GARRIGUES

FASHION & LAW

NUMBER 15 - OCTOBER - DECEMBER 2016

"SALE AT A LOSS" IN SPANISH LAW

GENERICIZATION OF TRADEMARKS OR THE PRICE OF FAME

THE SALE OF A COMPANY

THE DIFFICULTIES IN REGISTERING OLFACTORY TRADEMARKS AND THE PERFUME INDUSTRY

VUDOIR: A STYLIST IN YOUR MOBILE

WHAT HAPPENED TO THE SPANISH FASHION COMPANIES AFFECTED BY THE CRISIS IN THE TEXTILE INDUSTRY

CONTENTS

"Sale at a loss" in Spanish law	4
Genericization of trademarks or the price of fame	8
What happened to the Spanish fashion companies affected by the crisis in the textile industry and can their directors be held liable	12
The sale of a company	16
The difficulties in registering olfactory trademarks and the perfume industry	18
Vudoir: a stylist in your mobile phone	22

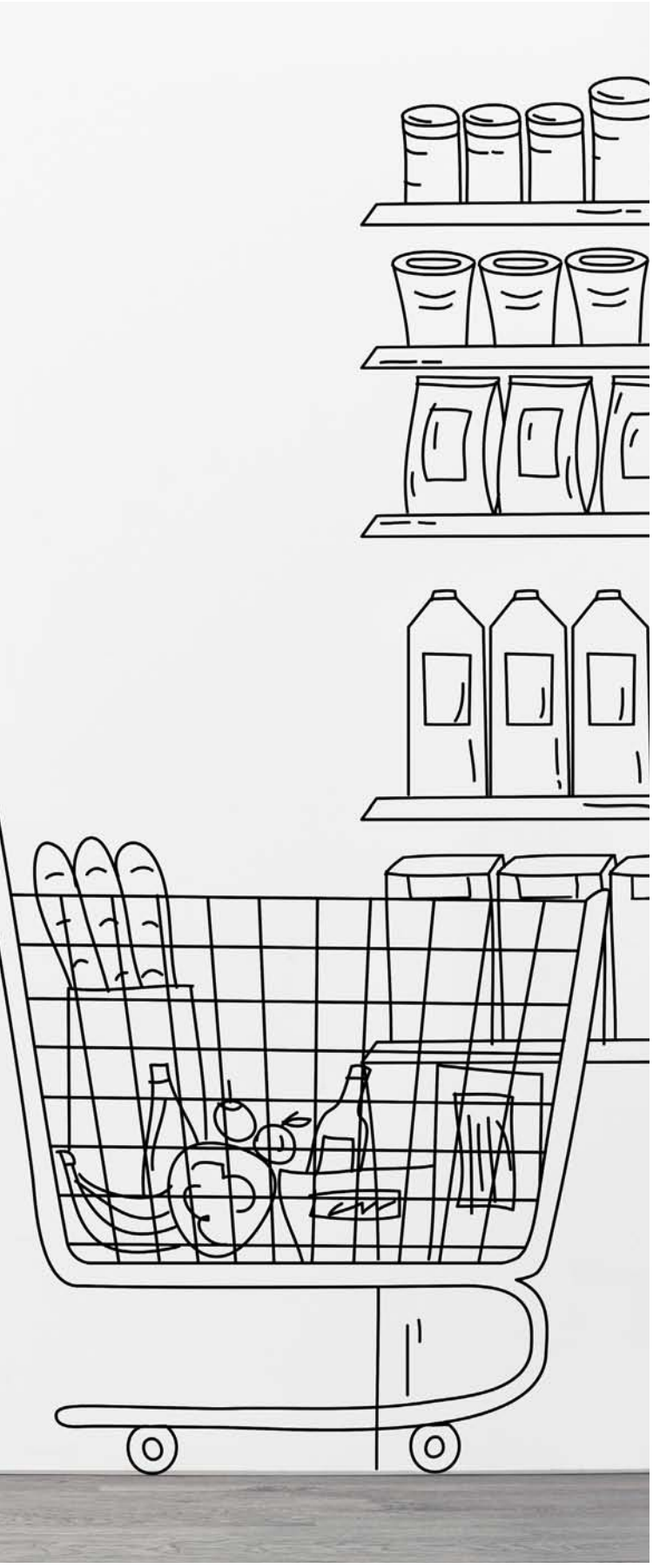
1941-2016 GARRIGUES
FASHION & LAW

Lead and coordinate the publication:
Cristina Mesa, *senior associate. Intellectual Property*

Design and implementation:
Communications and Marketing department of Garrigues

"SALE AT A LOSS"

IN SPANISH LAW



AMALIA HERNÁNDEZ SENDÍN

In every full-blown capitalist economy, numerous changes have taken place over recent years concerning the economic organization of the production, distribution and supply of all types of products.

This has resulted in a move away from a sales model based on small formats towards a superstore model which has led to a surge in large distributors in Spain and elsewhere, many of which elect mechanisms based on permanently low prices (outlets, for example). There has also been an upswing in online sales, especially for retail platforms and private selling clubs offering products at prices far below those charged on the high street.

No matter what the means of retailing, price is clearly still the key factor in a company's sales policy. Although it may mean taking the opposite direction to the profit aim underlying all retail activities, the battle to offer the lowest price and to grab market share may make the various retail operators consider sales strategies involving in selling some products at a price below the amount paid for them to the supplier as it appears on the invoice or, in some cases, below the manufacturer's price, after deducting the proportional part of discounts. This is generally known as sale at a loss.

There are two sets of rules in Spanish law on the concept of sale at a loss: from the standpoint of retail legislation, it is governed by Law 7/1996, of January 15, 1996, on the retail trade (the "**Retail Trade Law**") and, from the standpoint of competition/antitrust law, by Law 3/1991, of January 10, 1991, on unfair competition (the "**Unfair Competition Law**").

The coexistence of both sets of rules has given rise to a fair number of disputes in practice due to the different approaches contained in each, since the retail legislation proves to be stricter, in some respects, in its provisions on the existence of a "sale at a loss".

To focus on the retail legislation, article 14 of the Retail Trade Law places a general prohibition on selling at a loss. Although it does set out a few exceptions for sales at below cost which are treated as lawful:

i. A "*price alignment*": sale at a loss is accepted if the aim of the sale is to match the prices of one or more competitors "*with the capacity to have a significant effect on their sales*". Despite this provision, the exception is construed very restrictively by the courts, which require almost impossible proof (probatio diabolica) of the effect on sales.

"The National Markets and Competition Commission which even described it as "unreasonable to prohibit or criticize sale at a loss generally", because, in its opinion, "in some cases it may prove procompetitive and bring advantages for the consumer""

ii. The sale of "*perishable goods*", an ambiguous term which, nevertheless, is directly related to the sell-by and best-by dates for products.

There are also at least two valid promotional techniques which may equally give rise to the effect of selling at below cost and do not include selling in the sales:

i. The "*reduced for sale items*", namely, where the product's market value has fallen considerably because the product is impaired, damaged, no longer used, or obsolete, and it is specified that the surpluses in any season are not necessarily obsolete for the purposes of allowing their sale at a loss.

ii. A "*clearance sale*": in other words an exceptional sale to clear stock subject to certain defined requirements (such as they must be advertised under this name or another equivalent name, indicating the reason; it results from a court or administrative decision; etc.).

The rules in the Unfair Competition Law (art. 17), by contrast, only treat as unlawful the sales below cost which

may be regarded as unfair competition, due to being liable to mislead consumers, by seeking to discredit the reputation of a product or of an establishment of another party or to try and eliminate a competitor or group of competitors on the market.

In practice, the public authorities responsible for consumer affairs and domestic retail trade have been particularly active in auditing the prices set by retailers to detect infringing practices.

There is nevertheless room for reflection on the benefits of sale at a loss. The prohibition of sale at a loss and the severity of the public authorities and courts in implementing it almost automatically, was criticized recently by the National Markets and Competition Commission which even described it as "*unreasonable to prohibit or criticize sale at a loss generally*", because, in its opinion, "*in some cases it may prove procompetitive and bring advantages for the consumer*" (Report on the Draft Decision on the Code of Good Commercial Practices in Food Procurement (INF/CNMC/003/15).

This reflection has provided fuel for debate. Although for the time being, the lawmakers' position seems to be clear.

Genericization of trademarks

OR THE PRICE OF FAME

NATALIA RUIZ

María got up that morning to go to a work interview. She was running late, but she still put on some Rimmel® to look good and her skirt with the Velcro® fastener. She put a few indispensable items in her handbag: a Chupa Chups® to steel her nerves, a Tampax® just in case, a packet of ganchitos to stave off hunger and a packet of Kleenex® .

This tale contains references that we all make to products which, as pioneers or due to the success they have acquired over time, have come to be used to refer to all types of similar products sold under other brand names. But this does not mean that these trademarks have become genericized and anyone can use them.

Canceling a trademark due to genericization is not an easy task. Although its owner must pay the price of fame by being more vigilant and active in defending its rights than the owner of a less successful brand, a proactive stance in such defense is the only sure way to avoid the trademark becoming generic, for which it would be necessary for the mark to be canceled in a final judgment.

According to Article 55 d) of Spanish Trademarks Law 17/2001, of December 7, 2001:

Article 55. Revocation.

1. A trademark shall be declared to be revoked and the registration cancelled:

(…)

d) Where due to the activity or inactivity of its owner, it has become the common name in trade for the goods or services for which it was registered.

Obtaining the revocation of a trademark due to genericization in the European Union or Spain is very difficult. Its owner needs to have a passive attitude and allow a use that may lead consumers to believe that it is not a trademark but the name of a product.

Article 35 of this law, refers to the appearance of a trademark in a dictionary due to its widespread use:

Rímel
From Rimmel®, registered trademark
1. m. Cosmetic to darken and harden lashes.

Támpax
From Tampax®, registered trademark
1. m. tampon (roll of cellulose).

Velcro
From Velcro®, registered trademark, and the latter from the acronym, in French, 'velours' (velvet) and 'crochet' 'hook'.
1 m. Fastener comprised of two different types of fabric which fasten when pressed together.

Chupachups
Also: chupachup, chupa-chups, chupa-chup, chupachús.
From Chupa Chups®, registered trademark
1. m. A round sweet attached to a small stick which is used as a handle in order to lick the sweet

Ganchito
1. m. Spanish. Light and crunchy snack, which is long or hook-shaped, usually made of corn or potato.

Clínex
From Kleenex®, registered tradema
1. m. Disposable paper tissue.

> *Obtaining the revocation of a trademark due to genericization in the European Union or Spain is very difficult. Its owner needs to have a passive attitude and allow a use that may lead consumers to believe that it is not a trademark but the name of a product.*

Article 35. Reproduction of trademarks in dictionaries.

If the reproduction of a trade mark in a dictionary, encyclopedia or similar reference work gives the impression that it constitutes the generic name of the goods or services for which the trade mark is registered, the publisher of the work shall, at the request of the proprietor of the trademark, ensure that the reproduction of the trademark, at the latest in the next edition of the publication, is accompanied by an indication that it is a registered trademark.ç

All the brands mentioned at the beginning of this article are registered, active trademarks, and the only one that has become generic is "ganchitos" (formerly "Ganchitos"®). We can see in the dictionary of the Real Academia Española how some trademark owners have been proactive in specifying that their brands are registered trademarks.

Therefore, the owners of trademarks that are in common use should be particularly careful about how the mark is used. It is important that the ® mark be used correctly on all goods, not only by the trademark owner itself but also by its distributors, as well as in publications, the media and on the internet.

WHAT HAPPENED TO THE SPANISH FASHION COMPANIES AFFECTED BY THE CRISIS IN THE TEXTILE INDUSTRY AND CAN THEIR DIRECTORS BE HELD LIABLE

> *"The directors of the above companies that suffered the crisis in the textile industry may breathe easy—at least "for the time being"—because since the insolvencies were not assessed as fault-based the directors cannot be held liable. However, we say "for the time being" because there is nothing to prevent creditors who have sustained a specific loss as result of the conduct of the directors from bringing an* ***individual action for damages*** *against them at any time irrespective of the insolvency and they may also bring an* ***action for liability for debts*** *once the insolvency has ended".*

JUANA MARÍA PARDO

The fashion industry is one of the industries that has been hardest hit by the economic crisis and the fall in consumption in Spain, which has led to the disappearance of approximately 35% of the businesses in this industry since the start of the recession in 2008, among other reasons, because of the entry of countries such as China and India in the market.

The companies that managed to survive the crisis are starting to notice a recovery in sales after the turnaround in 2014, which, following considerable declines in sales, witnessed an annual growth of 2.7%. The current projections are even better since the experts are forecasting increases of between 3% to 5% this year, figures even greater than those reached before the economic downturn.

The Spanish textile industry has become a benchmark worldwide as a result of its *good practices*, in some cases even exceeding expected growth. One of the most admired businesses is the successful ***Inditex***, with an unstoppable growth in sales of around 8% per year.

The flip side of the coin are those companies which during the years of economic recession were forced to petition for insolvency. Contrary to the widespread belief that insolvency proceedings mean the end of a company, the truth is that in many cases it can prove to be its salvation if the petition is made in time. In some cases because an arrangement is approved and, in others, because liquidation takes place.

In the first group we find for example, the fashion chain ***Festa*** against which an insolvency order was made at the beginning of 2011 with liabilities of €12 million. Practically a year later, in March 2012 it secured the approval of an arrangement with creditors consisting of a 50% reduction in its liabilities. This is also the case of the company from La Coruña, ***Caramelo, SAU***, which was subject to an insolvency proceeding from April 2013 to March 2014, when it secured the approval of an arrangement with its creditors which is still being complied with at present. Another company from La Coruña that was affected is Volvoreta, SA, owned by the designer Joaquina Fernández Álvarez—better known as Kina Fernández—and her husband, who produced and marketed the creations of the designer ***Kina Fernandez***. In this case too an arrangement was approved in April 2011 but it was breached in October 2013, which led the company to liquidate its assets, including most notably the warehouse in La Coruña where it made its garments. The designer Kina Fernandez continues to develop her brand, now focused on international expansion, increasing exports and creating new franchises.

This is also the case of other companies in the sector such as ***Fun & Basic***, against which an insolvency order was made in December 2009. After breaching its creditors' arrangement, it was finally liquidated in March 2012 and the exploitation of the brand was sold to *El Corte Ingles*. ***Coronel Tapiocca***, is another case in point: it was declared insolvent in Autumn 2010 with liabilities of €54 million, and it ended up selling its operational production unit to *Kangaroos*, a company that owns other well-known brands such as *Bonavente*, *El Caballo* or *Devota y Lomba*.

In cases in which an arrangement is not reached, the company is liquidated directly, but even in this scenario, the results can be just as or even more satisfactory, because if the liquidation is carried out swiftly, assets can be sold before their value drops. This was the case of ***Musgo Distribución, SL*** which, in the Autumn of 2010, affected by the retail crisis in household goods and with liabilities amounting to €15 million, availed itself of article 5.3 of the Insolvency Law ("LC"). It entered insolvency proceedings in March 2011, which led to an early liquidation of its assets.

One of the most feared aspects of an insolvency order against a company for its directors is section five,

assessment, and, where applicable, section six, liability. This is because in some cases the directors of the insolvent company may end up being held liable for all the liabilities of the company they managed pursuant to art. 172 bis LC. In most cases this causes dread—or at least respect—among the directors of companies with sizeable liabilities, such as the ones mentioned. However, it should be borne in mind that the feared **insolvency liability** is only enforceable in certain cases: **(i)** where the assessment section of the insolvency proceeding commences due to the **liquidation** of the insolvent company, not due to an arrangement with creditors, even if the assessment section commences due to including compositions covering more than one-third of the debt, and the rescheduling of debt for more than three years; **(ii)** where there is a **finding of fault-based insolvency**; and **(iii)** where such fault is attributable to certain **persons affected by the assessment** of the insolvency. If any of these scenarios arise, then the court will assess whether the following requirements are met: **(i)** existence of a **net worth deficiency**, which occurs when the assets available to the creditors in the insolvency do not permit all the claims of the creditors in the insolvency to be paid in full in light of the results of the liquidation; and (ii) the conduct of the directors or liquidators, whether *de iure or de facto*, or general attorneys-in-fact of legal entities, the insolvency of which is deemed to be fault-based, who held office at the time of the insolvency order or for the two years preceding it, is what has **caused or aggravated the insolvency** of the company—as provided for in the current wording of article 172 bis LC as amended by Real Decree-Law 4/2014. In other words, for a director to be found liable for the insolvency there must be a **causal link** between the director's conduct and the damage caused, which is what will determine the amount to be covered—in whole or in part—of the net worth deficiency of the insolvent company.

In all the above-mentioned cases of insolvency in the textile industry, none of the them were classified as fault-based, and the cause of the insolvency in the majority of cases was precisely the crisis in the textile industry to which we referred at the beginning of this article.

The existence of this restrictive regime of liability for the insolvency does not mean that once the insolvency has been declared accidental, the directors can breathe easy because actions for liability cannot be filed against them. This is because corporate actions for liability may still be brought against the directors, although the corporate action set forth in art. 238 of the Capital Companies Law ("LSC") must be brought during the insolvency. The feared **liability for debt** action against the directors regulated in art. 367 LSC cannot be exercised until the insolvency ends.

Therefore, the directors of the above companies that suffered the crisis in the textile industry as well as other directors of companies subject to insolvency that are classified as accidental insolvencies may breathe easy—at least "for the time being"—because since the insolvencies were not assessed as fault-based the directors cannot be held liable under art. 172 bis LC. However, we say "for the time being" because there is nothing to prevent creditors who have sustained a specific loss as result of the conduct of the directors from bringing an **individual action for damages** against them, under art. 241 LSC, at any time irrespective of the insolvency. They may also bring an action for liability for debts once the insolvency has ended, either due to compliance with the arrangement or the end of the liquidation. The four-year statute of limitations for bringing these actions is tolled as long as the insolvency proceeding lasts.

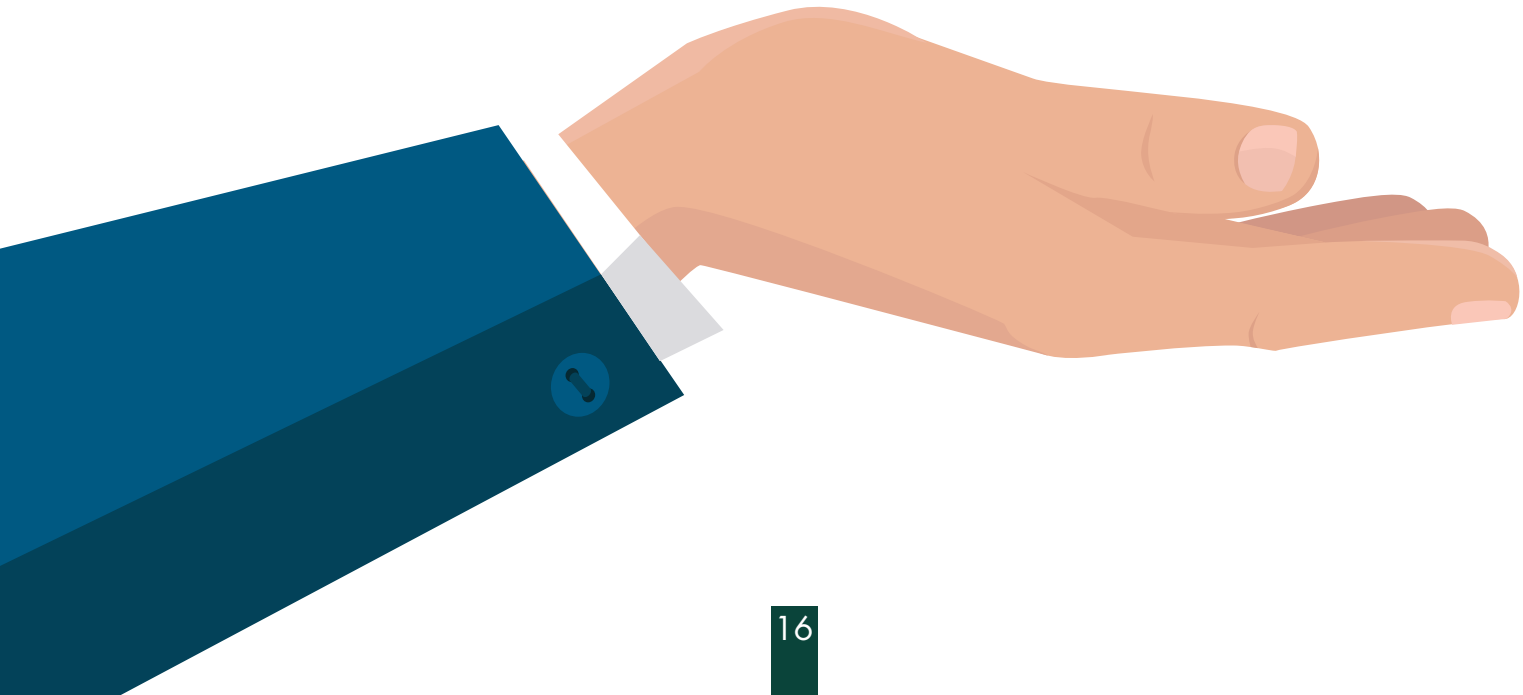
The sale of a company

CLAUDIO DORIA TÖLLE

In our previous article (Newsletter no 12) we discussed how the sale of a company is no easy decision, especially if it is having any trouble with its finances or its future is uncertain. We also mentioned that the sale process requires much planning and time plus an understanding of the dynamics of the negotiations. All in all the process usually takes between 6 and 12 months, from the signature of the nondisclosure agreement and a letter of intent, which provide the first and main pillars of the negotiation and of the sale process. Particularly the letter of intent, which gives a preview of the structure of the transaction, of the sale process, its phases and basic terms and conditions: the subject matter of the sale, the method for determining the price, the agreements that will be signed in due course (sale agreement, shareholders' agreement, executives' employment contracts, distribution agreement, etc.) as part of the transaction, together with the exclusivity period (in which the parties undertake not to negotiate with any other parties) and the due diligence phase.

After these documents have been signed, the due diligence phase may start on the company's legal, tax, financial and business affairs. The due diligence process is crucial for the buyer, because it will give him an understanding (among other matters) of the company's structure, both corporate and of its agreements (in other words, how the company operates and how it enters into agreements with its main suppliers and clients), its financial and tax position, together with its main assets and lawsuits. As a result of this process, the buyer will be able to determine the potential risks and contingencies that could arise after the acquisition.

Due diligence processes are now usually conducted by accessing documents and information made available to the buyer on a virtual platform (usually referred to in the jargon as a VDR - virtual data room), which can be entered using passwords supplied by the vendor or its advisors. It is often used also as a conduit for petitions for information, clarifications, etc. Besides replacing copious (and tedious) reviews of hardcopy documents over a number of days or weeks, so as to be informed in real time, this computerized tool gives the vendor the option to see which parts of the information made available have attracted more of the buyer's attention, who has accessed them, how often and for how long. All of this data may be particularly useful in the negotiating process for the sale agreement,



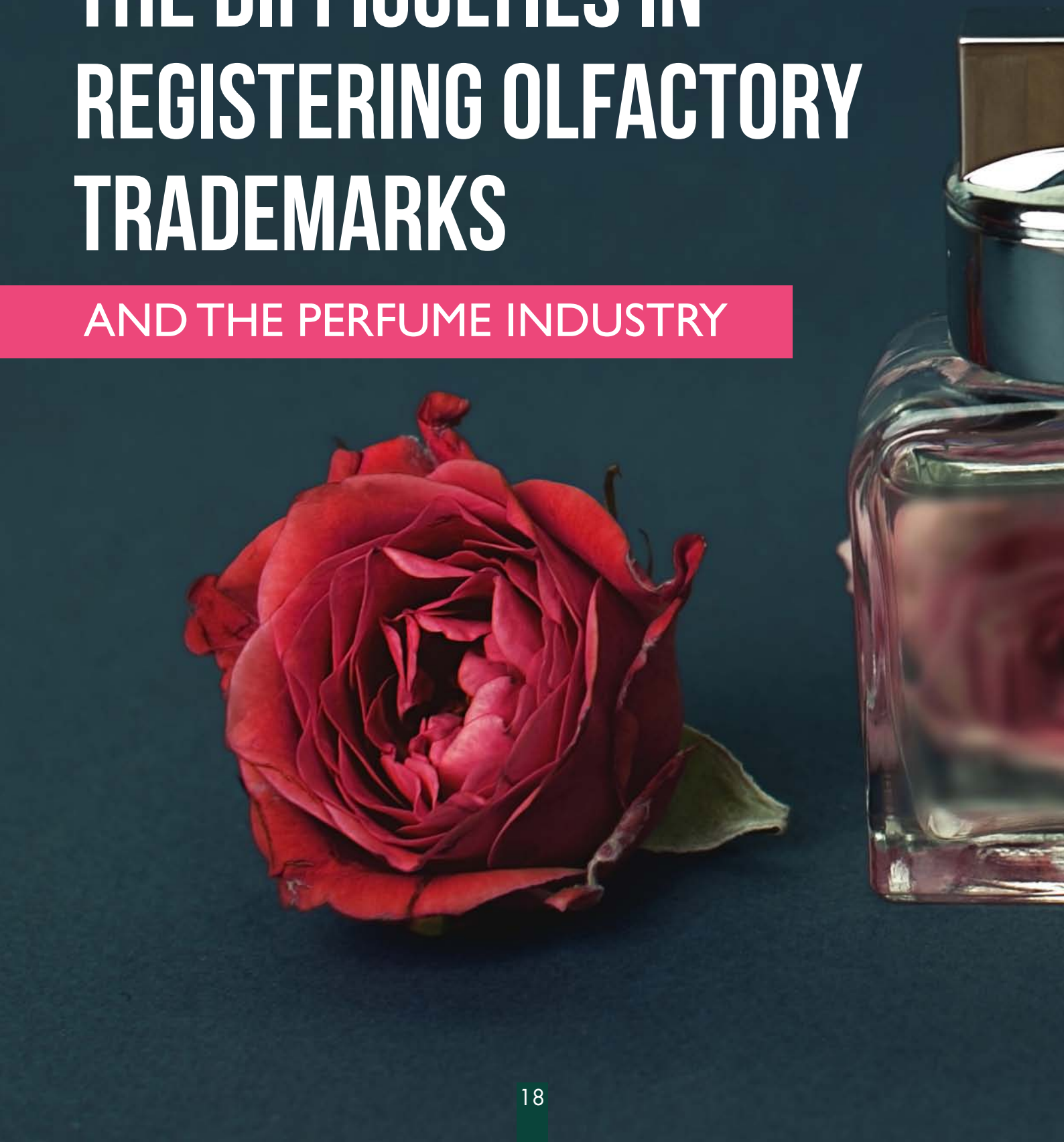
to try and give adequate cover in the agreement for the seller's liability or exemption from liability. And in the event of future claims by the buyer, the seller can refuse any attempts at indemnification based on an alleged unawareness of the company's position before the sale.

Especially where before the start of the process, as we mentioned in our previous Newsletter, the seller has seen to settling any doubtful tax affairs, renegotiating some of its agreements with suppliers or clients, transferring assets not used in the business or obtaining a legal or technical opinion on administrative permits, patents, marks, essential designs, etc., the quality and amount of the information it has made available in the VDR will enable it to conduct the negotiation of the sale agreement and particularly of the representations and warranties and their exceptions, with a surer foundation and better judgment, by having a solid basis for not reducing the price and also therefore protection from potential claims. It must be remembered that in these types of transactions the price is usually directly related to the representations and warranties given by the seller, and therefore, if in the due diligence process, the buyer identifies any potential contingencies in high amounts for which the vendor does not want to accept any liability, the buyer will want them to have an impact on the price of the transaction.

The sale agreement, therefore, besides the basic elements of the transaction (subject matter, price and parties' consent), will also contain a number of representations and warranties (with a greater or lesser amount of detail and description) on the business that is transferred, which will involve contemplating a claim procedure for any potential damages and losses that may arise from a breach of them, together with a mechanism for securing compensation (by withholding part of the price, a bank guarantee, etc.)
In our next article we will continue with a discussion of other legal elements of this process.

THE DIFFICULTIES IN REGISTERING OLFACTORY TRADEMARKS

AND THE PERFUME INDUSTRY



RICARDO LÓPEZ AND ALEJANDRA ROBERTS

Article 2 of the previous Trademark Directive[1]—Signs of which a trademark may consist—established that "*A trademark may consist of any signs capable of being represented graphically […] provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings*". Consequently, in order to register a trademark two requirements had to be met: "graphic representation" and "distinctive character". If a trademark could not be represented graphically it was refused, which proved to be a considerable obstacle to registering olfactory trademarks.

The Court of Justice of the European Union ("TJUE"), in the Sieckmann Case[2], carried out an in-depth analysis of the first requirement in the case of olfactory trademarks. It reached the conclusion that a trademark that is not in itself capable of being perceived visually, may be represented graphically and registered as a trademark by means of images, lines or characters provided that such form of representation is:

- clear and precise (in order to enable the competent authorities to carry out the prior examination of registration applications, for the publication and maintenance of the trademark and for competitors to be aware of the rights of third parties;
- self-contained, easily accessible and intelligible (for users of the register to be able to determine the precise nature of the mark);
- durable; and
- objective (with respect to the means of representation).

The breach of these requirements led to the rejection of an application for an olfactory trademark represented in three different ways: a chemical formula (C6H5-CH = CHCOOCH3), on the grounds that it was not intelligible, clear or precise as a description of the scent it sought to register. A description of the scent was also refused registration (balsamically fruity scent with a slight hint of cinnamon) because it was not precise, clear and objective. Finally the deposit of an odor sample was not considered acceptable for registration purposes either, because such a sample is not sufficiently durable, and changes over time. Lastly, we refer to the refusal of the application for the olfactory trademark "smell of ripe strawberries" on the grounds—following the requirements established in the Sickermann case—that it was not sufficiently clear, precise and unequivocal. Why? Because the smell of strawberries can vary from one variety to another.

There is, however, an exceptional case worth mentioning. The EUIPO (then OHIM) allowed a Dutch company to register an olfactory trademark—which was registered up to 2006—for "the smell of fresh cut grass" for tennis balls. In this case, it was held that it was a precise, clear and unequivocal description, because it is a smell that everyone immediately recognizes. The conclusion was also reached that it is a "distinctive" smell since, as it is associated with the product "tennis balls", it does not make reference to the attributes or qualities of the product.

However, after strong pressure from mainly Italian and French perfume houses to allow the registration of their trademarks and defend themselves from an increase in low-cost fake perfumes, a change was implemented through Directive 2015/2436 of the European Parliament and of the Council of 16 December 2015. The wording of article 3 eliminates the graphic representation requirement and in the preamble establishes as follows: "In order to fulfil the objectives of the registration system for trade marks, namely to ensure legal certainty and sound administration, it is also essential to require that the sign is capable of being represented in a manner which is clear, precise, self-contained, easily accessible, intelligible, durable and objective. A sign should therefore be permitted to be represented in any appropriate form using generally available technology, and thus not necessarily by graphic means, as long as the representation offers satisfactory guarantees to that effect".

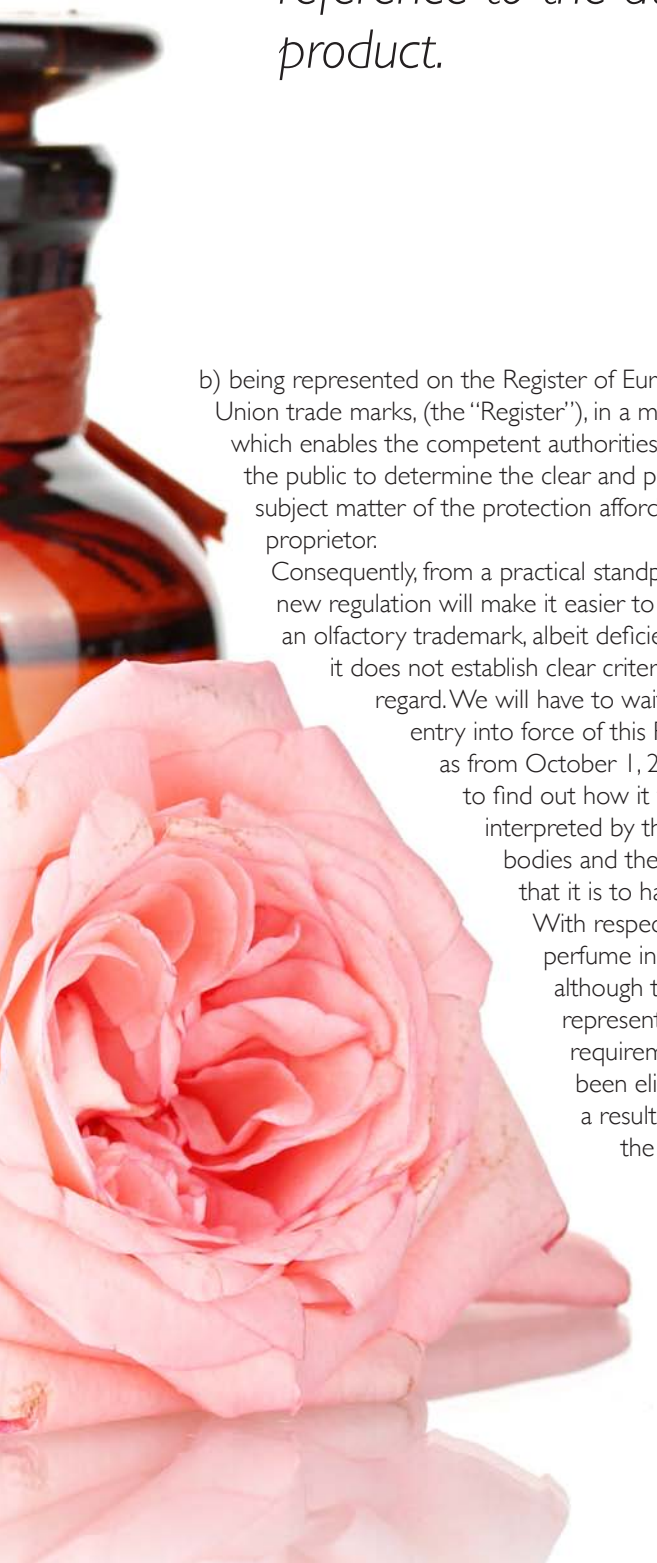
In addition, on that same date the new Community Trademark Regulation[3] was approved following the same line as the Directive. Article 4—Signs of which an EU trademark may consist—establishes that an EU trademark may consist of signs that are capable of:

a) distinguishing the goods or services of one undertaking from those of other undertakings.

[1] Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trademarks (the "Trademark Directive").

[2] Judgment by the Court of Justice of the European Union of December 12 2002, Sieckmann and Deutsches Patent- und Markenamt, Case C-273/00.

> *"It is a "distinctive" smell since, as it is associated with the product "tennis balls", it does not make reference to the attributes or qualities of the product."*



b) being represented on the Register of European Union trade marks, (the "Register"), in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

Consequently, from a practical standpoint, this new regulation will make it easier to register an olfactory trademark, albeit deficiently, since it does not establish clear criteria in this regard. We will have to wait until the entry into force of this Regulation as from October 1, 2017 to find out how it will be interpreted by the relevant bodies and the scope that it is to have.

With respect to the perfume industry, although the graphic representation requirement has been eliminated, as a result of which the criteria established in the Sieckmann case would no longer be applicable, there is still the obligation that the scent must not stem from the nature of the product (understood as primary aromas), in order to ensure that it is distinctive. This was the reason why Chanel No. 5 perfume was rejected as an olfactory trademark. We see how, even after the changes in legislation, it is still difficult to register a perfume as a trademark.

The French legal system would appear to be more inclined to register smells. Consequently, an alternative that various businesses have used is to register their perfumes via copyright. For example, the cosmetics company Lancôme used copyright to protect its perfume Trésor from another Dutch perfume called "Female Treasure". What requirements did it have to meet to secure protection via copyright? Basically originality. Thus, the conclusion was reached that Lancôme's perfume did not exactly reproduce a well-known smell such as roses. However, this possibility is only accepted in France and moreover, proving the originality of a scent is not always an easy task.

The conclusion we have reached is that at present, despite the changes in legislation, it is still difficult to register smells as trademarks, especially when the smell in question coincides with the product itself, i.e., perfume. However, it does seem easier to protect smells that seek to identify other types of products, such as the scents used by stores to identify the establishment itself.

[3] Regulation 2015/2424 of the European Parliament and of the Council amending the previous Regulation on the Community Trademark (applicable as from October 1, 2017).

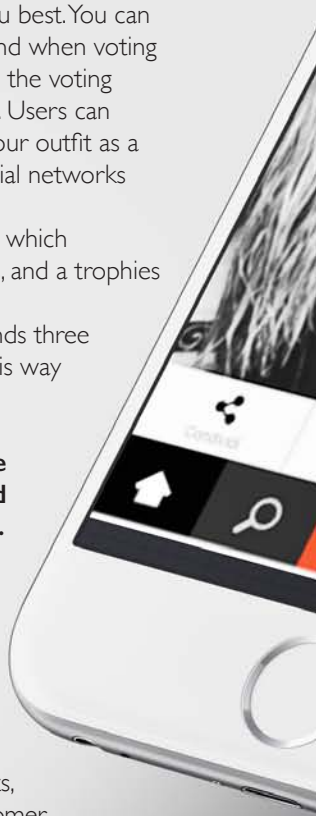
Vudoir:
A stylist in your mobile phone

CRISTINA MESA

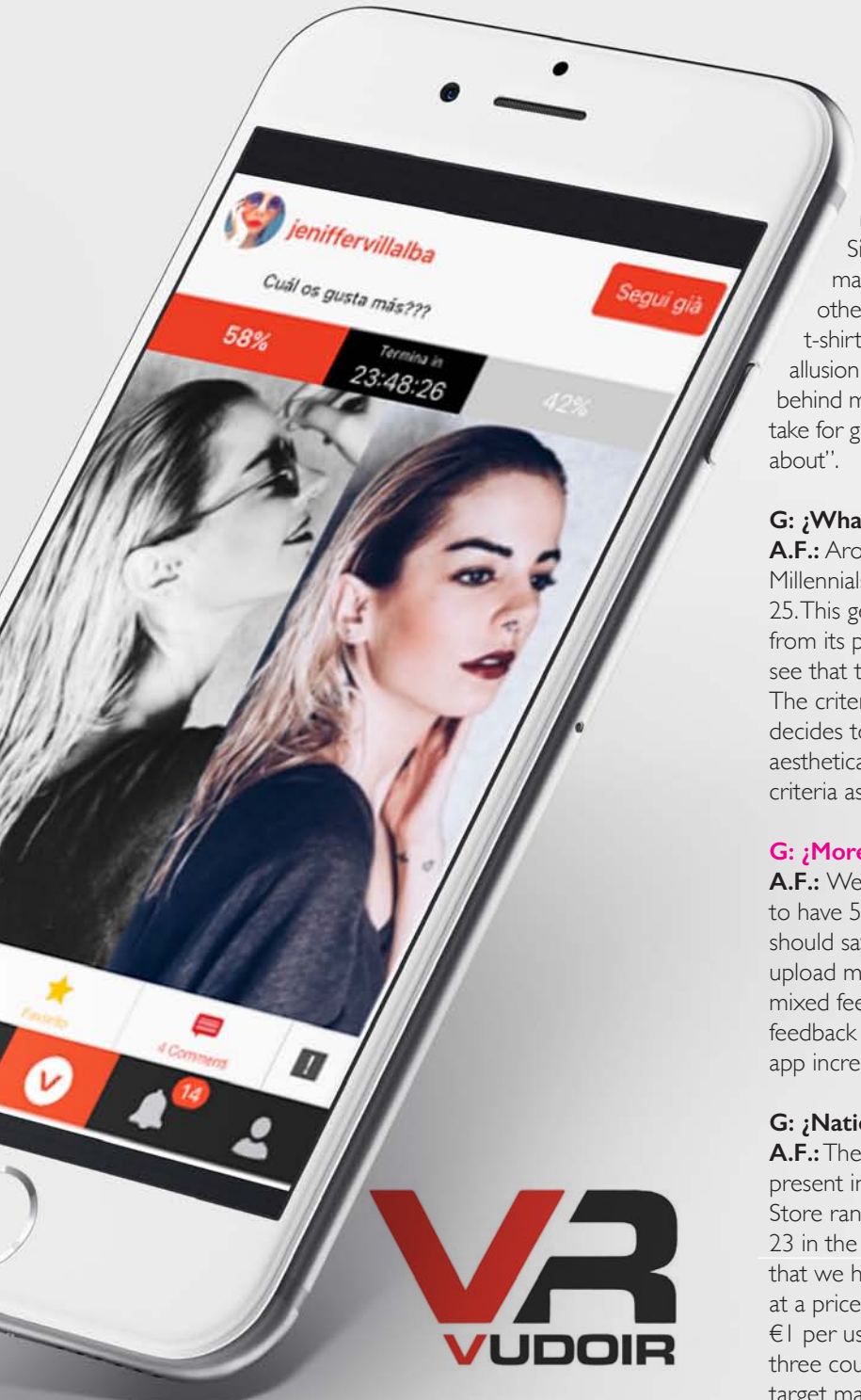
Today we're interviewing Alina Franco, CEO of the Spanish start-up company Vudoir. What we like about Vudoir is the fact that it is a Spanish initiative which has managed to carve out a niche for itself among thousands of fashion and lifestyle apps. And our understanding is that it has managed to do this by addressing a problem which affects all of us to a greater or lesser extent: knowing what to wear for every occasion.

Garrigues: Alina ¿How did Vudoir come about? What was it that sparked it off?
Alina Franco: Vudoir is the digital approach to a question which we have been asking ourselves offline all our lives: what do I look best in? What shall I wear? I was invited to several shows at the Madrid fashion week a couple of years ago. There was a blogger there who'd been invited to give a talk (at the time, we in Spain still talked of bloggers rather than Instagrammers) and her followers – most of whom were women – began to ask her their questions on how best to combine certain garments, mentioning the dilemma they face each morning when deciding what to wear. I began to look for solutions which could help us chose the clothes that suit us best, as an alternative to hiring a personal shopper. One which gave fast results and could be used on a day-to-day basis. I got in touch with one of our partners who is based in Los Angeles, who has a wealth of experience creating and monetizing apps, to see if she could help me. The conclusion I reached was that there was no complete solution nor a winning player that had captured this market niche. From there, I got to work with several of my current partners, looking at how Vudoir could add value to each of the main stakeholders.

G: What do we find when we open this application? How does Vudoir work?
A. F.: When you open the application you see the timeline with users' photos. To be able to interact, you have to register. To be able to seek the opinion of the Vudoir community, you have to take two photos, either of yourself or directly of the garments that you're trying to decide between, and upload them. The process takes just a few seconds. You can indicate the occasion that you're going to be dressing for (e.g. a date, a birthday party, an interview, etc.) and say when you would like the voting to be closed. If you state no preference, the voting process is open for 24 hours by default. The shortest voting time allowed is 5 minutes and the longest is 7 days. Other users, with a single click, can vote which outfit they feel suits you best. You can see how the voting process is progressing and when voting is closed, you can see the winning outfit and the voting percentages. The feedback is always positive. Users can also send you comments, follow you, save your outfit as a favorite, or share it on leading generalist social networks such as Instagram.
The app has an inspirations section, another which provides a ranking of the most voted outfits, and a trophies and achievements board.
I should mention that our average user spends three minutes and thirty seconds in Vudoir, which is way above the average for the market.



G: There is a clearly a technological side to Vudoir. Do you think that fashion and technology work well together in Spain. Have we still got a lot to learn?
A.F.: The fashion-tech market is really hot. We're not necessarily referring to high tech. What we are seeing is that the fashion industry, which used to rely upon its creators alone and was far less professionalized than other industries, is introducing technology in order to cut costs, improve scalability, and provide the final customer with added value. At Vudoir we are aware of the change the industry is going through. This is particularly true in the area of fast fashion, where the collections we are seeing are



getting shorter all the time and our ability to estimate demand needs to improve. And demand, in turn, is more mature, revealing greater autonomy from the outset. Spain is a front runner in the fashion industry, but technology is an area we have embraced only recently. An example: in August 2015 I went to Silicon Valley and Los Angeles to test whether Vudoir made sense to potential customers, investors and other successful entrepreneurs. I made myself some t-shirts with the Vudoir logo initials (VR), which was an allusion to the concept of virtual reality. Everybody was behind me. They said "that's right, apps are something we take for granted, but this is the thing we're really excited about".

G: ¿What is the age range of Vudoir users?
A.F.: Around 60% of our users are Generation Z and Millennials. Our standard hard user is aged between 15 and 25. This generation, on the face of it, is not so very different from its predecessors, but if we take a closer look, we see that the way in which it reaches decisions is different. The criteria on which it bases its purchasing decisions or decides to support a particular brand or define what is aesthetically pleasing, are not, as a general rule, the same criteria as are applied by persons aged over 35.

G: ¿More female users than male users?
A.F.: We are one of the few apps in the fashion industry to have 51% of male users. At the same time, however, we should say that the 49% of female users are the ones that upload most content to Vudoir. Both sexes like to receive mixed feedback. What we have found is that when the feedback is mixed, the number of content uploads to the app increases.

G: ¿National or international?
A.F.: The bulk of our users are in Spain although we are present in 151 countries and have fared very well in App Store rankings in the UK, Italy and France (among the top 23 in the *lifestyle category*). The funny thing about this is that we have only invested in acquiring users in Spain, and at a price which is below the market average (less than €1 per user). The growth we have experienced in these three countries has therefore been wholly organic. Our target market is the US. Startups such as Olapic (recently

acquired for 130 million) and Wishbone App (acquired by a US investment conglomerate) have shown us that there are users and a business model for an app such as Vudoir in the US.

One trend we are noticing is the standardization of styles worldwide. There continue to be great differences, but the process of adoption of foreign garments and styles is gathering pace all the time. For example, we are seeing the normalization of certain Asian and Latin American styles. Unusual hair colorings are gaining popularity in segments which would once have never even considered such a thing. At Vudoir, our contents are voted on by users all over the world, who comment in different languages. At the beginning, we thought this could be a drawback, but we have found that it makes the experience more enriching for all parties involved.

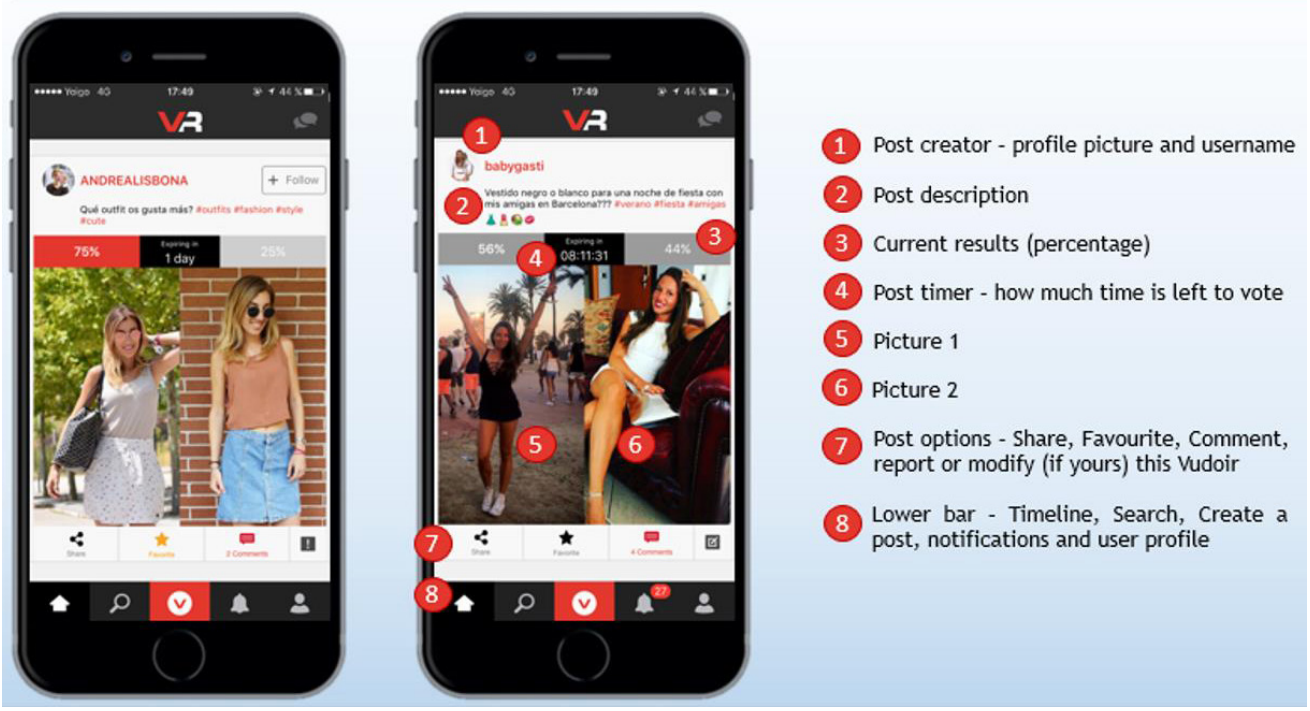
G: ¿What difficulties have you come up against as an entrepreneur?

A.F.: I trained as a lawyer, specializing in M&A, and spent the early years of my career here, at Garrigues. The first hurdle you have to get over is a mental barrier: the idea that a lawyer can only be a lawyer. Leaping into what appears to be a void is quite scary. It helps if you have devised a plan B, a plan C and a plan D; if you assess the risks and work out what you can do to reduce them. The second hurdle, for me, was how to build a 360° vision of the business when up until then my vision had been based purely on my legal knowledge and common sense. To speed up this learning process and try and make as few mistakes as possible, I started an EMBA at IESE Business School in September 2015, which I will be completing in May 2017.

It wasn't easy to find the right partner to take Vudoir forward. I interviewed 70 people before finding Paolo Rizzardini, who is key to Vudoir. Neither was it easy to get people to believe in Vudoir when all I had was a PowerPoint presentation. I made some pretty dismal pitches and was forced to swallow my pride on several occasions until I came up with a way of presenting my concept of Vudoir in a manner which was easy to explain and was able to transmit my own vision and enthusiasm, generating confidence that my team and I would be to carry off the project. As an entrepreneur, I have experienced the fear of not knowing whether I would be able to pay my employees' salaries at the end of the month, or whether I would be able to pay my rent. I had to cut back on what I spent going out and travelling. The sense of risk and legal liability was very real indeed. I was turned down many times or met with silence and made to feel pretty foolish. I would build up great hopes after a fundraising meeting, only to find that it all came to nothing. But despite all that, the feeling I wake up with in the mornings and go to bed with at night is that I am alive and am truly building something. I am happy and motivated and it all seems worth the effort.

G: Who supported you most?
A.F.: For our initial round of FFF financing, I have former bosses, former colleagues and even former Juniors from the various stages of my professional career to thank, along with friends and clients such as Carlos Blanco (Akamon). My father has also played a key part in this process. He's an old-school entrepreneur of the type that believes that for a business to be a business, it must generate revenues from day one. Although Vudoir is not a traditional business, an awareness of this perspective was helpful when working on the business model, and helped me not to lose sight of the fact that the purpose of a business is to generate wealth. I turn to him when I lose my way.
My partner Paolo is my other major source of support. He has experience working in a multi-national and leading his own start-up company for 4 years. He assumes the day-to-day management of Vudoir with great serenity and sound judgement. When the going gets rough, we both seize the helm and battle through the storm. I am constantly learning from him.
Lastly, I must also mention IESE. While running Vudoir, I am also in the second year of my Executive MBA course. My team-mates support me through the more difficult moments of Vudoir and help me to become, every day, a better person and a better professional. At IESE I have also found a place of refuge and a sense of working shoulder to shoulder. We were selected for the first WeGrow mentoring program, which is wholly altruistic. Once a month, we meet with a representative from IESE, Pere Botet (Caprabo) and Carmen Mur (ManPower) to discuss Vudoir's strategy and receive their advice, based on their experience. We have been turned down many times, but we also feel fortunate and grateful for the support and advice we have received from some amazing investors, such as Grupo Sorigué, Joaquín Sanz (Kereon VC), Rafael García Escarré (Orbita97), Global Lleida or Eduardo Navarro (Sherpa Capital, PE), among others.

G: What do you imagine the future holds for Vudoir?
A.F.: I believe in Vudoir as a tool which can enable people to make the most of themselves by carrying out surveys with respect to their appearance. Never again will anyone be met with silence when they ask "which one suits me best?" I imagine that there will be a high level of gamification in Vudoir, videos, virtual reality/ augmented reality and a Marketplace offering products which have sparked interest among users. A channel of communication between the fashion industry and new generations. Why design products you don't know who is going to buy when you can read metrics on what the market is demanding and carry out A/B testing before going into production. Vudoir won't take the place of other tools used to analyze and estimate demand, but it can supplement them by providing a fresh insight, with real data not altered by Instagrammers, into what people—and the new generations in particular—want to wear.



CONTRIBUTORS *to this issue..*

CLAUDIO DORIA TÖLLE

Partner - Corporate Department
Barcelona

Claudio is the partner who coordinates Garrigues' industry Business of Fashion Law and the responsible of the Italian Desk of the firm, and specialist in Mergers & Acquisitions, Corporate and Commercial law. He is a member of the Barcelona Bar Association (ICAB) and the current Vice-chair of the European Regional Forum of the International Bar Association (IBA). He has participated in the Task Force on International Sales of the International Chamber of Commerce (ICC). He has a wealth of experience in advising national and international entrepreneurs in the fashion industry and other sectors, with a special focus on the definition and implementation of the legal strategy for the international expansion of their business

claudio.doria@garrigues.com
es.linkedin.com/in/claudiodoria

AMALIA HERNÁNDEZ SENDÍN

Senior Associate
Administrative Law, Urban Planning and Environmental Department
Madrid

Amalia specializes in domestic trade and in consumer and user rights, providing legal services to numerous commercial operators on a range of issues in this field and in accordance with the different sales formats, particularly e-commerce.

amalia.hernandez.sendin@garrigues.com

RICARDO LÓPEZ ALZAGA

Attorney at Law
Intellectual Property
Madrid

Ricardo advises on Intellectual Property issues. His work is related to copyright, trademark law, publicity rights and privacy on the media and the Internet.

ricardo.lopez@garrigues.com
www.linkedin.com/in/ricardo-l%C3%B3pez-alzaga-8b8549106

CRISTINA MESA

Senior Associate
Intellectual Property
Madrid

Cristina advises on contentious and non-contentious Intellectual Property and Internet related issues, including advertising, image rights, social media, Internet and unfair competition. She is also a designer and illustrator, being specially interested about design, creativity and innovation.

cristina.mesa@garrigues.com
@demesa2
www.linkedin.com/in/cristinamesa

JUANA MARÍA PARDO

Senior associate
Litigation and arbitration
Madrid

Juana María Pardo is a Doctor of Law and specializes in corporate law and litigation since 2006, focusing particularly on actions for liability against directors. She also has extensive experience in advising companies and in alternative dispute resolution, as well as in acting as legal counsel in civil and commercial court and arbitration proceedings.
She has been an associate lecturer at Universidad Pontificia de Comillas (ICADE) since 2010 and also teaches classes in several master's programs at various universities and study centers.
Juana Maria holds degrees in law and business administration (having obtained special distinction in both), and a juris doctor from Universidad Autónoma de Madrid (*Cum Laude*).

juana.maria.pardo@garrigues.com
www.linkedin.com/in/dra-juana-mar%C3%ADa-pardo-pardo-70321929

NATALIA RUIZ

Senior Associate
Industrial Property
Madrid

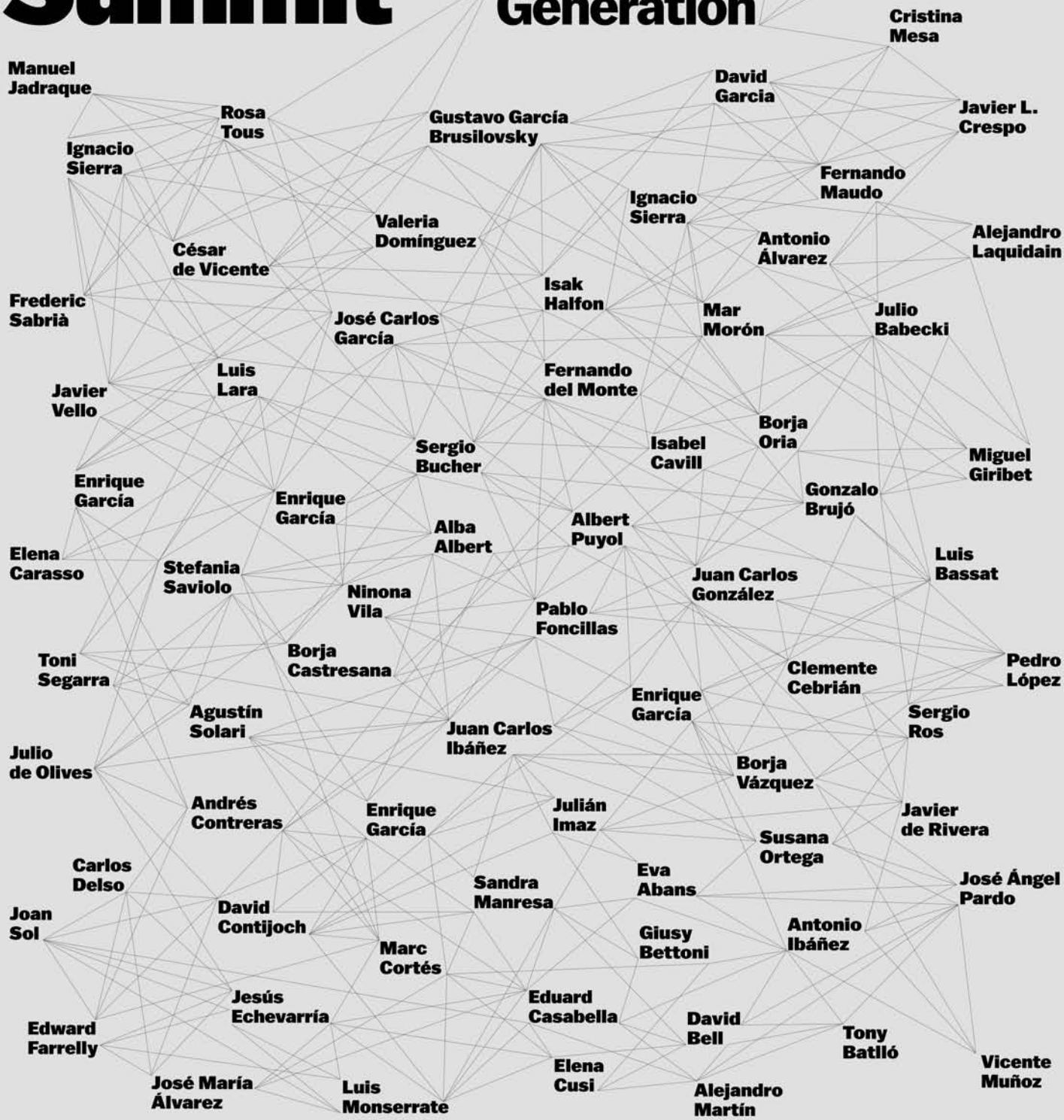
Natalia advises on trademarks and designs protection worldwide, practicing as an IP agent since 1997.

natalia.ruiz.gallegos@garrigues.com
@NataliaNRG
www.linkedin.com/pub/natalia-ruiz-gallegos/3/584/b12

Barcelona Fashion Summit

2 de febrero de 2017
Barcelona

Next Generation 2017



Donde los líderes del negocio deciden el futuro del sector

¡Conéctate!

Patrocinan

Organiza

Apoya

Más información e inscripciones en www.barcelonafashionsummit.com

1941-2016
GARRIGUES

Hermosilla, 3
28001 Madrid
T +34 91 514 52 00
F +34 91 399 24 08
www.garrigues.com

Follow us: