

How to sell your US fashion products in Europe, at high margins?

In the globalisation age, fashion and luxury brands aspire to doing business everywhere, servicing their retail clients on each continent.

Yet, trade and geographical barriers are still in place, and even increased during the inward-looking Trump era, in the US, and Brexit transition, in the UK, making smooth and seamless fashion and luxury purchase transactions a challenge.

So, what is the best approach, in the post-COVID, post-Trump, and post-Brexit world, to sell your

fashion and luxury wares around the world, while making high margins?



1. Selling fashion products between the US and Europe, via your own e-commerce sites, at a profit: "how to" guide

In an age stricken by lockdowns and compulsory sanitary passes induced by COVID, online sales are a life saver. They took off during the pandemic and retail customers have now gotten used to shopping online.

It is therefore time to make your ecommerce site, as well as social media accounts, as attractive, and user-friendly, as possible. This way, you may capitalise on this online shopping spree, provided that you offer free worldwide shipping and returns, 24/7 customer service and a faultless and enjoyable electronic buying experience.

a. Consumer protection on distance-selling transactions

One thing to bear in mind, though. While there is no singular or specific law governing e-commerce by retailers or any other seller of goods or services via the internet, in the US, it is a distribution channel which is tightly regulated in the European Union ("EU") and the UK.

In particular, national laws transposing the EU directive 2011/83 on consumer rights, which aims at achieving a real business-to-consumer internal market, striking the right balance between a high level of consumer protection and the competitiveness of businesses, apply in the 27 EU member-states and in the UK, as "retained EU law" (i.e. a new type of UK law filling the gap where EU law used to be, pursuant to the EU withdrawal act 2018).

Thanks to these EU and UK national laws, the withdrawal period during which a consumer may withdraw from the sale, has been extended from 7 to 14 days. They introduced the use of a standard form, that can be used by consumers to exercise their withdrawal rights. Such form must be made available to consumers online or sent to them before the contract is entered into. If a consumer exercises this withdrawal right, the business must refund the consumer for all amounts paid, including delivery costs, within a period of 14 calendar days.

If your US fashion or luxury brand wants to sell, online, to European consumers, it must comply with those above-mentioned EU and UK national laws protecting consumers.

So, your best bet is to adopt a best practice approach, offering the same level of consumer protection rights to all your clients, all over the world, which will be in compliance with the high standards imposed by the EU and UK national laws transposing the EU directive 2011/83 on consumer rights.

b. General data protection regulation and privacy

Also, Europeans are quite touchy with regards to their personal data and how businesses manage it.

The General data protection regulation ("**GDPR**"), adopted in April 2016, reflects these concerns and how they are addressed in the EU and the UK.

As a result, e-commerce stores, which target the EU and UK

markets, must have a data privacy policy, as well as a cookies policy, as well as some general terms and conditions of use of their e-commerce website, as well as some general terms and conditions of sale on their e-commerce website, which all comply with the GDPR and national data protection laws such as the French "*loi informatique et libertés*" and the UK data protection act 2018.

In addition, companies offering products and services to EU and UK consumers must appoint a data protection officer, ensuring that they:

- comply with such data protection legal framework,
- have a systemic and quick process in place, should they suffer from a data breach or some hacking issues of their e-commerce website, and
- have a designated point of contact, who will liaise with the EU or UK data protection authority, such as the "*Commission informatiques et Libertés*" ("**CNIL**") in France, or the Information Commissioner's Office ("**ICO**") in the UK.

Again, perhaps the best approach, for any fashion and luxury business with global ambitions, is to set up a data protection policy worldwide, which will apply to all its customers globally, and which will meet the high standards imposed by the GDPR.

While it may be a steep learning curving, to bring your ecommerce website and business up to these standards, your fashion brand will only gain in reputation, coming across as a deeply respectful company, in tune with consumers' needs and concerns with respect to data protection and privacy.

c. Value added tax

Online sales are taxed in the same way than sales in brick-and-mortar retail stores, in the EU and the UK: they are all

subjected to a 20 percent value added tax (“VAT”) rate. It is the standard VAT rate in France and the UK and is applicable on all fashion and luxury products.

Indeed, since July 2021, all e-commerce purchases, even those made by retailers based outside the EU or the UK, are subjected to VAT. While there used to be an exemption of VAT, for goods imported in the EU, and sold for less than 22 Euros, they are no longer exonerated of VAT.

So, what does this mean, practically, for a US fashion business that sells its wares via e-commerce in Europe? It must register with the Import one-stop shop (“IOSS”), to comply with its VAT e-commerce obligations on distance sales of imported goods. And it must charge VAT on all fashion goods imported to the EU.

d. Import duties

If the VAT and import duties (or trade tariffs) are not planned for, and paid promptly, when the imported fashion products enter the EU or UK, this will cause customs delays, slow your delivery time and negatively impact your customer’s experience.

It is therefore essential to clarify from the outset, with your EU or UK customer, who is in charge of bearing those costs, and how. These additional costs, and the responsibility for paying these, must be clearly communicated on your e-commerce website and/or social channels, as well as at the checkout.

Generally, the customs clearance process is more or less the same in all EU countries. As far as shipping documents go, a commercial invoice and air waybill are required for all international shipments.

Personal shipments of low-value, unregulated goods can usually clear customs without any additional documentation.

However, fashion brands in non-EU countries will need an Economic operators registration and identification number ("EORI number"), if they will be making customs declarations for shipments to EU countries. Shippers based outside the EU can request the EORI number from the customs authority in the EU country where they first lodge a customs declaration.

Customs duties will be charged for shipments valued over 150 Euros.

As a US fashion or luxury brand keen to do business in the EU and the UK, you need to adapt your e-commerce website, by adding some information and checkout options relating to VAT and custom duties, and by adding appropriate terms and conditions' webpages, compliant with the GDPR and EU laws on consumer protection during distance-selling transactions. This will be a winning recipe for your European conquest.

2. Selling fashion products from the US to Europe, via third-party e-commerce sites: the holy grail

When you sell your fashion wares via third party ecommerce websites, as a US business, you somehow delegate the above-mentioned EU and UK compliance issues to someone else.

Indeed, it will be down to the mytheresa, net-a-porter, theoutnet and matchesfashion of this world to have all their ducks in a row, in order to comply with EU regulations.

However, you still have to focus on two main points, when selling your products via third party ecommerce sites.

Firstly, a working capital consideration: are you ready to accept consignment, or do you only do wholesale? In other words, will you get paid only if and when your product is sold by the e-commerce platform, or will you get paid for the product, by this third-party retailer, whether or not it sells

on the online retail store?

Secondly, are your products compliant with EU regulations relating to product safety rules and standards? This is especially true if you are selling high risk products such as jewellery (in direct contact with the skin) or children's apparel and jewellery. For example, the EU REACH regulation limits the concentration of lead in jewellery and other articles, while US jewellery companies have no such limitations on their internal market. It is therefore essential for your US fashion and luxury brand to double-check, before exporting to the EU or the UK, that your products comply with these EU and UK product safety rules and standards, especially now that class action lawsuits are allowed in Europe.

3. Selling US fashion products via European brick & mortar retailers and stockists: the traditional route

During the European seasonal fashion trade shows, such as Pitti and White, in Italy, and Tranoi, Man/Woman and Premiere Classe in Paris, France, your US brand may meet some European stockists interested in selling your wares in their EU or UK brick-and-mortar retail stores.

This is a great opportunity to showcase your US brand to European consumers and should be embraced with "cautious celebration". Indeed, while the two above-mentioned considerations of consignment vs wholesale, and of compliance with EU product safety rules and standards, should be taken into account, a proper discussion about the retail channels of the EU or UK brick & mortar stores also needs to take place.

Does the EU or UK stockist intend to sell solely in their physical store, or also online, on their e-commerce boutique? Under article 101 of the treaty on the Functioning of the

European Union ("TFEU"), luxury and fashion brands cannot ban their distributors from selling their products online, through ecommerce, as this would be a competition law breach, deemed to be an "anticompetitive restriction". However, luxury and fashion brands may impose some criteria and conditions to their stockists, to be able to sell their products online, in order to preserve the luxury aura and prestige of their products sold online, via the terms of their distribution agreements.

Indeed, these above-mentioned discussions and conditions could be the premises of setting up a selective distribution network for your US brand in Europe. Selective distribution is the most-used distribution technique for perfumes, cosmetics, leather accessories and ready-to-wear in Europe. It escapes the qualification of anti-competitive agreement, under article 101(3) of the TFEU, via a vertical agreement block exemption.

If you decide to appoint an agent, or a distributor, for the EU and UK territories, so that they find more stockists for your products in their geographical territories, your fashion brand must have a clear distribution plan in place, which needs to be set out in their agency agreement or distribution agreement. This way, your agent or distributor will be able to implement this distribution strategy, according to your guidelines and its contractual undertakings, in the designated EU or UK territory.

4. What's in the works, with a global tax for digital platforms? How is that going to affect fashion and luxury brands worldwide?

Earlier this year, after the election of Joe Biden, we have heard a lot about an agreement on the corporate taxation of multinationals, paving the way to create new rules for the imposition of levies on the world's multinational enterprises

(“MNEs”).

This is because European governments, and businesses, are fed up with US MNEs, such as Amazon, Google, Facebook, Starbucks and Apple, not paying corporate tax on their soil, but solely in the US and/or in European tax havens such as Ireland (which corporate tax rate is among the lowest in Europe at 12.5 percent).

Also, transfer pricing (that is, what affiliated companies charge each other for finished goods, services, financing or use of intellectual property) has been a source of tax planning opportunity, and the largest single source of tax controversy for MNEs, in a wide variety of industries, including retail and consumer products companies.

The French government went as far as setting up its own unilateral digital services tax, at a 3 percent rate, which applies to social networks, search engines, intermediaries such as online selling platforms, digital services, online retailers, since December 2020.

In July 2021, 130 countries and jurisdictions, representing more than 90 percent of global GDP, had joined a new plan to reform international taxation rules and ensure that MNEs pay a fair share of tax, wherever they operate, according to the OECD. If these reforms take place, taxing rights on more than USD100 billion of profit are expected to be reallocated to market jurisdictions each year, while the global minimum corporate tax will be at a rate of at least 15 percent and will generate around USD150 billion in additional global tax revenues annually.

While these global tax reforms may not affect the P&L of most fashion and luxury brands directly, it will definitely impact the tax burden of their digital distributors, marketplaces and channels, around the world.

These tax reforms will level the playing field, ensuring that

wealth is redistributed more fairly, while globalisation and fashion distribution continue their ineluctable growth and expansion.

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