Hermes Bags Antitrust Win That Clarifies Luxury Tying Claims

By **David Kully and Jennifer Lada** (October 17, 2025)

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Cavalleri v. Hermes International SCA, a much-publicized but quite silly antitrust challenge to the retailer's sales strategies for its coveted Birkin bags, came to what should be its merciful end on Sept. 17,[1] with the U.S. District Court for the Northern District of California's dismissal of plaintiffs' claims with prejudice.[2]

Hermes' Birkin bag has long stood as a symbol of ultimate luxury, notorious for its high price point and scarcity. These attributes made headlines recently when Hermes faced an antitrust lawsuit in the U.S.

The plaintiffs, two shoppers who attempted to buy the famous Birkin bag, alleged that Hermes violated antitrust laws by requiring customers to first purchase other Hermes products before even being considered for a Birkin. Plaintiffs argued that this sales strategy constituted a per se illegal tying arrangement because Hermes conditioned sale of Birkin bags on the purchase of other products.

At stake in this case was the potential to reshape how luxury brands market and sell their most coveted products. However, the court ultimately determined that Hermes' approach did not violate antitrust law.

U.S. District Judge James Donato found that absent actual harm to competition in the market for ancillary products, Hermes was entitled to set its own sales policies, even if those policies disappointed some consumers or made access to the Birkin bag contingent on other purchases.

Consumer Disappointment Does Not Mean Harm to Competition

Plaintiffs argued that they were injured by Hermes policies because "they were required to spend thousands of dollars on Hermes' ancillary products to qualify for the opportunity to purchase a Birkin bag, effectively compelling them to buy products they did not want or could have purchased elsewhere."[3]

However, antitrust laws are not designed to prevent disappointment. In dismissing the case, the court noted that illegal tying involves more than just assertions that a company's sales policies restrict consumer choice,[4] or might require consumers to purchase products they might not want.

Forcing consumers to buy something they would prefer not to purchase might make them unhappy but, without more, it affects only the buyers, not competition.

Company sales policies only rise to the level of illegal tying and violate the Sherman Act if the requirement that customers purchase the tied product harms competition in the market for the tied product.

As the court observed, Hermes can do "whatever they want with their product so long as it does not substantially foreclose competition" in the market for the ancillary products that

plaintiffs claimed they did not want to buy.[5]

In practical terms, Hermes is free to charge whatever prices it wants for Birkin bags or to condition access to Birkin bags on its customers' purchase of scarves, footwear or watches — which were among the ancillary products plaintiffs alleged were part of the tied market — so long as Hermes' sales restrictions do not prevent other sellers of scarves, footwear and watches from being able to compete effectively against Hermes in the sales of those products.

The court found that the plaintiffs could not establish plausibly that competition for the "kaleidoscope of products" plaintiffs could purchase in order to become qualified to buy a Birkin bag "has been illegally restrained by Hermes."

The court concluded that plaintiffs had not "come close to plausibly alleging harm to competition in a market for the tied product ... . [Even if] Hermes reserves the Birkin bag for its highest-paying customers, ... that in itself is not an antitrust violation" without some injury to competition.[6]

Market Definition: Labels and Sound Bites Are Not Enough

Central to the court's decision to dismiss plaintiffs' claims against Hermes was plaintiffs' inability to show that Hermes possessed market power in a properly defined market that included Birkin bags.

The fact that some consumers might covet Birkin bags and even might be willing to accept Hermes' conditions on access to the coveted bags does not, on its own, establish market power or the ability to use market power to harm competition in markets for the ancillary tied products.

The plaintiffs attempted to define the relevant market as "elitist luxury handbags," suggesting Hermes dominated this space.[7] They leaned on Hermes' own marketing materials and public statements to make their case that product quality and exclusivity could define the boundaries of the product market.

However, the judge demanded more to support than mere headlines and hype, criticizing plaintiffs' use of sound bites and "snippets of public statements" and their failure to "present any facts that might have made these allegations more than purely conclusory."[8]

Without sufficiently alleging the existence of a "cognizable tying market" for "elitist luxury handbags," plaintiffs could not meet their burden of showing that Hermes possessed the requisite market power in that market.

The court made it clear that being popular or hard to obtain does not equate to having genuine antitrust market power. What matters to the court is whether a brand's practices actually harm competitive conditions, not just whether a product is exclusive or in demand.

Past cases have made it clear that it is possible for plaintiffs to define a relevant market, even a handbag market, around just a segment of a broader market.[9] The plaintiffs' failure to support its elitist luxury handbag market was merely a failure of proof, not of concept.

Actual Tying Remains Per Se illegal

In evaluating plaintiffs allegations in support of their claim of per se illegal tying, the court noted a trend of softening in the per se prohibition on tying arrangements, suggesting that the lack of experience "with the luxury handbag industry" might counsel against a "presumption of per se liability" for alleged tying practices in that industry.[10]

But because Hermes had accepted that the per se standard applied to the conduct alleged in the complaint, the court viewed the allegations "through the lens of per se liability."[11]

The key question the court raised concerning whether the per se standard applies to tying claims was squarely presented for review by the U.S. Supreme Court in a recent petition for certiorari, but the court denied the petition on Oct. 6.[12]

For now, the Supreme Court's statement in the 1984 decision in Jefferson Parish Hospital District No. 2 v. Hyde that it "is far too late in the history of our antitrust jurisprudence to question the proposition that certain tying arrangements pose an unacceptable risk of stifling competition and therefore are unreasonable 'per se',"[13] remains applicable in cases in which the plaintiff establishes the existence of market power in the tying market.

The Hermes Birkin antitrust case shows that exclusivity and competition can coexist in the luxury world. The court's decision makes it clear that selective sales tactics and scarcity do not automatically violate U.S. antitrust law.

What really matters is evidence: Courts want to see harm to competition, not just disappointed customers.

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[1] Apparently not seeing the writing on the wall, plaintiffs on October 7, 2025, announced their intention to appeal the dismissal of their claims. See Mike Scarella, Hermes customers appeal loss in US Birkin bag antitrust lawsuit, Reuters (Oct. 7, 2025),

[2] See Second Order re Dismissal, Cavalleri v. Hermes Int'l, No. 24-cv-01707 (N.D. Cal. Sept. 17, 2025) (ECF No. 61).

[3] Pls.' Opp. To Defs.' Mot. to Dismiss First Am. Class Action Compl. at 11, Cavalleri, v. Hermès Int'l, No. 3:24-cv-01708 (Nov. 22, 2024) (ECF No. 57).

[4] Id.

[5] See Defs.' Reply in Supp. of Mot. to Dismiss at 11, Cavalleri, v. Hermès Int'l, No. 3:24-cv-01708 (Dec. 13, 2024) (ECF No. 58) (quoting Sept. 19, 2024 Hr'g Tr. at 15:16–19).

[6] See Second Order re Dismissal at 4, Cavalleri v. Hermes Int'l, No. 24-cv-01707 (N.D. Cal. Sept. 17, 2025) (ECF No. 61).

[7] See id. at 3.

[8] Id. at 3.

[9] See David Kully, Jennifer Lada, and Anna Hayes, Antitrust in Retail: Handbag Ruling Won't Go Out of Fashion, Law360 (Dec. 4, 2024).

[10] See Second Order re Dismissal at 2, Cavalleri v. Hermes Int'l, No. 24-cv-01707 (N.D. Cal. Sept. 17, 2025) (ECF No. 61).

[11] Id.

[12] See SAP SE v. Teradata Corp., No. 24-1324 (Oct. 6, 2025).

[13] Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 9 (1984).