's check-list, introduced on a trial basis in late 1992, contains around 45 questions (it was quite similar in content to the YSL check-list, though somewhat more detailed in some areas).
2. Nearly all questions are scored. A variety of scales apply, eg: 2, 4, 6, 8, 10; 0, 2, 5, 10; and 0, 2, 4, 6.
3. Minimum score varies with the brand, eg to stock Cacharel fragrances and Guy Laroche a score of 300 is required, for Armani and Paloma Picasso fragrances it is 400, and for Ralph Lauren Safari it is 550.
4. If the score in any five of 16 specified questions is lower than a prescribed minimum, the outlet is deemed not to have satisfied P&C's qualitative criteria.
5. In the past, P&C's criteria were not sent in advance, but in the early summer of 1993 it finalized its new procedure for sending applicants printed details of the conditions they must meet.
6. May delegate to Commercial Director or Financial Director.
7. To minimize risk of inconsistency, assessments and site visits are carried out by Area Managers. In appropriate cases site visits may also be undertaken by the Managing Director.

Golden

1. Golden did not submit a check-list, but said that P&C's replies set out Golden's policy on criteria, etc.
2. Not sought by the MMC.

Parim

1. Scoring varied, eg 2, 6, 10; 10, 20, 30; and 0, 8, 16, 24.
2. Minimum level of 50 in each section.
3. Parim referred to the P&C replies, and said that they had equal validity for Parim.
4. Not sought by the MMC.

Klein

1. There are 37 questions on the check-list, which was one of the clearest submitted to us (it incorporated one of the most informative front sheets).
2. A score of 2 or less in three of 11 specified questions eliminates the applicant.
3. The number of inspectors is limited to four trained individuals.
4. The same approach to scoring is used for all applicants (the minimum score being 200), although the check-list seems to allow for some minor variations on scoring similar to YSL (see YSL Point 4 below).

Arden

1. Arden intends to formalize its qualitative criteria with the introduction of its European retailer agreement. It did not say what these criteria are but its current terms and conditions of sale include retail criteria which mainly concern the physical characteristics of the outlet and customer service (including number of qualified staff). It does not currently have a check-list, but one is being designed.
2. There is no check-list at present, but the Area Sales Manager visits applicants to assess their ability to comply with all relevant criteria (which are the same for all outlets).
3. The criteria are discussed with a store where necessary.

YSL

1. YSL's evaluation report (which was disclosed to the EC during the notification process) contains 37 scored questions, relating primarily to premises and staff but also including several questions on other matters (such as whether the point of sale management is computerized, the type of stocklist available, and the professional ability of the shop manager). There are also seven scored 'bonus' questions, not included in achieving the minimum score, plus a few unscored questions (for example, an unscored question asks about type of floor covering then a scored follow-up question asks about the quality and condition of the floor covering (Givenchy, by contrast, has a scored question on type of floor covering; and while Givenchy has a scored question on the age of decoration, a YSL question on this is not explicitly scored)).
2. If a score of 2 is achieved in any three out of 11 specified questions (concerning location of point of sale, point-of-sale environment, street where outlet is located, facade, general inside lighting and lighting of products, flooring, walls, furniture and fittings, other products sold in the point of sale and professional ability of the shop manager and sales staff) the applicant is automatically eliminated.
3. YSL indicated that when the authorized retailer agreement was first introduced in the UK, the evaluations were carried out by Area Managers, each of whom was responsible for a different part of the UK. Although the evaluators were given training prior to beginning their evaluations, comparison of the evaluations carried out in the earlier months indicated that the criteria were not being applied consistently by the different evaluators. YSL therefore appointed a single evaluator to evaluate all existing and new accounts to ensure consistency (see paragraph 4.26).
4. The 37 questions referred to in Note 1 above are included in the minimum score (ie 259 out of a possible 370) for outlets where there are one or more dominant activities other than the sale of perfumery products. Where perfumery/cosmetics are the dominant activity, three fewer questions are scored (giving a pass mark of 238 out of 340).
5. YSL commented that the criteria are the same for all outlets, except for perfumery departments within department stores where appropriate criteria are being developed regarding use of YSL fittings and employment of sales staff dedicated to YSL products.
6. No samples of completed check-lists for rejected applicants were supplied to the MMC as no evaluations have resulted in refusals. (Outstanding requests for supply are to be reappraised.)

Giorgio

1. There are 36 scored questions on Giorgio's retail outlet evaluation check-list which, we noted, was very similar to the YSL and Klein check-lists in terms of questions asked, scoring system (2, 4, 7, 10), and elimination for three 2s out of 11 specified questions.
2. While its retailer agreement contains rather brief and general reference to the physical characteristics of a retail outlet, the intention that the outlet must be appropriate to the image of Giorgio products is clear. The detailed criteria are set out in the check-list and made known to the retailer through this means.
3. An outlet is eliminated if it scores three 2s out of 11 specified questions.
4. The results of 36 questions are included in minimum scoring (ie a score of 252 or more) for stores with one or more other dominant activities. For shops whose main business is perfumes/cosmetics, only 33 questions are scored and the pass-mark is 231.

Guerlain

1. While Guerlain has retailer selection criteria (which, it said, were the same for all outlets), it did not currently have a check-list, and it was not clear from its current agreement what requirements it imposed on potential retailers wishing to join the Guerlain network. One of the initial criteria it applied is whether the retailer was a department store, retail pharmacy, perfumery or beauty salon. If it was, the outlet was then assessed according to its credit account application forms and visited by its Area Manager. However, in mid-July 1993 Guerlain sent us a draft check-list. This contained 21 questions for consultant accounts and 24 questions for non-consultant accounts. It appears that the scoring system to be adopted by Guerlain will be 0, 2, 5, 8 and 10 (any score of 0 or two scores of 2 would eliminate an outlet, as would a total score below the average in any of the three categories into which the check-list is divided).
2. Guerlain has supplied completed credit account application forms. Apart from business details these merely record the decision to supply and a brief reason.

Lancaster

1. The qualitative criteria which Lancaster applies in deciding whether or not to admit a retailer to its selective distribution network are set out in its retailer agreement. There is no formal check-list; the agreement is used as a reference document. The criteria are made known to retailers when they are visited by a Lancaster Sales Manager. Individual Sales Managers initially take a decision as to whether or not to supply a retailer. If the retailer wants to take the discussion further, reference is next made to the Regional Sales Manager and finally the Sales Director.

Procter & Gamble

1. Procter & Gamble is in the process of formalizing its qualitative criteria for the selection of retailers, and it has no check-list. Requests for supply are taken by Procter & Gamble and, to ensure both compliance with the trade mark licence agreements for its brands and also consistency of distribution throughout Europe, are subsequently referred to the President of Eurocos Cosmetic GmbH.

Creative Fragrances

1. Creative Fragrances does not have an agreement or check-list. It applies a small number of criteria, as set out below, which do not bear much relationship to the EC qualitative criteria. Under normal circumstances a company representative would visit an outlet which wished to stock the reference products to check the following criteria:
 - whether the outlet was an existing perfumery business;
 - whether the outlet was a branch of a group with which Creative Fragrances already traded;
 - whether it appeared appropriate to supply under normal credit terms;
 - whether there were already several existing outlets selling Creative Fragrances products in the immediate vicinity;
 - whether the outlet had an ambience suitable for the merchandising of quality fragrance products.

Stores were aware of the criteria. The decision as to whether to supply an outlet was taken by the Sales Director, following informal discussions after the Sales Representative's visit. Consistency was achieved through the application of the listed criteria, which were applied to all types of outlet.

Muelhens

1. Muelhens said that it made an initial assessment of outlets wishing to stock its products by reference to a number of criteria relating to the quality of the store environment, the range of competitive brands stocked, adequate trained and knowledgeable staff, and a representative stockholding and product mix. A site visit was made using a check-list from which an account assessment report was prepared. The information collected in the assessment reports was of a relatively quantitative nature, and included: information on performance, highlights of store activity, competitive activity, perfume department layout and size of space available for Muelhens, Muelhens' investment in point-of-sale support, consultant availability, activities/events, and account investment proposal and profitability analysis. We found nothing explicitly concerning the quality of location, external and internal appearance, etc, other than perfume department layout and provision of point-of-sale materials. There was no numerical rating. The criteria were made known to the retailer in advance of a site visit, and subsequently in order to give the retailer an opportunity to rectify any deficiencies. The Muelhens management team made the decision as to whether or not to supply an outlet. The same criteria were used for all outlets. Consistency was achieved through the detail of the site reports and regular field visits by all members of the management team.

Ricci

1. In assessing whether or not to supply companies which ask for supplies, Ricci applies the same criteria that are covered in its new draft agreement (these are similar to the EC provisions). The criteria are applied by the Ricci local representative, following a request for supplies. Check-lists are not currently used, but the new agreement will have an accompanying check-list. The criteria are made known during the site visit, and are the same for all outlets.
2. The Area Manager decides for chemists and perfumeries, and the Sales Director for department stores. In exceptional cases the Sales Director and Managing Director decide.
3. Ricci submitted copies of reference letters and account advice forms relating to the financial and administrative aspects of the application.

Revlon

1. Revlon has no written procedures, and no check-list. It took into consideration the style/nature of the premises, reflecting the prestige of the supplier, and ability to achieve sufficient sell-through.
2. Completed account control documents were submitted. They do not cover qualitative criteria, other than information on competitive brands stocked.

Sanofi

1. Sanofi does not currently have a retailer agreement or check-list (however, its new authorized retailer agreement will be linked with a new evaluation questionnaire). (We were shown a copy of the questionnaire, and it appeared quite similar to the YSL/Klein approach.) Sanofi said that it intended that the candidate retailer would receive a copy of the agreement and the general conditions of sale, and would be advised of the criteria used when visited for the assessment. The decision to supply would be taken jointly by the Sales Manager and Managing Director. To ensure consistency, a points scoring system was to be included in the new questionnaire. The criteria will be applied uniformly, but the score required for acceptance would vary according to outlet type.

Survey of fine fragrance retailers by Verdict Research Limited

Methodology

Criteria

1. The fundamental aim of the research methodology was to produce a rating system which allowed a disparate range of retailers and environments to be compared in a consistent and entirely even-handed way. Verdict's core quantitative fieldwork assessed stores against 20 criteria. These criteria were chosen by Verdict as the most relevant and appropriate from the evaluation forms of the leading perfume houses. Each of the perfume houses uses a slightly different set of criteria to evaluate prospective outlets. On the basis of these, Verdict produced its own rating system incorporating all the important criteria used by the perfume houses.

2. The criteria which are in some perfume houses' evaluation reports but which Verdict did not cover explicitly were:

- (a) staff welcome;
- (b) height of display cabinets;
- (c) identification/highlighting of brands;
- (d) beauty products stocked;
- (e) floor space;
- (f) storage areas;
- (g) experience of staff;
- (h) windows;
- (i) age of decor; and
- (j) brands stocked.

Experience of staff and other information about personnel were covered separately by a questionnaire filled in by shop staff and returned to the MMC. Verdict decided that floor space could not be covered in the time available, and it did not feel that the height of display cabinets or condition of storage areas were priority criteria in the context of its brief.

3. The remaining criteria listed above are: (a), (c), (d), (h), (i) and (j). All these areas were covered using a broader form of words. For example, because finding out the date of a store's last decoration would have been very time-consuming, Verdict preferred simply to rate the outlet on the general quality of its decor. Similarly, instead of a rating for length of shop window, Verdict judged the quality of window displays in broad terms. The one exception is brands stocked (j), which was covered in the qualitative research.

4. Details of the scoring guidelines used by Verdict's field workers are in paragraph 11.

5. Each criterion chosen by Verdict was given five grades of score, except for 'payment points' which required a 'yes' or 'no' response. The 'adjacent products' criterion was also treated differently since a number of different items could be positioned next to fragrances. In this case Verdict scored as follows:

<i>Adjacent products</i>	<i>Points</i>
Beauty products	5
Fashion	3
Fashion accessories	3
Jewellery	2
Other items	1

6. Each retailer's score was derived by adding up the rating for every criterion and dividing by the number of criteria concerned.

Sample of stores and locations

7. The fieldwork took place across a sample of 101 stores, all of which sold fine fragrances. Within the time and cost constraints which were set, Verdict selected the sample with the aim of providing a combination of maximum numbers and diversity.

8. The research covered at least half a dozen outlets from each of the country's five leading department store groups, two multiple chemists and one multiple drugstore. Verdict also covered a sample of independent department stores and chemists, duty-free shops, two food superstore retailers and a small chain of specialist perfume shops.

9. A range of different location types was chosen to cover the following:

- High streets
- Neighbourhoods
- Shopping centre development (high street)
- Shopping centre development (out-of-town)

Consistency

10. The same team of Verdict analysts conducted the entire research programme. They visited each shop together in order to maximize consistency. They were then debriefed, and their views and impressions also went into the bulk of the report's qualitative analysis.

Scoring

11. Most of the results of the quantitative analysis are given as a percentage overall rating for each outlet. This is calculated by taking each store's cumulative mark and expressing it as a percentage of its total possible score. Verdict chose this approach in order to allow like-for-like comparisons to be made between disparate outlets. For example, a store which stood on its own, perhaps in an edge-of-town location, clearly has no adjacent shops and therefore cannot be scored against this criterion.

12. Further information about the survey, and the criteria assessed during the store visits, is given in Annex 1 to this appendix.

Quantitative analysis

13. The detailed scores achieved under each of the criteria by each store in the field survey are shown in Table 1.

TABLE 1 Core fieldwork survey results

Retailers	Location	Type of location*	Type of retailer*	Total score	% of possible total	Location	Parking	Cond of adj shops	Image of adj shops	Cond shop front	Wind display	Floors	Ceiling	Furnishing	Lights	General decor	Tidiness	Quality of staff	No of staff	Display	Adv/POS	Prod testers	Adj prods in store	Location	Payment points	Total possible score
Alders Intd	Edinburgh	A	DF	68	74	1	2	5	2	5	0	5	3	3	3	5	5	4	5	3	3	5	3	4	2	92
Alders Intd	Heathrow	A	DF	84	91	5	4	5	5	5	0	5	4	5	4	5	5	4	5	4	5	5	3	4	2	92
Alders 1	Basildon	SC	DS	67	69	5	3	4	3	3	3	3	3	4	2	3	3	4	3	3	4	5	4	3	2	97
Alders 2	Sutton	SC	DS	87	90	5	4	5	3	5	2	5	5	5	4	5	5	4	5	5	5	5	3	5	2	97
Alders 3	Chatham	SC	DS	66	68	3	4	3	2	4	2	4	2	3	2	3	4	4	5	3	4	5	3	5	1	97
Alders 4	Woking	SC	DS	90	93	5	4	5	3	5	4	5	5	5	5	5	5	4	5	5	5	5	3	5	2	97
Alders 5	Bromley	HS	DS	59	61	3	2	3	3	1	3	2	1	4	2	3	3	4	4	4	4	4	3	4	2	97
Angies Chemist	Radlett	NH	IC	56	58	3	5	3	4	3	1	2	2	4	3	2	3	2	1	3	2	3	5	4	1	97
Asda 1	Dudley	OSC	S	54	59	5	5	4	3	5	0	4	1	2	1	3	3	3	3	1	1	1	3	5	1	92
Asda 2	Nuneaton	OOT	S	51	55	1	5	4	3	4	0	5	4	2	2	5	4	2	3	1	1	2	1	1	1	92
Asda 3	Leamington	OOT	S	38	46	1	5	0	0	4	0	5	3	2	2	3	2	2	3	1	1	1	1	1	1	82
Asda 4	Leicester	OOT	S	48	52	1	5	4	4	3	0	4	4	2	2	3	3	2	3	3	1	1	1	1	1	92
Asda 5	Nottingham	OOT	S	37	45	1	5	0	0	2	0	3	3	1	2	3	3	2	3	2	2	2	1	1	1	82
Asda 6	Watford	OOT	S	49	60	1	5	0	0	4	0	4	5	2	2	4	5	2	3	2	2	3	1	3	1	82
Asda 7	Sheffield	OOT	S	41	50	1	5	0	0	2	0	2	2	3	2	2	3	2	4	2	2	1	5	2	1	82
Atkinsons	Sheffield	HS	ID	62	64	3	3	3	2	3	4	2	5	3	3	4	3	4	3	3	3	3	3	3	2	97
Benalls	Thurrock	OSC	ID	80	82	5	5	5	4	5	2	5	4	4	3	5	5	4	3	3	4	5	4	3	2	97
Bodgers	Ilford	HS	ID	67	69	3	3	3	2	3	2	3	3	4	3	4	4	4	3	4	4	5	3	5	2	97
Boots 1	Dudley	OSC	C	78	80	5	5	5	3	5	1	4	4	4	3	4	5	4	5	3	3	5	4	4	2	97
Boots 2	Coventry	HS	C	71	73	3	3	2	2	4	2	5	5	4	3	4	5	4	3	3	3	5	5	4	2	97
Boots 3	Sheffield	HS	C	64	70	3	3	3	3	4	0	3	4	3	3	4	5	4	4	3	4	3	3	3	2	92
Boots 4	Solihull	HS	C	70	76	3	3	2	3	4	0	4	5	4	3	5	5	5	3	3	3	4	5	4	2	92
Boots 5	Nottingham	SC	C	73	79	5	4	4	4	4	0	4	3	3	3	4	5	4	5	3	2	5	5	4	2	92
Boots 6	Watford	SC	C	78	85	5	4	5	5	5	0	3	5	4	4	5	3	4	3	4	5	4	3	5	2	92
Boots 7	Milton Keynes	OSC	C	76	83	5	5	4	4	5	0	5	4	2	3	5	5	4	3	4	4	5	3	4	2	92
Boots 8	Rotherham	HS	C	63	68	2	3	2	3	3	0	4	4	3	2	4	5	4	3	3	4	4	4	4	2	92
Boots 9	Bromley	SC	C	75	82	5	4	5	3	5	0	4	4	3	3	5	5	4	4	3	3	5	4	4	2	92
Boots 10	Basildon	HS	C	63	65	3	3	3	3	2	2	3	4	3	3	4	4	3	2	4	4	4	3	4	2	97
Clements	Watford	HS	ID	68	70	3	3	2	2	4	4	3	2	4	3	3	4	4	5	4	3	5	3	5	2	97
Cox & Robinson	Milton Keynes	OSC	IC	55	57	4	5	4	3	4	2	3	3	2	2	3	2	2	3	1	1	3	2	5	1	97
Crystal	Slough	HS	IC	41	42	2	2	2	1	2	2	3	3	3	3	2	3	2	3	1	1	1	3	1	1	97
Debenham 1	Dudley	OSC	DS	86	89	5	5	5	4	5	4	5	4	4	3	5	4	5	5	3	5	5	3	5	2	97
Debenham 2	Coventry	SC	DS	89	92	5	4	5	5	5	2	5	5	5	4	5	4	5	5	5	5	5	3	5	2	97
Debenham 3	Leicester	SC	DS	94	97	5	4	5	4	5	5	5	5	5	5	5	5	5	5	5	5	5	4	5	2	97
Debenham 4	Nottingham	HS	DS	65	67	3	2	3	3	2	3	3	3	3	3	2	4	5	4	4	3	5	5	3	2	97
Debenham 5	Sheffield	OSC	DS	91	94	5	5	5	4	5	4	4	4	5	5	5	5	5	5	5	5	5	3	5	2	97
Debenham 6	Romford	HS	DS	70	72	3	2	2	3	2	3	4	3	5	4	3	4	4	3	5	5	5	3	5	2	97
Debenham 7	Harrow	HS	DS	61	63	3	2	3	2	3	3	3	3	3	2	3	4	4	2	3	3	5	3	5	2	97
Dis Chemists	Harrow	NH	IC	47	48	3	3	2	2	2	1	3	3	3	2	2	3	2	3	2	1	2	5	2	1	97

Retailers	Location	Type of location*	Type of retailer*	Total score	% of possible total	Location	Parking	Cond of adj shops	Image of adj shops	Cond shop front	Wind display	Floors	Ceiling	Furnishing	Lights	General decor	Tidiness	Quality of staff	No of staff	Display	Adv/POS	Adj Prod testers	prods in store	Location	Payment points	Total possible score
Elys	Wimbledon	HS	ID	69	71	4	2	3	3	3	4	3	2	4	3	4	5	4	3	3	5	4	3	5	2	97
Fenwicks	Leicester	HS	ID	65	67	2	3	3	3	5	1	4	2	4	3	4	5	4	1	4	4	5	3	3	2	97
Forte	Heathrow	A	DF	80	87	5	4	5	5	5	0	4	4	4	3	5	5	4	4	4	5	5	2	5	2	92
H Gibson	Ilford	HS	ID	61	63	3	3	3	2	3	3	3	3	4	2	4	4	3	2	4	3	2	3	5	2	97
Harrods 1	Heathrow	A	DF	82	85	5	4	5	5	5	5	5	4	5	3	5	5	5	3	4	1	5	3	4	1	97
Harrods 2	Heathrow	A	DF	81	88	5	4	5	5	5	0	5	4	5	4	5	5	5	4	5	2	5	3	3	2	92
Harrods 3	Heathrow	A	DF	78	85	5	4	4	4	5	0	5	3	3	2	5	5	5	5	3	5	3	5	2	2	92
HoF 1	Birmingham	HS	DS	74	76	5	2	3	4	3	4	2	3	4	3	3	2	5	5	5	5	5	4	5	2	97
HoF 2	Milton Keynes	OSC	DS	76	78	5	5	4	4	4	4	5	4	3	3	4	5	4	2	3	3	5	3	4	2	97
HoF 3	Sheffield	OSC	DS	82	85	5	5	5	4	5	1	5	5	4	3	5	5	4	3	4	5	5	4	3	2	97
HoF 4	Leamington	HS	DS	76	78	4	2	3	4	3	4	5	2	5	4	3	4	4	5	4	5	5	3	5	2	97
HoF 5	Birmingham	HS	DS	68	70	5	2	3	4	3	4	3	3	4	2	2	3	5	4	4	5	5	2	3	2	97
HoF 6	Bromley	HS	DS	58	60	2	2	2	4	2	3	3	1	3	2	3	4	4	2	3	4	5	3	4	2	97
HoF 7	Gravesend	HS	DS	60	62	3	2	3	3	3	3	3	2	3	4	2	3	3	2	3	2	5	4	5	2	97
HoF 8	Thurrock	OSC	DS	85	88	5	5	5	4	5	3	5	5	4	4	5	5	4	3	5	5	5	3	3	2	97
J Beattie	Solihull	HS	ID	60	62	2	4	2	1	3	4	2	3	3	2	3	3	3	5	3	4	3	3	5	2	97
John Lewis 1	Sheffield	HS	DS	65	75	2	4	0	0	4	3	3	4	3	2	4	5	5	5	3	3	5	3	5	2	97
John Lewis 2	Nottingham	SC	DS	68	70	5	4	4	4	4	4	3	4	3	2	3	4	3	5	3	1	5	4	1	2	97
John Lewis 3	Watford	SC	DS	77	79	5	4	5	3	5	4	4	4	3	2	5	5	4	3	4	3	5	4	4	2	97
John Lewis 4	Milton Keynes	OSC	DS	74	76	5	5	5	3	5	4	4	3	3	2	4	3	3	5	3	3	5	3	4	2	97
John Lewis 5	Brent Cross	OSC	DS	74	76	5	5	3	3	4	3	4	3	4	3	4	5	3	5	3	2	5	3	5	2	97
John Lewis 6	Sloane Square	HS	DS	66	68	4	1	3	3	4	3	4	3	3	2	4	5	4	5	3	1	5	4	3	2	97
John Lewis 7	Oxford Street	HS	DS	73	75	5	2	4	4	4	3	5	3	3	2	4	5	4	5	3	1	5	5	4	2	97
K	Slough	HS	IC	47	48	2	2	2	2	2	2	2	3	4	2	3	3	2	4	2	2	1	3	3	1	97
Keencare	Harrow	NH	IC	66	68	3	3	2	3	3	4	2	2	4	4	3	3	3	3	4	4	4	5	5	2	97
Lister	Beaconsfield	HS	IC	70	72	3	3	3	4	4	2	1	4	5	5	3	3	4	3	4	5	5	3	4	2	97
Lloyds 1	Stratford	HS	C	58	60	3	4	3	4	5	1	2	3	4	3	3	4	2	2	3	1	2	3	4	2	97
Lloyds 2	Acocks Green	HS	C	56	58	3	3	2	2	3	2	3	3	4	3	2	3	2	3	3	1	2	5	5	2	97
Lloyds 3	Solihull	HS	C	80	82	3	3	4	3	5	4	5	5	4	5	5	5	5	4	4	4	2	5	4	1	97
Lloyds 4	L. Buzzard	HS	C	60	62	4	4	3	3	5	2	3	3	3	2	3	4	2	2	3	1	4	4	3	2	97
Lloyds 5	Kempton	NH	C	48	49	2	4	3	3	3	0	2	3	3	2	2	3	2	1	3	1	1	3	5	2	97
Lloyds 6	Chislehurst	HS	C	63	65	3	4	4	4	3	2	4	3	3	2	3	5	3	3	3	1	4	4	4	1	97
Lloyds 7	Epping	HS	C	60	62	3	4	4	3	3	2	2	3	4	3	3	3	3	2	2	2	4	5	4	1	97
Moss	Slough	HS	IC	50	52	2	2	2	2	2	2	3	3	4	3	3	3	2	3	3	1	3	3	3	1	97
NVS Pharmacy	Watford	NH	IC	48	49	3	2	2	2	2	1	3	1	4	2	2	3	2	4	2	1	2	5	4	1	97
Owen Owen 1	Redditch	SC	DS	66	68	5	4	2	2	3	4	4	2	4	2	2	4	3	3	3	4	5	3	5	2	97
Owen Owen 2	Coventry	HS	DS	60	62	3	3	2	2	3	4	2	3	4	3	3	4	3	1	4	4	2	3	5	2	97
Owen Owen 3	Finchley	HS	DS	55	57	3	2	2	2	3	3	3	2	3	2	3	3	3	3	3	4	4	3	3	1	97
Owen Owen 4	Ilford	SC	DS	80	82	5	4	5	4	5	3	4	4	4	3	4	5	4	3	5	5	3	3	5	2	97
Owen Owen 5	Slough	HS	DS	64	66	4	4	3	3	3	3	3	4	4	2	3	5	4	1	3	3	2	3	5	2	97
Owen Owen 6	Uxbridge	HS	DS	55	57	3	3	3	3	3	2	3	3	4	3	2	3	3	1	3	2	3	3	3	2	97

Retailers	Location	Type of location*	Type of retailer*	Total score	% of possible total	Loca-tion	Park-ing	Cond of adj shops	Image of adj shops	Cond shop front	Wind dis-play	Floors	Ceiling	Furn-ish-ing	Lights	General decor	Tidl-ness	Quality of staff	No of staff	Dis-play	Adv/ POS	Adj Prod testers	prods in store	Loca-tion	Pay-ment points	Total possible score
Pearsons	Enfield	HS	ID	51	53	3	3	2	2	2	2	2	2	3	2	2	2	3	2	2	4	4	3	4	2	97
Perfume Shop 1	Milton Keynes	OSC	PS	64	78	4	5	4	3	0	0	4	3	4	4	4	4	4	4	4	2	4	0	5	2	82
Perfume Shop 2	Sheffield	OSC	PS	68	78	3	5	5	4	4	0	3	3	4	3	4	5	4	4	3	3	4	0	5	2	87
Perfume Shop 3	Bromley	SC	PS	68	78	4	4	5	4	4	0	4	3	4	3	4	4	4	4	3	3	4	0	5	2	87
Perfume Shop 4	Thurrock	OSC	PS	71	77	4	5	5	4	4	3	3	3	4	3	4	4	4	4	3	3	4	0	5	2	92
Shanipharmacy	London	HS	IC	57	62	3	1	3	3	3	0	4	3	4	2	4	4	2	3	3	2	4	3	5	1	92
Superdrug 1	Dudley	OSC	D	72	78	5	5	5	3	4	0	3	4	4	4	4	3	5	3	4	4	3	3	4	2	92
Superdrug 2	Sheffield	OSC	D	69	75	3	5	4	3	5	0	4	4	4	5	4	5	3	3	4	2	4	1	4	2	92
Superdrug 3	Gillingham	SC	D	66	68	4	5	4	4	4	1	4	4	4	4	4	4	2	3	3	2	4	1	3	2	97
Superdrug 4	Chatham	SC	D	64	70	3	3	4	3	4	0	4	4	4	4	4	3	3	3	2	4	3	4	4	2	92
Superdrug 5	Basildon	SC	D	63	68	3	3	2	3	4	0	4	4	4	4	4	4	4	3	3	1	4	3	4	2	92
Superdrug 6	Thurrock	OSC	D	69	75	4	5	5	3	4	0	4	4	4	4	4	4	4	3	3	1	4	3	4	2	92
Superdrug 7	Harrow	HS	D	62	67	3	2	3	3	4	0	3	4	4	4	4	4	3	4	3	3	3	3	3	2	92
Tesco 1	Harrow	HS	S	51	62	1	5	0	0	5	0	5	5	2	3	4	5	2	5	2	1	1	1	3	1	82
Tesco 2	Aylesbury	OOT	S	57	62	1	5	4	3	4	0	4	5	4	3	4	5	3	3	2	1	1	1	3	1	92
Tesco 3	Rotherham	HS	S	44	48	3	5	1	1	3	0	4	4	2	2	3	3	2	3	1	1	1	3	1	1	92
Tesco 4	Amersham	OOT	S	58	63	2	5	5	4	5	0	5	4	3	2	4	5	2	4	2	1	1	1	2	1	92
Tesco 5	Romford	OOT	S	47	57	1	5	0	0	5	0	4	5	2	2	4	4	2	3	1	1	1	3	3	1	82
Tesco 6	Basildon	OOT	S	41	50	1	5	0	0	2	0	4	1	2	2	3	5	3	3	1	1	1	3	3	1	82
Tesco 7	Sutton	HS	S	47	51	2	3	3	1	3	0	3	3	4	2	3	4	2	4	3	2	1	1	2	1	92
Tudor Williams	New Malden	HS	ID	62	64	3	2	3	3	3	4	3	3	4	2	3	4	2	4	3	2	1	1	2	2	97

Failed applicants analysis

Failed applicant

Andrews	London	HS	IC	53	55	3	3	4	3	4	4	2	2	2	2	2	3	4	3	3	1	1	3	3	1	97
Bennets	Derby	HS	ID	37	74	3	3	4	3	4	4	4	3	0	0	4	5	0	0	0	0	0	0	0	0	50
Bodycare	Liverpool	HS	IC	50	57	3	3	2	3	3	0	3	3	2	4	3	3	2	4	2	0	2	3	3	2	87
Calto	London	NH	IC	46	47	3	2	1	1	3	2	3	3	2	2	2	3	2	3	2	1	4	3	3	1	97
C'est Moi	Leeds	HS	BS	72	78	3	4	4	3	4	0	4	3	5	4	5	5	4	4	4	3	5	2	5	1	92
Chameleon	Coventry	HS	MW	35	70	3	3	3	3	4	4	3	4	0	0	4	4	0	0	0	0	0	0	0	0	50
Didlco	Mitcham	HS	IC	52	54	3	3	3	2	3	3	3	3	3	2	3	4	2	2	3	1	2	3	3	1	97
G W Taylor	Ilkinston	HS	IC	60	65	3	4	2	2	3	3	4	4	4	2	4	4	3	3	3	0	1	4	5	2	92
J A Hainstock	Farnham	HS	IC	39	40	3	3	2	2	2	2	2	1	3	1	1	1	1	3	2	1	1	4	3	1	97
Jerseylodge	London	HS	IC	59	61	3	2	3	3	3	3	4	3	4	2	4	5	3	2	3	2	1	4	4	1	97
Kents Chemist	Croydon	HS	IC	47	48	3	2	2	1	3	2	3	3	3	2	3	4	2	3	2	1	1	3	3	1	97
MacKenzie	Edgware	HS	IC	53	55	3	4	2	1	3	2	4	3	4	2	3	3	2	2	3	1	2	4	4	1	97
Roses	London	HS	IDS	34	37	3	1	1	1	2	0	2	2	2	2	2	2	2	2	1	1	1	3	3	1	92
Sherlock	London	HS	IC	55	57	3	1	3	4	4	1	3	3	4	2	3	3	4	3	3	1	3	3	3	1	97
Superdrug	Epsom	SC	D	70	76	4	4	4	3	4	0	4	4	4	4	4	5	3	3	4	3	4	3	4	2	92
Tesco	New Malden	OOT	S	52	63	1	5	0	0	4	0	4	5	4	3	4	5	3	3	2	1	1	3	3	1	82
Westway	E Acton	NH	IC	42	43	1	1	1	1	3	2	3	3	3	2	3	3	2	2	2	1	2	3	3	1	97
Yeartiger	London	NH	IC	51	53	3	4	3	3	3	2	2	2	4	2	2	3	2	3	3	1	1	4	3	1	97

*For a guide to the abbreviations used in these columns, see the end of Annex 1.

Qualitative analysis

Multiple department stores

14. Verdict found multiple department stores to be very variable in standard. It rated the newer stores highly but the older outlets, although of a reasonably high standard, had much lower key displays of fine fragrances. Verdict found the Debenhams stores it visited to be very good, and the most consistent of the major multiple department stores in qualitative terms. Store ambience was particularly good, especially flooring, and most of the stores had high-tech counter displays located very prominently in-store, by the main entrance. Staff seemed very knowledgeable and were immaculately attired.

15. Verdict found that fine fragrance departments in some of the stores were positioned near the rear which made them a little more difficult to find. In some stores Verdict also noted that the men's fragrance department allowed some self-service purchases to be made. Some of the fragrance departments Verdict visited were described by it as conservative, not too exciting but very consistent and solid, with displays in rather unimaginative glass cabinets. Verdict found that in a few of the department stores it visited the stores and perfume departments were dingy, dull and depressing. Testers were badly maintained and often empty or broken. The offer and way in which it was presented was rated poor by Verdict.

Independent department stores

16. The quality of presentation and decoration in the independent department stores visited by Verdict were generally poorer than the multiple department stores. Typical comments made by Verdict included:

- the perfume area was rather cluttered, was positioned next to the front door, and consisted of one island counter which featured vertical perfume displays;
- staff were impressive, knowledgeable and helpful;
- the ambience was found to be dowdy and rather depressing;
- fixtures and fittings were very low tech and rather functional;
- the ambience was up-market with new and very attractive fixtures and display cabinets;
- the store was poorly located;
- the store was positioned up-market but was nevertheless rather cluttered;
- a long-established independent department store and while, like so many outlets of this ilk, it was old fashioned and rather worn out, the perfumery department was fitted out to a very high standard with excellent linkage between it and the adjacent cosmetics department, and point-of-sale material was used particularly well;
- the range was quite limited and lacked the kind of product authority usually found in department stores;
- perfumery was not very easy to find once inside the store;
- the perfume area was very large, and was recently refurbished and fitted out to a very high standard; and
- the perfumery department was very extensive but access was very limited, and although customers could see the merchandise on offer, the fact that it was mostly in enclosed cabinets and behind counters made it very inaccessible.

Duty-free outlets

17. Across a broad range of qualitative criteria Verdict generally rated the duty-free outlets it visited very highly. The stores were very clean, had high-tech displays and top-quality staff. The ratio of staff to floor space was particularly good, although the shops nevertheless offered a high degree of self-service. However, in a few stores the merchandise displays and the general ambience were rather more basic than in the other duty-free stores. In one store Verdict found that product range was narrow and had been augmented with many trinkets.

Multiple chemists and drugstores

18. Verdict found these stores to be very clean and bright with a good standard of decor and shop fit without being flashy. In one chain of multiple chemists the fine fragrances were usually arranged in cabinets along the side walls of the store, staff were smartly dressed with separate uniforms to set them apart from the rest of the store, and there was a good ratio of staff to space. However, in some of the stores the testers were hidden away behind promotional material which severely limited customer access to them.

19. Verdict found that the fine fragrance displays in the stores of another chain of multiple chemists were very variable. In one of its stores the presentation was rated by Verdict as outstanding, with luxury carpeting, reproduction furniture and wooden fixtures (with classical music to reinforce the up-market ambience). Verdict rated this the best fitted store in the survey, apart from Harrods. But most of the other of this multiple chemist's outlets visited by Verdict were less highly rated, with unattended displays, sometimes in locked glass cabinets together with the testers.

20. In the stores of a chain of multiple drugstores visited by Verdict, the fragrances were usually positioned at the back of the store. Displays were in what Verdict described as attractive glass-fronted cabinets with special lighting. Most were promoted with revolving triangular displays showing lists of brands available, prices and attractive promotional photos. The fine fragrance area was visually differentiated from the rest of the store, and the fittings were of a high standard, as was the special lighting. The range of fine fragrances was quite good but stores did not always have all items in stock. Staff were dressed smartly and differently from assistants elsewhere in the store, and seemed knowledgeable and presentable.

Supermarkets

21. In the stores of one of the supermarket chains visited by Verdict, fine fragrances were only available at the in-store pharmacies, where a limited range was offered from glass cabinets positioned at the front of the pharmacy counter. The perfumes were accessible to consumers and located in a logical part of the store, but displays were low key and probably difficult to notice by shoppers not visiting the pharmacy. Price promotions were very understated.

22. In the stores of another supermarket chain, Verdict found what it considered to be a less than wholehearted commitment to selling fine fragrances. In most of the stores visited by Verdict, the fine fragrances were sold from the tobacco kiosk, and in one of the stores they were kept in a locked cabinet at the customer services counter. Promotion of the availability of perfumes was found to be poor, with most outlets using an 'A' board and offering leaflets. In one store there was a sign in the toiletries department directing customers for fragrances to the tobacco kiosk. A limited range of fine fragrances was offered at 30 per cent discounts. The offer was weak and very low key. Unless she/he went specifically to the counter it was unlikely that the casual shopper would become aware of their existence.

Notes to the fieldwork survey criteria

A. External factors

1. *Location*. This refers to site location, eg primary, secondary, etc.
 Poor-Tertiary
 Not very good-Edge of high street/Secondary
 Average-Middle of high street
 Very good-Next to anchor store
 Excellent-Anchor store
2. *Parking*. Takes into account closeness to shops and safety/security, etc.
 Poor-No nearby parking
 Not very good-Fairly close
 Average-Close, but not very clean or secure
 Very Good-Close, clean and secure
 Excellent-Adjacent to shops, free, clean and secure
3. *Condition of adjoining shops*. This refers to the physical condition of the shops.
4. *Image of adjoining shops*. This refers to the adjoining stores' image in terms of their names and what type of customers they attract.
5. *Condition of shop-front*. This refers to the physical condition of the shop.
6. *Window display*. The display does not have to include perfumes, but refers to its attractiveness, cleanliness and design input.

B. Internal factors

7. *Flooring*. This refers to the condition of the floor covering as opposed to the material used (ie a carpet is not better than lino if it is in the same physical condition).
8. *Ceiling*. This again refers to condition rather than type.
9. *Furnishings/display cabinet/shelves*. This refers to the functionality and design element.
 Poor-Non existent
 Not very good-General purpose/functional
 Average
 Very good-Customized
 Excellent-High design element
10. *Lighting*. This refers to the functionality and design element. See above (furnishings).
11. *General decor*. This takes into account the age of the decoration as well as its condition.
12. *Cleanliness and tidiness*.

C. Staff

This refers only to the staff manning the perfume counters, whether dedicated staff or not.

13. *Quality*. Their general appearance and quality of their presence.

14. *Number of staff to space.* This is purely a staff/space ratio assessment.

D. Merchandising

15. *Quality of displays.*

16. *Advertising/POS material.* This refers to the image portrayed by the displays and the identification, or not, of the brand.

17. *Product testers.*

Poor-Absent

Not very good-Badly maintained

Average

Very good

Excellent

18. *Adjacent products.* This can include more than one product.

19. *Location in store.* Being at the back of the store is not necessarily a poor position if it is well signposted, although closeness to the main entrance is more desirable.

20. *Payment points.* Either there are dedicated tills or not, there is no in between.

Check-list

NAME OF
STORE.....CODE.....

LOCATION.....

A. External factors

Notes

1. *Location*

- Poor
- Not very good
- Average
- Very good
- Excellent

2. *Parking*

- Poor
- Not very good
- Average
- Very good
- Excellent

3. *Condition of adjoining shops*

- Poor
- Not very good
- Average
- Very good
- Excellent

4. *Image of adjoining shops*

- Poor
- Not very good
- Average
- Very good
- Excellent

5. *Condition of shop-front*

- Poor
- Not very good
- Average
- Very good
- Excellent

6. *Window display*

- Poor
- Not very good
- Average
- Very good
- Excellent

B. Internal factors

7. *Flooring*

- Poor
- Not very good
- Average
- Very good
- Excellent

8. *Ceiling*

- Poor
- Not very good
- Average
- Very good
- Excellent

9. *Furnishings/display cabinet/shelves*

- Non-existent
- General purpose/functional
- Average
- Customised/designed specifically for fragrance
- High design/hi-tec

10. *Lighting*

- Non-existent
- General purpose/functional
- Average
- Customised/designed specifically for fragrance
- High design/hi-tec

11. *General decor*

- Poor
- Not very good
- Average
- Very good
- Excellent

12. *Cleanliness/tidiness*

- Poor
- Not very good
- Average
- Very good
- Excellent

C. Staff

13. *Quality (general quality/appearance)*

- Poor
- Not very good
- Average
- Very good
- Excellent

14. *Number/strength/ratio of staff:space*

- Poor
- Not very good
- Average
- Very good
- Excellent

D. Merchandising

15. *Quality of displays*

- Poor
- Not very good
- Average
- Very good
- Excellent

16. *Advertising/POS material*

- Poor
- Not very good
- Average
- Very good
- Excellent

17. *Product testers*

- Absent
- Poor, badly maintained
- Average
- Very good
- Excellent

18. *Adjacent products*

- Beauty products
- Fashion
- Fashion accessories
- Jewellery
- Other items

19. *Location in store*

- Difficult to find badly signed
- Remote, but signed posted
- Average prominence
- Prominent, well identified
- Front of store/by main entrance

20. *Payment points*

- No specific fragrance payment point
- Dedicated fragrance payment point

Guide to abbreviations

Type of location-Code A

- A = Airport
- HS = High street
- NH = Neighbourhood
- OOT = Out-of-town
- OSC = Out-of-town shopping centre
- SC = Shopping centre

Type of Retailer-Code B

- BS = Beauty salon
- C = Chemist
- D = Drugstore
- DF = Duty-free shop
- DS = Department store
- IC = Independent chemist
- ID = Independent department store
- MW = Menswear shop
- PS = Perfume specialist
- S = Supermarket

Survey of pharmacies and drugstores by Research International Limited

Research objectives

1. The main objective of the research was to provide quantitative data relating to fine fragrance products from a large sample of pharmacies and drugstores throughout the UK. The specific objectives were to:

- collect background information about the retailers (eg current turnover);
- assess reactions towards fine fragrance products;
- determine the proportion of independent pharmacies and drugstores which currently stock fine fragrance products, and ascertain the reasons why they do/do not;
- evaluate to what extent grey-market supplies are being used;
- identify barriers to stocking fine fragrance products;
- where appropriate, examine reasons for no longer stocking fine fragrance products; and
- look at the cost implications of stocking fine fragrance products.

Method and sample structure

2. The research was carried out by means of a postal survey among independent pharmacists and drugstores. 'Independent' was taken to mean either a sole trader or one of a chain which had fewer than ten outlets.

3. The sample was purchased from A C Nielsen. The sample was selected to reflect the overall proportions of pharmacists and drugstores (92 per cent and 8 per cent respectively). RI therefore sent out a total of 3,000 questionnaires split between pharmacists and drugstores as follows:

Pharmacists	2,750
Drugstores	250

Because of the postal methodology RI could not control the profile of the achieved sample. It therefore weighted the profile back to the 92 per cent and 8 per cent proportions mentioned above.

4. Each questionnaire mailed out was accompanied by a covering letter and a reply-paid envelope. Questionnaires were addressed to the senior pharmacist or store manager. A reminder letter was sent two weeks after the first mailing in order to boost the response rate. The questionnaire was designed in close consultation with the MMC.

5. The first mailing took place during the week commencing 8 March 1993. The reminder letter was sent during the week commencing 29 March 1993. RI received a total of 995 returned questionnaires, giving a response rate of 33 per cent. Two bound copies of the data tabulations were supplied to the MMC on 8 April 1993.

Sample profile

6. Table 1 shows the profile of the sample, both weighted and unweighted. It shows that the proportion of drugstores has been up-weighted from 4 per cent of the total sample to 8 per cent. Even so, the results for drugstores must be treated with some caution as even the weighted base is still relatively small (80). The table also shows that RI achieved a wide geographic spread, and that seven out of ten of the outlets that returned a questionnaire were relatively small shops with turnover under £40,000 a year.

TABLE 1 **Sample profile**

	<i>per cent</i>	
	<i>Weighted (995)</i>	<i>Unweighted (995)</i>
<i>Base: All</i>		
<i>Type of outlet</i>		
Drugstore	8	4
Pharmacist	92	96
<i>Turnover in a typical year</i>		
Below £40,000	71	72
Above £40,000	29	28
<i>Region</i>		
Scotland and Northern Ireland	10	10
North	6	6
North-West	13	12
Yorkshire and Humberside	9	9
East Midlands	7	6
West Midlands	8	8
Wales	6	7
East Anglia	4	4
South-West	9	9
London (within M25)	15	15
Other South-East	10	10
Question not answered	3	3

Summary of findings

7. In the sample of 995 independent pharmacists and drugstores, 76 per cent currently sold fine fragrances (see Annex 1 to this appendix for a list of most of the brands stocked by the respondents to this survey). This included 78 per cent of pharmacists and 50 per cent of drugstores. Most of those currently selling fine fragrances have been doing so for several years (60 per cent for over eight years). Of the 24 per cent who currently do not sell fine fragrances, 27 per cent have done so in the past, mostly supplied by the grey market.

8. The vast majority of those currently selling fine fragrances (93 per cent) used the grey market, either for all or some of their supplies. One in three (31 per cent) used both authorized and grey-market supplies. Only 6 per cent of those returning a questionnaire obtained all their supplies direct from fine fragrance houses.

9. Those who use the grey market to obtain supplies of fine fragrance products appeared to do so because they do not sell enough of the products to justify going for full authorization (81 per cent of them have never had authorized status). Those that had been authorized in the past seemed to be on a threshold of fine fragrance sales; perhaps in the past they had sold sufficient to justify being authorized. Most had **chosen** to go back to the grey market; only 13 per cent had lost their authorization.

10. 13 per cent of grey-market sellers had applied to one of the fine fragrance houses in the past for authorization. Of these 73 per cent had been turned down. They tended to be told that there was competition too near to their outlet or that the fragrance house was not planning to expand. 78 per cent of those who had been turned down felt that the explanation given had been unreasonable.

11. 28 per cent of our sample are currently authorized fine fragrance stockists. Of these, only a quarter (24 per cent) had been accepted straight away by a fine fragrance house. 17 per cent were rejected without explanation when they first applied. The remainder either received a visit from the fine fragrance house or were asked to

make changes to their premises straight away. Two in five were asked to give their staff further training. The rest were asked to make physical improvements to their outlet. For 69 per cent of those who had gone ahead and made improvements, the work had cost less than £5,000. 5 per cent, however, had spent over £20,000.

12. Authorized stockists charged more for fine fragrance products and found them more profitable than grey-market sellers, who had a much greater tendency to discount the products. Discounting was widespread (64 per cent sometimes discount their prices); however, this was largely as a result of strong competition. 84 per cent of those who currently sell fine fragrances said that other shops in their area did so too. 40 per cent of those who faced local competition said that their competitors were charging less for fine fragrance products than they were. The authorized stockists who have sought help from fine fragrance houses to counter price-cutting by competitors have been given mostly advice and guidance rather than concrete financial assistance.

Main findings

Whether stock fine fragrances

13. Just over three-quarters of the sample (76 per cent) currently sell fine fragrances. As Table 2 shows, pharmacists are more likely than drugstores to stock fine fragrances. London is the area most likely to have drugstores and pharmacists that stock fine fragrances.

TABLE 2

<i>Base: All</i>	(995)
	%
<i>Total</i>	76
<i>Type of outlet</i>	
Pharmacist	78
Drugstore	50
<i>Region</i>	
Scotland and Northern Ireland	82
North	72
North-West	75
Yorkshire and Humberside	71
East Midlands	66
West Midlands	77
Wales	72
East Anglia	68
South-West	76
London (within M25)	91
Other South-East	70

How long stocked fine fragrances

14. Just over 60 per cent of those who sell fine fragrances have done so for eight years or more (Table 3). Only 2 per cent had only began to stock fine fragrances in the previous year.

TABLE 3

<i>Base: All who sell fine fragrances</i>	(756)
	%
Under 1 year	2
1-2 years	3
3-4 years	10
5-6 years	15
7-8 years	9
More than 8 years	61

15. In terms of the turnover generated by fine fragrance products, for three-quarters of our sample these

products produce less than £10,000 turnover each year (Table 4). Having said that, for 5 per cent of the respondents fine fragrances generated more than £40,000 in turnover annually.

TABLE 4

<i>Base: All who sell fine fragrances</i>	(756)
	%
Below £10,000	78
£10,001-£20,000	10
£20,001-£40,000	6
Over £40,000	5
Question not answered	1

16. Grey-market sellers tended to generate less turnover from fine fragrances than authorized sellers. 94 per cent of grey-market sellers in RI's sample said that fine fragrances produce less than £10,000 revenue annually, compared with 27 per cent of authorized sellers.

Profitability of fine fragrance products

17. RI went on to ask respondents whether fine fragrance products were more or less profitable to them than other non-pharmaceutical products. Opinion on this was evenly divided, as Table 5 shows.

TABLE 5

	<i>per cent</i>			
<i>Base: All who sell fine fragrances</i>	<i>Grey (472)</i>	<i>Authorized (46)</i>	<i>Both (236)</i>	<i>Total (756)</i>
A lot more profitable	6	14	11	8
Slightly more profitable	19	39	33	24
About the same	32	34	25	30
Slightly less profitable	27	6	20	24
A lot less profitable	15	7	9	12
Question not answered	0.5	0	3	1

18. There was, however, considerable difference between authorized and grey-market suppliers on this question. Authorized suppliers were much more likely than grey-market suppliers to say that fine fragrances were more profitable to them than other non-pharmaceutical goods that they sell (53 per cent versus 25 per cent). This suggests that authorized suppliers do not discount fine fragrances to the extent that grey-market suppliers do.

Discounting

19. When asked whether or not their outlet ever offered fine fragrance products for sale at a price that is below the supplier's recommended price, nearly two-thirds (64 per cent) said that they did. 78 per cent of drug-stores, as against 64 per cent of pharmacists, said that they sometimes discounted fine fragrances and, not surprisingly, those obtaining supplies through the grey market were more likely than authorized suppliers to discount fine fragrances (69 per cent versus 36 per cent). The propensity to discount did not vary according to the amount of fine fragrance products sold.

20. Those who do not discount fine fragrances products were asked why not. As Table 6 shows, nearly two out of five believed that even without a discount the profit margin is too low. A quarter believed that if they reduced the prices the quality image of the fine fragrances would be lost.

TABLE 6

<i>Base: All who do not discount prices</i>	(269)
	%
Profit margin too low	38
Cheapens the product/customer perception of quality product is related to price	26
Volume of trade too low/slow moving	14
Can't buy at low enough price to discount	13
High stockholding costs	10
Buy from wholesaler at 10 to 15% more than trade price	8
Only order in small amounts	7
Majority of competitors sell at RRP	6
Don't believe in discounting products	6
No reason given	6

Competition

21. Four-fifths of the respondents (83 per cent) said that there were other shops in their area that sell fine fragrances (Table 7).

TABLE 7

<i>Base: All who sell fine fragrances</i>	(756)
	%
Total	83
<i>Type of supply</i>	
Authorized	96
Grey	79
<i>Region</i>	
Scotland and Northern Ireland	79
North	81
North-West	86
Yorkshire and Humberside	76
East Midlands	80
West Midlands	86
Wales	79
East Anglia	71
South-West	71
London (within M25)	96
Other South-East	81

22. RI then asked those with local competition whether their competitors had been charging higher, lower, or similar prices for fine fragrances compared with them in the last six months (Table 8). Although half (50 per cent) felt that the prices charged by their competitors are about the same as theirs, two in five thought that their competitors were charging lower prices for fine fragrances. Authorized sellers were more likely than average to feel that they were being undercut by the competition (52 per cent say lower prices) and this ties in with the earlier finding that those obtaining supplies through the grey market were the most likely to be discounting.

TABLE 8

<i>Base: All with local competition</i>	(626)
	%
Higher prices than mine	9
Lower than mine	40
About the same as mine	50
Question not answered	1

23. Those who felt that they had been undercut by their local competitors were asked what effect this had had

on their outlet. For a large majority (88 per cent) the result of price-cutting by the competition had been reduced sales. Only one in ten said that price reductions by their competitors had had no effect on their outlet. There was no variation on this according to the supply method; grey-market and authorized sellers were equally likely to respond that sales have gone down.

24. Those who claimed to have suffered reduced sales were then asked what action they had taken to combat the situation. As Table 9 shows, two in five (43 per cent) took no action at all and just over a third (37 per cent) cut their prices too. Six out of the 20 authorized sellers (28 per cent) sought help from their suppliers. Eight (38 per cent) introduced special offers or gifts. Grey-market sellers were much more likely than authorized sellers to react by cutting their own prices (35 per cent versus 14 per cent). Grey-market sellers were also much more likely than authorized sellers to do nothing at all (57 per cent versus 30 per cent).

TABLE 9

<i>Base: All whose sales decreased</i>	(224)
	%
No steps were taken/did nothing	43
Also discounted prices	37
Sought help from suppliers	13
Introduced special offers/gifts	12
Increased advertising	9
Question not answered	1

25. Only 30 shops sought help from suppliers to combat competitive price-cutting. RI asked them what sort of help was given. As Table 10 shows, the help given by suppliers seems more likely to be in the form of advice or guidance than concrete financial assistance.

TABLE 10

<i>Base: All who sought help from supplier</i>	(30)
	%
Personal visit from a representative	42
Advice and guidance	26
Financial help to promote products	13
Other	13
Question not answered	29

Supply channels

26. RI asked respondents to say how they obtained supplies of fine fragrances. They could be from 'authorized' suppliers (eg fine fragrance houses), from 'grey-market' suppliers (in other words obtaining non-authorized stocks), or both (obtaining some stocks as an authorized seller, others via the grey market). More than nine out of ten of those who sold fine fragrances currently used the grey market for all or some of their fine fragrance supplies (Table 11). Only 6 per cent obtained all their supplies through authorized channels. The importance of 'grey-market only' retailers was higher (at 70 to 80 per cent) in the Midlands, Northern England and Wales, but with most other regions follow the national pattern. London stood out as being unusual with a higher incidence of authorized retailers than average (Table 12).

TABLE 11

<i>Base: All selling fine fragrances</i>	(756)
	%
Authorized only	6
Grey market only	62
Both	31

TABLE 12

<i>Base: All selling fine fragrances in London</i>	(135)
	%
Authorized only	15
Grey Market only	35
Both	50

27. This fits with the large number of expensive stores in London that are likely to be authorized sellers. Further evidence lies with the high proportion of shops with high annual turnover from fine fragrances (again likely to be the big London stores) operating as authorized suppliers. 34 per cent of shops turning over more than £40,000 from fine fragrances obtain only authorized supplies (compared with the overall average of 6 per cent).

28. At the opposite end of the scale the grey market predominates. 98 per cent of shops whose turnover from fine fragrances is less than £10,000 use the grey market to obtain all or some of their supplies.

29. RI asked those retailers who obtain supplies from both grey-market and authorized sources what proportion they obtained from fine fragrance houses (ie authorized). The average was 42 per cent of supplies obtained, but this went up to 69 per cent among shops whose fine fragrance turnover was over £40,000 annually.

Grey-market retailers

30. Those outlets which obtained their supplies of fine fragrances from grey market suppliers were asked why they did not obtain the products from fine fragrance houses. From a sample of the responses, the main reasons were as follows:

- could not afford to keep whole range specified by the house;
- fine fragrance turnover too low; and
- too expensive and too restricting.

31. The vast majority (81 per cent) of those currently using grey-market supplies have never had authorized status. Only 13 per cent have been authorized in the past and 6 per cent did not answer this question.

32. Fifty-seven of the 60 outlets which used to be authorized sellers but now worked exclusively within the grey market had turnovers of less than £10,000 a year from fine fragrances. This suggests that their turnover was once higher-high enough to obtain authorization-but was now too low either to qualify for it or to justify it.

33. RI then asked grey-market retailers who had never in the past been authorized, if they had ever applied for authorization to sell fine fragrances. Just over one in ten had applied (13 per cent), including 20 per cent of outlets in the East Midlands and 24 per cent of outlets in London.

34. RI asked the 87 per cent which had never applied for authorization why they had never applied (see Table 13). Most of the reasons given related to the amount of fine fragrance products sold by the outlets. Either they did not sell enough fine fragrance products to justify going for authorization, with all that this involves, or they did not sell enough to meet the fragrance houses' requirements.

TABLE 13

<i>Base: All who have never applied for authorization</i>	(332) %
Turnover too small to be supplied directly	23
Insufficient turnover to justify stock investment/capital outlay	17
Do not need to stock whole range/just pick best-sellers	16
Prefer to buy small quantities across many ranges	11
Supplies are readily available/can get what I need elsewhere	10
Lack of space/outlet too small to stock all the merchandise associated with agency	10
Poor demand/small local market	8
I do not portray image required/I have not got the required facilities	7
Trade is seasonal/stock as gift lines at Christmas	6
Minimum order value too high	6
No reason given	9

35. RI also asked grey-market retailers who were once authorized why they were no longer authorized to sell fine fragrance products (see Table 14). Half of those who are no longer authorized to sell fine fragrance products went to the grey market by choice. Only one in ten (13 per cent) said that they lost their authorization, although a quarter did not answer this question.

TABLE 14

<i>Base: All no longer authorized to sell fine fragrance products</i>	(60) %
I lost my authorization	13
I decided to go to grey-market suppliers instead	49
Other	16
Question not answered	22

36. There were 50 outlets in the RI sample which had applied for authorization from fine fragrance houses. Thirty-six of these (72 per cent) had been turned down. From a sample of responses, they tended to have been told either that there were other authorized distributors too near to their outlet, or that the fragrance houses were not planning to expand any further. Thirty of the 36 turned down were pharmacists (as against drugstores).

37. There was strong feeling from the 36 respondents whose applications had been turned down. Table 15 shows their responses when asked if they thought the reasons for rejecting their application were reasonable or unreasonable.

TABLE 15

<i>Base: All whose application for authorization turned down</i>	(36) %
Very reasonable	0
Fairly reasonable	22
Fairly unreasonable	22
Very unreasonable	56

38. About half of those who only use the grey market now but who have either been authorized in the past or applied for authorization say that being authorized to sell fine fragrances would help their business. However, only 4 per cent (5 out of 110) say they plan to reapply. Presumably the rest are perfectly happy using grey-market supplies, or have been turned down in the past and feel it is unlikely that their application would be accepted without making changes to their shop.

Authorized sellers

39. 28 per cent of the sample were currently authorized sellers of fine fragrances. RI asked them how the fine fragrance houses responded when they first applied to become an authorized stockist. 17 per cent said that they were refused without explanation (Table 16). The remainder were either accepted straight away or the fine

fragrance house visited their premises and/or asked them to make some changes before giving authorization.

TABLE 16

<i>Base: All authorized sellers</i>	<i>(282)</i>
	%
They sent someone to look at my premises	49
They accepted my application straight away	24
They refused my application without explanation	17
They asked me to make various changes to my shop in order to get authorization	15
Question not answered	15

40. The changes retailers were asked to make are shown in Table 17. Apart from the two in five (41 per cent) who were asked to train their existing staff to a higher standard, all the other requested changes were to do with the physical layout and design of the shop.

TABLE 17

<i>Base: All asked to make changes or received visit from fine fragrance house</i>	<i>(158)</i>
	%
Had to train existing staff	41
Had to improve the counter	35
Had to improve quality of window displays	26
Had to purchase new shop fittings	17
Had to improve/change internal decor	13
Had to upgrade lighting	13
Had to improve standard of overall maintenance	9
Had to improve floor coverings	6
Had to increase size of windows	3
None of these	44

41. RI then went on to ask those that had made improvements to their shop how much the improvements had cost. For most respondents the improvements cost less than £5,000 (Table 18). A few outlets (eight altogether), however, had invested over £10,000 in upgrading their premises in order to stock fine fragrances.

TABLE 18

<i>Base: All who made improvements</i>	<i>(89)</i>
	%
Less than £1,000	44
£1,001-£5,000	25
£5,001-£10,000	11
£10,001-£20,000	3
More than £20,000	5
Question not answered	12

42. RI also asked respondents to tell us which fine fragrance houses had ever refused to give them authorization to sell their products (see list in Table 19).

TABLE 19

<i>Base: All authorized sellers</i>	<i>(282)</i>
	<i>%</i>
Chanel	19
Estée Lauder	17
YSL	12
Lancôme	11
Dior	8
Aramis	7
Klein	7
Arden	4
Cacharel	3
Giorgio	3
Guerlain	3
Ricci	3
Givenchy	3
Paco Rabanne	3
Guy Laroche	2
Rochas	2
Clinique	2
Never been refused	50
Question not answered	13

43. All the others listed were mentioned only by 1 per cent or fewer. As with the grey market suppliers who had had applications for authorization turned down, there was a fairly high degree of resentment among authorized sellers about being turned down by a fine fragrance house. 61 per cent felt that the decision was unreasonable (Table 20).

TABLE 20

<i>Base: All authorized sellers who have ever been refused authorization</i>	<i>(142)</i>
	<i>%</i>
Very reasonable	4
Fairly reasonable	30
Fairly unreasonable	30
Very unreasonable	31
Question not answered	6

Non-sellers of fine fragrances

44. In our sample there were 24 per cent who did not currently sell fine fragrances. Of these, 27 per cent had sold fine fragrance products in the past (and these were more likely to be pharmacists than drugstores). Most of those who had sold fine fragrances in the past had done so for some time (Table 21).

TABLE 21

<i>Base: All not selling fine fragrances now but have done in past</i>	<i>(65)</i>
	<i>%</i>
Under 1 year	17
1-2 years	25
3-4 years	31
5-6 years	6
7-8 years	3
More than 8 years	15
Question not answered	3

45. When RI asked how those retailers had obtained fine fragrance products in the past, 78 per cent said exclusively through the grey market. Only 12 per cent had obtained fine fragrance products only from the

fragrance houses themselves. This backs up earlier evidence that at the margin some retailers drifted in and out of selling fine fragrances and when they were in a phase of selling them they tended to obtain them from the grey market.

46. RI asked this group that did not currently sell fine fragrances whether or not they currently wished to sell them (Table 22).

TABLE 22

<i>Base: All not selling fine fragrances</i>	<i>(239)</i> %
Yes	11
No	81
No answer	8

47. Without exception, those wishing to sell fine fragrances were the biggest retailers (with annual turnover over £40,000). However, when RI asked these 26 respondents how likely they were actually to apply for authorization to sell fragrances, only ten said that they were likely to do so (Table 23).

TABLE 23

<i>Base: All who wish to sell fine fragrances</i>	<i>(26)</i> %
Very likely	7
Fairly likely	30
Not very likely	52
Not at all likely	7
Question not answered	4

Current brands sold

Those currently selling fine fragrance products were asked which brands they sold at the moment. Their answers are given in the table below.

Base: All currently selling at least one fragrance (756)

	%		%
Chanel	88	Azzora	19
Yves Saint Laurent	88	Jean Patou	19
Paco Rabanne	86	Antonio Puig	19
Aramis	85	Hermès	16
Christian Dior	84	Davidoff	15
Estée Lauder	83	Joop!	15
Givenchy	81	Montana	15
Cacharel	77	Gres	14
Nina Ricci	77	Guess	11
Worth	76	Gianni Versace	10
Boss	72	Salvador Dalí	8
Max Factor	71	Nina Cerruti	7
Giorgio Beverly Hills	70	Kenzo	6
Rochas	67	Bourjois	5
Calvin Klein	58	Laura Ashley	5
Giorgio Armani	54	Jaguar	4
Gucci	54	Geoffrey Beene	4
Paloma Picasso	51	Escada	4
Oscar de la Renta	50	Omar Sharif	2
Elizabeth Arden	50	Ungaro	2
Carven	49	Diana de Silva	2
Guerlain	48	Caroline Herrera	2
Lancôme	47	Chopard	2
Guy Laroche	46	Lalique	1
Dunhill	37	Loewe	1
Houbigant	36	Shiseido	1
Fendi	33	Parlux	1
Ralph Lauren	33	Kanebo	1
Roger & Gallet	27	Brigade	1
Alyssa Ashley	27	La Prairie	1
Benetton	26	Boucheron	1
Van Cleef and Arpels	25	Jean Louis Scherrer	1

This is Exhibit H referred to in the
Affidavit of Jeanie Lee
Sworn before me at Richmond, British Columbia
this 9th day of March A.D. 2007



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FRANCOISE

GIVENCHY

HUGO BOSS

ROOTS

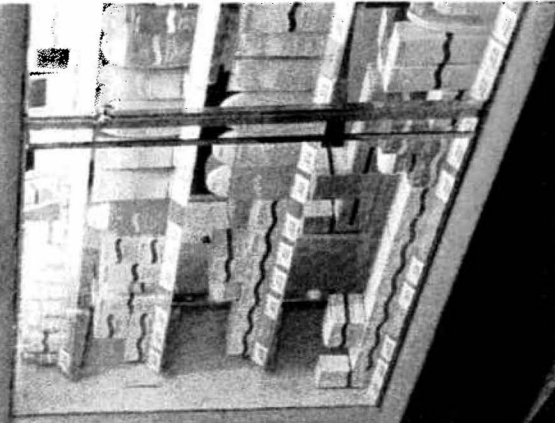
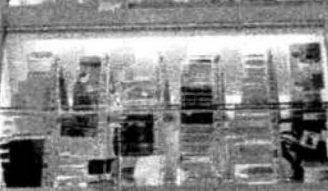
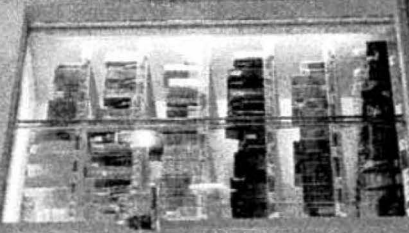
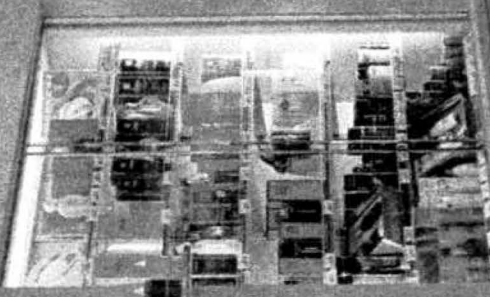
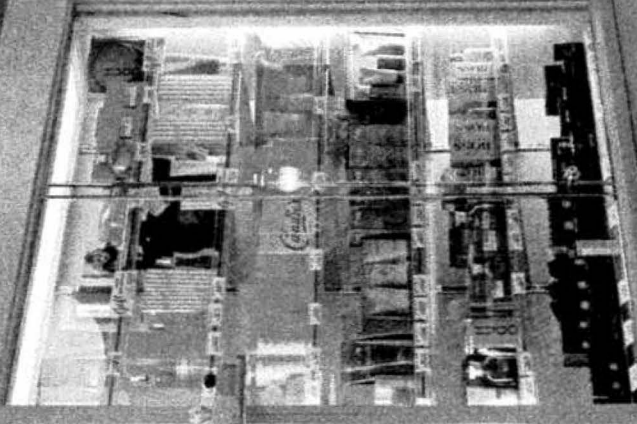
Calvin Klein

CHANEL PARIS

Deodorant

SUNG ALFREDIS

Elizabeth Arden



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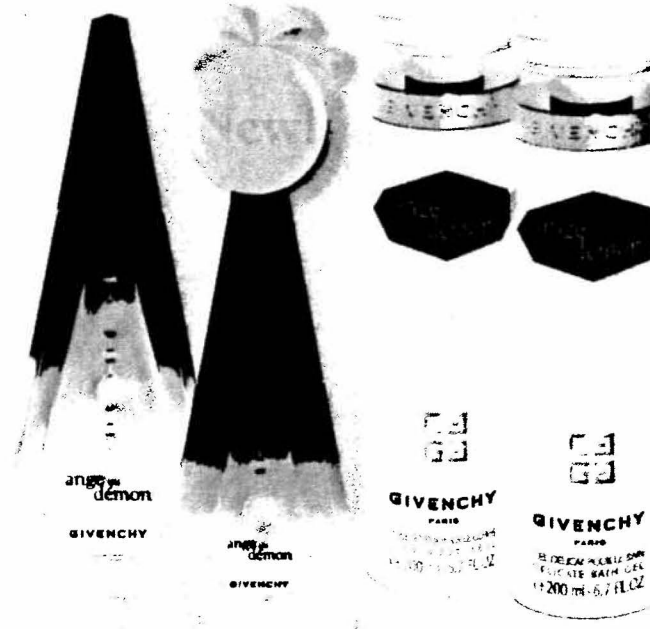


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Cosmetics

GIVENCHY



Givenchy Gift**

With a minimum \$85 purchase from the Givenchy women's fragrance collection (excluding ange ou démon), receive this Deluxe Atomizer Set.

** Gifts not applicable with the purchase of sets. One gift per customer purchase. Limited quantities.

New!
ange ou démon...the eternal mystery of seduction.
she alone knows
Prices from

42^{00*} to 112^{00*}



Vera Wang Princess
Fragrance Collection
Prices from

45^{00*} to 98^{00*}



Euphoria for Men
Fragrance Collection
by Calvin Klein
Prices from

28^{00*} to 85^{00*}



64 locations across Western Canada!
40 British Columbia locations
to serve you.

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This catalogue took many months to prepare, so we've marked every price with an asterisk (), indicating they were our best price at the time of printing only. Current prices in our stores may be even lower. We reserve the right to limit quantities. Sorry, rainchecks on flyer merchandise may not be available. Not all items available at all locations due to space limitations. Coupon and rebate values will be deducted from prices after tax has been added. Produced and printed in Canada.

Our Guarantee
Your satisfaction is guaranteed at LONDON DRUGS. If any purchase isn't to your complete satisfaction, return it to any of our locations within 15 days in the original packaged condition with proof of purchase for a complete refund, exchange or adjustment.

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RENA A. ACKERMAN
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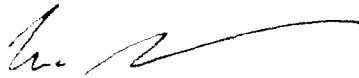


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Jeanie Lee

From: Jeanie Lee
Sent: January 10, 2007 2:47 PM
To: Judi Santos
Subject: RE: Agenda request - Jan. 18th meeting at London Drugs

thank you.

Jeanie Lee

Merchandise Manager Cosmetics
London Drugs Limited
Email - jlee@londondrugs.com
Tel - (604) 272-7609
Fax - (604) 272-7579

From: Judi Santos
Sent: January 10, 2007 1:18 PM
To: Jeanie Lee
Subject: FW: Agenda request - Jan. 18th meeting at London Drugs

Here you go.....

*Judi Santos
London Drugs Limited
One Hour Lab & Cosmetic Divisions
(604) 272-7597 Direct
(604) 272-7157 Fax
jsantos@londondrugs.com*

From: erin.donohue@lvmhcapc.com [mailto:erin.donohue@lvmhcapc.com]
Sent: January 10, 2007 1:10 PM
To: Judi Santos
Subject: Re: Agenda request - Jan. 18th meeting at London Drugs

Hello Judi,

Please let them know that I would like to review the business and the future direction for Givenchy in Canada.

Thank you,
Erin

Erin Donohue
VP & GM Parfums Givenchy Canada
416-929-3499, ext. 105
416-929-3490 (fax)

03/02/07

"Judi Santos" <jsantos@londondrugs.com>

To <erin.donohue@lvmhcapc.com>

cc

01/09/2007 12:55 PM

Subject Agenda request - Jan. 18th meeting at London Drugs

Good Morning Erin:

On behalf of Jeanie Lee, I am requesting an agenda for the meeting you have with Wynne Powell and Jeanie Lee on January 18th.

Please reply to my request as soon as possible. Thank you kindly,

Judi Santos
London Drugs Limited
One Hour Lab & Cosmetic Divisions
(604) 272-7597 Direct
(604) 272-7157 Fax
jsantos@londondrugs.com

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January 23, 2007

Erin Donohue
Vice President & GM of Parfums Givenchy Canada
Parfums Givenchy Canada
2 Bloor Street West, Suite 1802
Toronto, Ontario
M4W 3E2

Dear Ms. Donohue,

We write to confirm the recent visit of Ms. Erin Donohue, Vice President and General Manager of Parfums Givenchy Canada, to our offices on January 18, 2007. At that meeting she advised us that, effective immediately, you are going to cease doing business with us.

As you can imagine, we were completely shocked at this approach, as we have been a direct account of Givenchy since August 1996. Ms. Donohue gave us further information: that your company is in financial difficulty and therefore cannot support retailers such as ourselves that operate in only 4 Canadian provinces. Ms. Donohue then explained further, saying that the administrative costs of dealing with "regional" retailers are higher than dealing with "national" retailers. We note that on your web that you apparently continue to support one non-national retailer Shifeon who operates only two stores. This seems to negate Ms. Donohue's concept that you can only deal with national retailers.

During the discussion which ensued, we reminded her that the most recent market surveys confirm that London Drugs is #1 in Western Canada in cosmetics sales. As a "regional retailer" our volumes are greater than those of many "national retailers".

We asked her a question whether you would continue to supply Shoppers Drug Mart and her answer was yes.

We pointed out to her that the cost and complexity of dealing with the Shoppers Drug Mart system can be far greater than that of dealing with London Drugs. In addition, we offered to work out an administrative system which would address any cost concerns and which would allow us to maintain our 11 year relationship. This offer was declined.

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Canada LtdLVMH Moët Hennessy
Louis Vuitton.¶
165 Carlton Street22. avenue
Montaigne

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The effect on us of such a callous approach by you to doing business with such a long term partner is devastating. As a family group of companies prospering over the last 103 years in Western Canada, we believe in long term positive relationships. We disagree totally with your scheme and ask that you reconsider, not only because of our long-standing relationship and leading sales position in Western Canada, but also because the reasons that Ms. Donohue gave for your scheme simply do not make any sense.

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Your actions significantly reduce competition for your product in the retail sales market. In addition, we understand that both you and Sephora are part of the same corporate group and that Sephora will be opening retail stores in Western Canada in the near future.

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Given these facts, and the fact that the reasons for your scheme, as expressed to us by Ms. Donohue, do not appear to make any sense, we are quickly led to the conclusion that the real reasoning behind your termination of our relationship is to eliminate competition and limit retail choice to the detriment of the Canadian public.

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The negative effect of your new scheme is that if you are unable to correct this situation, we have no option but to pursue all legal and business avenues available to us to protect ourselves, the #1 cosmetics retailer in Western Canada.

We await your reply by return.

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Yours truly,

LONDON DRUGS LIMITED

G.W. (Wynne) Powell
President & Chief Operating Officer

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¶
Wynne Powell ¶
President

cc. Bernard Arnault, Chairman & CEO, LVMH
Alain Lorenzo, CEO, Parfums Givenchy France
Pamela Baxter, President, North America of Parfums Givenchy

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Competition Tribunal File No. _____

COMPETITION TRIBUNAL

BETWEEN:

LONDON DRUGS LIMITED

APPLICANT

AND:

PARFUMS GIVENCHY CANADA LTD.

RESPONDENT

AFFIDAVIT OF JEANIE LEE

BULL, HOUSSER & TUPPER LLP

Barristers & Solicitors

3000 - 1055 West Georgia Street

Vancouver, B.C. V6E 3R3

Telephone: (604) 687-6575

Facsimile: (604) 641-4949

Attention: Gwendoline Allison

GCA/dma

File# 123713