



**Topic  
Brief 17**

**Lookalikes, copycats  
and parasitic trading**

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# Lookalikes, copycats and parasitic trading

## What are lookalikes?

Lookalikes, also known as copycats or parasitic copies, are products in packaging designs that mimic closely the packaging of familiar branded products. Distinctive features of the brand's packaging, whether shape, colour, typeface, label design, graphic features or words, are adapted by a competitor in order to create a connection in shoppers' minds between their product and the popular brand.

The aim is to enhance the appeal of the copy by 'borrowing' the reputation of the original in order to increase sales and/or prices but without infringing the brand owner's intellectual property (IP) rights. They differ from counterfeits in not copying the brand owner's trade marks.

## Fair or unfair competition?

The producers of lookalikes argue that shoppers can easily tell the products apart and they are simply indicating to shoppers that their products are equivalent to branded products.

Brand owners state that lookalikes trade parasitically off the reputation of their products, duping consumers and taking unfair advantage of the investments they have made in product innovation, consistency and quality. The copies also destroy brand distinctiveness and the ability for brands to stand out on the supermarket shelf where shoppers are making decisions at speed, relying heavily on pack shape and colour to determine their choice rather than reading labels.

Most lookalikes are produced by retailers that wish to suggest their own label version is as good as the brand. Nevertheless the vast majority of own label products are distinctively packaged and not an issue.

What does research tell us? The UK's Intellectual Property Office commissioned a three-year study that reviewed past research and undertook its own original research. It provides robust evidence that:

- There is a lookalike effect;
- Consumers are more likely to make mistaken purchases if the packaging of products is similar;
- There is strong evidence that consumers in substantial numbers have made mistakes;
- Consumer perception of the similarity of packaging are correlated with an increased perception of common origin, to a material degree;

- Consumer perception of similarity of packaging increases their perceptions of quality.
- The lookalike effect increases consumers' propensity to buy a product in similar packaging.

## So what are the implications?

**For the copier**, a lookalike strategy is attractive as it costs no more to design such packaging, may boost sales by anything up to 50% and may allow them to charge more.

**The brand owner**, on the other hand, is likely to lose revenue and faces increased costs as it endeavours to reduce shopper confusion, tackle the copy and re-assert its distinctiveness in the marketplace by re-designing its own packaging – an expensive exercise.

**Shoppers**, when led to think the lookalike is the same quality as the brand and/or comes from the same manufacturer when it does not, or if they buy the lookalike in error, are clearly being duped and misled.

Lookalikes are of concern in the UK as the tools to tackle them are ineffective. The lookalike is often designed to avoid infringing IP rights such as trade marks, design rights and copyright. Meanwhile the narrow interpretation of, and the evidence required to show confusion make a successful passing off action very hard to bring. Deliberately promoting a product to suggest it comes from a particular manufacturer when it does not falls foul of the Consumer Protection Regulations (CPRs) but enforcement is lacking.

## Recent developments

In 2014 the UK Government's Department for Business, Innovation and Skills (BIS) launched a consultation exploring whether brand owners affected by the practice should be granted private civil rights of action under the CPRs. Brand owners have such rights in the majority of member states but not in the UK. In October 2016 a ministerial decision was taken not to grant such rights, leaving brands in the UK vulnerable to such copying.

## Comment

The lookalike phenomenon generates interest as it touches on the scope of IP rights and their relationship with consumer protection law. Some also see it as a competition issue (between branded and own label products) but as the copier is unlikely to have a dominant position and cartels are not involved, competition law does not apply.

The UK's compliance with international treaties and EU Directives has also been questioned. Article 10bis and 10ter of the Paris Convention and TRIPS requires the UK to ensure nationals have effective protection against acts of unfair competition, while the Unfair Commercial Practices Directive requires the UK to provide adequate and effective remedies to unfair commercial practices.

In most other EU countries brand owners already have effective means of banning such copying (irrespective of any registered IP rights held) through provisions in unfair competition law and there is a strong case for similar tools to be available in the UK too, as long as these are reasonable and not drawn too broadly. An alternative would be to ensure consumer protection legislation is actually enforced but the prospects of that remain slim in the UK, with Trading Standards having insufficient resources to do so and brand owners denied the right to enforce themselves via civil means.

### Suggested further reading:

- 2013 UK Intellectual Property Office research on the impact of lookalikes: similar packaging and fast moving consumer goods<sup>125</sup>
- BIS call for evidence 2014<sup>126</sup> and Ministerial statement<sup>127</sup>
- “I can't believe it's not copying”<sup>128</sup> – Don Edwards, British Brands, Summer 2009
- Parasitic packaging – article on the British Brands Group website<sup>129</sup>; see also IPAN Brief 19
- Examples of similar “parasitic” packaging<sup>130</sup>
- Hogan Lovells Final Report on Parasitic Copying for the European Commission<sup>131</sup>

125 <http://webarchive.nationalarchives.gov.uk/20140320154249/http://www.ipo.gov.uk/ipresearch-looklikes-310513.pdf>

126 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/305207/bis-14-724-call-for-evidence-review-of-enforcement-provisions-of-consumer-protection-regulations-2008-in-respect-of-copycat-packaging-revised.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/305207/bis-14-724-call-for-evidence-review-of-enforcement-provisions-of-consumer-protection-regulations-2008-in-respect-of-copycat-packaging-revised.pdf)

127 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-10-13/HCWS232/>

128 <http://www.britishbrandsgroup.org.uk/upload/File/27.pdf>

129 <http://www.britishbrandsgroup.org.uk/pages/parasitic-copying>

130 <http://www.britishbrandsgroup.org.uk/upload/File/Similar%20pkg%20examples%202012.pdf>

131 [http://ec.europa.eu/internal\\_market/ipenforcement/docs/parasitic/201201-study\\_en.pdf](http://ec.europa.eu/internal_market/ipenforcement/docs/parasitic/201201-study_en.pdf)