



Birkin Bag Suit Pits Antitrust Law Against Desire for Exclusivity

Published by ***Bloomberg Law***

April 1, 2024

Intellectual Property Partner Karen Artz Ash and Associate Cynthia Martens authored an article for *Bloomberg Law* that examines the recent case, *Cavalleri v. Hermès International*, brought against Hermès by two California residents. The plaintiffs allege that the luxury brand violates the Sherman Antitrust Act and the California Cartwright Act, the state's law prohibiting anticompetitive activity, by requiring customers to buy other company products before they can purchase a Birkin bag, which has now become a status symbol that can cost up to tens of thousands of dollars.

Karen and Cynthia noted that "the desire for an exclusive experience transcends generations." In Ancient Rome, for instance, only nobility could afford to wear purple because it was produced using sea snails through a labor-intensive and expensive process. "By using its trademark to sell exclusivity, Hermès has artfully capitalized on this aspirational feeling," the authors said, adding that the brand champions its high-quality products as made by hand in France, sometimes by the same individual from start to finish, creating a "story of specialness" and "sense of exclusivity" for their products. Additionally, the brand's "unusually tight control" over the distribution of its handbags, which are not even sold in high-end department stores, contributes to its image.

While "exclusivity matters," the authors emphasize that companies should remember to seek antitrust counsel before exploring gatekeeping measures. Regardless of the outcome in the Hermès case, the company and fashion industry may find that similar accusations impact public interpretation of brand storytelling.

["Birkin Bag Suit Pits Antitrust Law Against Desire for Exclusivity,"](#) **Bloomberg Law*, March 29, 2024

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