

**Question for written answer E-001557/2011
to the Commission**

Rule 117

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Subject: Legal protection of fragrance formula

The fragrance industry creates scents that bring added value to thousands of products and provide pleasure and benefits to peoples' everyday lives. The scent of a product is a crucial element for its success, communicating a brand's attributes in a uniquely emotive way. Products such as washing powders, fabric softeners, detergents, air fresheners, personal care products and fine fragrances all contain a fragrance composition. This composition is a carefully crafted symphony of fragrance materials and can contain anything from 20 to 200 or more different ingredients from a palette of over 3000. The materials are blended to create the perfect scent required for the product. A great deal of time, expertise, money and effort goes into developing the fragrance composition, which is extremely valuable and considered a trade secret.

Valuable as a composition may be, legally it is considered 'artisanal' and therefore is difficult to protect. Because of this, historically the fragrance industry has protected its intellectual property and its compositions by means of Trade Secrets, only disclosing the ingredients under strict confidentiality agreements.

Nowadays – and it is a good thing – there is pressure from regulators and civil society groups for the fragrance industry to be more transparent and to disclose some or all of the ingredients of a fragrance composition for any given product. The problem is how does the fragrance industry protect its intellectual property and still reveal the ingredients of the fragrance composition if it cannot be protected?

The key issue is that there is no clear pan-European legal guidance on whether a fragrance composition can be protected under copyright. In addition, any protection gained through unfair competition or misappropriation law is insufficient.

1. Trade secret protection is becoming increasingly challenging. Is the Commission aware that existing patent law protects technologies and ingredients but not the full formulae and the fragrance itself?
2. How does the Commission propose to address the key issue of the lack of clear pan-European legal guidance on whether a fragrance formula can be protected under copyright or any other relevant legal framework?