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Sanrio fined for restricting cross-border sales of licensed Hello Kitty merchandise

European Union - [Herald](#)

- **Sanrio licenses its proprietary characters, including Hello Kitty, to other undertakings that produce and distribute merchandise products**
- **The Commission found that Sanrio had implemented a set of practices that restricted its licensees' ability to sell licensed merchandise cross-border**
- **Such conduct constituted a restriction of competition by object under Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement**

On 9 July 2019 the European Commission adopted a decision ([Case AT.40432](#) - character merchandise) under Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the Agreement on the European Economic Area (EEA Agreement).

The decision was addressed to Sanrio Company Ltd, as well as to its European subsidiaries Sanrio GmbH and Mister Men Limited (hereinafter 'Sanrio'), for infringing Article 101 of the TFEU and Article 53 of the EEA Agreement. These articles cover anti-competitive agreements between undertakings.

Background

Sanrio may not be well known, but it includes Hello Kitty among its proprietary characters. It designs, licenses, produces and sells products focusing on the Japanese 'kawaii' artistic and cultural style. Sanrio is also the licensor for the Mister Men characters.

It was found that, between 1 January 2008 and 21 December 2018, Sanrio participated in a single and continuous infringement that involved the implementation and enforcement within the EEA of a series of practices restricting active, passive and online cross-border sales of licensed merchandise.

The decision concerned Sanrio's activities as a licensor for its own proprietary characters. Sanrio licenses its characters to other undertakings for products of a varied nature, for example stationery, school supplies, gifts and accessories sold primarily, but not exclusively, for children.

The licences are made either directly or through an agent and typically include provisions governing the distribution of the products on which the licensed IP right will be applied. Other elements consistently present in Sanrio's merchandising agreements include:

- territorial scope: Sanrio generally granted all licences in the EEA for one or more specific countries on a non-exclusive basis; and
- financial compensation to be paid by the licensee.

These licensing agreements, and more broadly, the relationships that were built on the basis of those agreements, were the focus of the decision.

In September 2016 the Commission conducted unannounced inspections at Sanrio GmbH's office in Milan, Italy and then initiated proceedings in accordance with Article 2(1) of Regulation 773/2004 against Sanrio Company Ltd and all legal entities directly or indirectly controlled by it, including Sanrio GmbH. The purpose of the proceedings was to investigate whether Sanrio had in place agreements and/or applied practices preventing or restricting the sale of licensed merchandise in the EEA.

On 29 May 2019 the Commission adopted a further decision to initiate proceedings in accordance with Article 2(1) of that regulation against Mister Men Limited. Subsequently, Sanrio submitted a formal offer to cooperate and, on 29 May 2019, the Commission adopted a statement of objections addressed to Sanrio.

The procedure carried on and the Commission adopted this decision on 9 July 2019.

Decision

The infringement was found to be as follows:

A series of practices restricting active and passive cross-border sales of licensed merchandise were put in place throughout Sanrio's merchandising business. These practices concerned both offline and online sales of licensed merchandise products throughout the EEA. The following main types of restrictions are covered by the decision:

a) Direct measures restricting out-of-territory sales by licensees, such as (i) prohibitions of out-of-territory passive sales; (ii) prohibitions of out-of-territory active sales; (iii) prohibitions of out-of-territory online sales; (iv) obligations to refer orders for out-of-territory sales to Sanrio; (v) use of language requirements to restrict out-of-territory sales.

b) Indirect measures restricting out-of-territory sales by licensees: a series of measures were also at times implemented as an indirect way to encourage compliance with the out-of-territory restrictions. These measures included the conduct of audits and the non-renewal of contracts.

It was found that, through this set of practices, Sanrio restricted the licensees' ability to sell licensed merchandise cross-border, and that this single and continuous infringement contributed to restoring the divisions between national markets. In addition, it was stated that this might have led to a reduction in the choice available for consumers and to increased prices directly deriving from the lower level of competition.

The Commission found that this conduct constituted, by its very nature, a restriction of competition by object within the meaning of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement, and did not meet the conditions for exemption provided for in Article 101(3) of the TFEU and Article 53(3) of the EEA Agreement.

Comment

Even though this is not stated clearly in the published summary of the decision, it is thought that the characters are protected by various IP rights, including trademarks. In any case, this unusual decision is a reminder that IP rights and the corresponding licences can be examined and found infringing under the EU competition rules.

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