



ALLIANCE

FOR INTELLECTUAL PROPERTY

Copycat packaging

Parasitic “copycat” packaging adopts distinctive features of familiar branded goods in order to mislead the consumer. It can persuade some shoppers to buy goods they did not intend to buy, while misleading many more into believing the products have similar qualities and heritage to the brand being mimicked. In addition, distinctiveness is destroyed making it harder for consumers to make choices, while enormous damage is caused to the brand owners and the years of investment, innovation and reputation building they have undertaken. Costs of the original rise, competition with other products in the category become distorted and innovation inhibited.

In addition to misleading consumers, copycat packaging damages the competitiveness of the original product in the following ways:

- The copycat incurs none of the costs of investment that the brand has spent over years to build its reputation (which is concisely communicated through its packaging) therefore “free-riding” on the original
- The original brand has to spend significant amounts of money and resource to challenge the copycat. It can cost well over £100,000 to undertake the necessary preparatory work and surveys to determine whether a case can be brought which has a reasonable prospect of success
- Brand manufacturers’ costs are increased as they are forced to adopt new packaging to distance themselves from copies – only to find the new designs are then themselves copied

Enforcement of the regulations intended to protect consumers from copycat packaging is currently effectively restricted, to the OFT and Trading Standards. However, experience has shown brand owners that neither organisation is likely to enforce due to limited resources, other priorities, limited knowledge of the impact of specific brand imagery on consumer behaviour and difficulties in proving a breach of the regulations.

The government has promised to review the success of the current consumer protection measures to combat misleading packaging in 2010 and the Alliance is calling on them to make a full assessment, not just of the limited interpretation of the consumer protection regulations in the UK but also of the effectiveness of the UK’s legislative regime generally in addressing acts of unfair competition, including the use of misleading packaging. Given the huge losses caused to brand owners, it is also essential the review considers not just consumer detriment but also the damage caused to competition and brand owners’ legitimate businesses through misleading copycat packaging.