



## *SACG DSA SEMINAR*

### *The DSA: What Impact for LVMH?*

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# 1. *CONTEXT*

- E-commerce directive since 2000
- Since 2013: **right holders asking for rebalancing of roles and responsibilities in the fight against counterfeiting**
- EU approach mostly based on **voluntary measures** (MoU) and “name and shame” (EU watchlist)
- DSA represented a unique opportunity to **strengthen the fight against online counterfeiting**
- However: **revision of e-commerce directive was limited in scope** from the beginning (agreement not to touch the limited liability regime and ban on general monitoring)
- Insights into right holders’ lobbying efforts
  - Proposal presented in December 2020
  - Lobbying campaign led by the “Together Against Counterfeiting” (TAC) Alliance, AIM (European Brands Association), KYBC Coalition, national associations (Unifab, Markenverband, SACG,...)
  - European Parliament: fragmentation in the EPP and Renew groups
  - Council: French Presidency and electoral context

## ***2. DSA – POSITIVE EVOLUTIONS***

### **1) TRACEABILITY OF TRADERS**

On the one hand, online marketplaces will be subjected to a “**Know Your Business Customer**” (KYBC) obligation: they will have to collect and check information shared by traders before allowing them to use their services

On the other hand, online intermediaries established outside the EU will have to appoint a **legal representative**

### **2) HARMONISATION OF NOTICE AND ACTION PROCEDURES**

Hosting service providers will have to process brands’ illegal content notices in a “timely, diligent, non-arbitrary and objective manner”

### **3) BRANDS AS TRUSTED FLAGGERS**

Brands will be awarded a “trusted flagger” status by relevant national authorities, constraining online platforms to address their illegal content notices with priority, provided brands fulfil several criteria.

## ***2. DSA – POSITIVE EVOLUTIONS***

### **4) PROVISION AGAINST REPEAT INFRINGERS**

Online platforms will be obliged to suspend “for a reasonable amount of time” the provision of their services to repeat infringers, i.e. users who frequently provide manifestly illegal content.

### **5) CONSUMER INFORMATION**

Online marketplaces will have to inform consumers of the illegal nature of a product they have bought in the past six months and present appropriate means of redress once they become aware of it.

### **6) RISK ASSESSMENT AND MITIGATION MEASURES**

No obligation to take proactive measures but... Very large online platforms and/or search engines, with at least 45 million monthly active users on average, will face additional obligations: they will have to proactively assess and effectively mitigate systemic risks stemming from their services’ design, functioning and use in the EU.

### ***3. ANALYSIS OF DSA IMPACT***

- The adoption of the DSA represents a **(small) step in the right direction**: it is a **minimal-harmonisation horizontal legislation** that covers all types of illegal content
- There will be a need to carefully **monitor the implementation of the DSA in EU Member States** and to ensure a harmonised implementation throughout the EU
- The DSA's focus on online marketplaces risks making it obsolete rather fast
- **The DSA will need to be complemented by industry-specific legislation**, for example by introducing more ambitious rules for counterfeiting through a dedicated, binding instrument

### ***3. ANALYSIS OF DSA IMPACT***

- **What's missing?**
  - KYBC applicable to all intermediaries (in particular advertising platforms, search engines, social networks, domain name registrars)
  - « Duty of care »: obligation to put in place effective proactive measures
  - Staydown: obligation to prevent the reappearance of illegal content that has been taken down
  
- **Upcoming initiatives**
  - EU Toolbox against Counterfeiting
  - IPRED Revision?
  - Separate EU initiative on counterfeiting? (like it exists for copyright, terrorist content, and other specific types of illegal content)

## *CONCLUSION*

1. The DSA is a first step in the right direction
2. It will need to be complemented by specific binding legislation on counterfeiting
3. In order to do so, need to keep the topic “alive” on the EU agenda

*THANK YOU*

*Questions ?*