

COLUMNS

NYC's ban on biometric data may hurt luxury brands

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By A LUXURY DAILY COLUMNISTBy **Rania V. Sedhom**

NYC is contemplating a ban on the use of biometric data. The bill originally did not pass but was reintroduced this year after growing concerns of data leaks and improper use of the data. While it may seem counter intuitive that this may have adverse effects on luxury brands, there have already been lawsuits against the likes of Dior and LV.

The ban would place restrictions on the use of biometric surveillance and data collection across the city. Biometric data is a capture or measurement of a person's unique physical characteristics such as fingerprints, palmprints, voiceprints, facial, retinal, or other measurements. A person's biometric data can be used in a variety of ways but this article will focus on its use by luxury brands but will exclude a discussion of the obvious use of this data - security and a safe shopping experience.

Consumers like convenience but also like privacy. It is difficult to marry the two with virtual try ons. If you've ever used your telephone, iPad or computer to try on makeup at Hermes or sunglasses at LV, for example, you've shared your biometric data with those brands. Illinois already has a biometric privacy law and residents of Illinois sued Louis Vuitton last year for failing to obtain consent to use facial recognition software before collecting data during visual try on sessions for sunglasses that consumers initiate. A similar lawsuit was started by customers of Dior where consumers alleged that they were not notified that Dior will collect and store biometric data when using the virtual try on tool, also for sunglasses.

Other uses of biometric data in luxury brands measure a customer's heart rate and reaction (eyes widening, eyes smiling, etc.) to experiences and products to provide a highly customized future shopping experience. Luxury brands use this data to curate unique experiences and offer exclusive or VIP shopping opportunities to spawn brand loyalty and authenticity. If you've ever received an invitation from a luxury brand for a perfect event for you, it is likely that biometric data was used to determine your interest and proclivity to spend on particular items.

The proposed bill will require private entities, including luxury brands, in possession of biometric data to develop a written policy establishing a retention schedule and guidelines for permanently destroying said data at the earlier of three (3) years or when the initial purpose for collecting or obtaining such identifiers or information has been satisfied. As part of the protocol, consumer consent is required. We are awaiting the particulars about the consent. For example, is a one-time popup window asking for authorization sufficient or must the company require consent with each use of the virtual try on or each entry into the

brick-and-mortar store?

The likelihood that the law will pass in some form is high, as many special interest groups posed concerns of discrimination and others are concerned about cyber-attacks, leaving unique identifiers in the hands of the wrong people. Luxury brands should consider examining their current and desired use of biometric data and outlining its uses, the period of time the data is being utilized, and whether the collection of the data is necessary. As with all private data, the collector of the data must properly obtain, use, store and destroy it. As such, if biometric data is not being utilized but rather collected for a future unknown use, stopping its collection may be a good path. For the data that is critical to business operations, putting together a policy that reinforces its use, proper storage and safeguarding of the information cannot occur soon enough.

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