

Issue 1: The nature and scale of any problems associated with the current enforcement arrangements

- We are a large yogurt and dessert manufacturer producing predominantly branded product but also manufacturing for private label.
- To our knowledge there has been little enforcement action against misleadingly similar packaging since the introduction of the Consumer Protection from Unfair Trading Regulations in 2008. We believe that in the current financial climate where local authorities are facing increasing budget cuts, copycat packaging may be viewed as more a brand protection issue for the brand owner than one where there is consumer detriment requiring criminal sanctions.
- Over the past few years, we have had at least ten cases where we have faced lookalikes for our distinctive yogurt. For commercial reasons, we can only highlight the following.



We have had a number of cases involving third parties adopting a similar pot design to ours. The two pots to the left were the subject of a dispute where we instructed external



lawyers and spent a significant amount of internal resource resolving the matter on the basis of infringement of our registered design in the pot. The competitor eventually agreed to change the pot design to the pot on the right. This case is only one of a few similar cases (albeit with different resolutions) over the last few years.

- We have also had cases where third parties have attempted to use our trade mark "CORNER" or the peel back design which we have to take action to protect. In every case, even when resolved quickly, internal resources and costs were incurred.
- Our experience has led us to reach the following conclusions in relation to lookalikes. Firstly, bringing intellectual property claims is easier generally in relation to registered intellectual property rights. Secondly, most competitors will only copy some elements (but not all) of a packaging or product design, which whilst confusing for the consumer makes bringing legal proceedings against them challenging and, in our view, often provides ineffective remedies. Thirdly, there are many legal barriers to bringing such proceedings including the high burden of proof, high cost consequences even if successful and the risks of making what could be deemed unjustified threats, a peculiarity of IP law.
- As the CPR's approach this matter from a consumer confusion viewpoint, if brand owners were able to enforce CPR's through the civil route, this would greatly assist in addressing the problem of copycat packaging.

Issue 2: What is the extent of any consumer detriment arising from copycat packaging?

- Any sales which are diverted to copycat products impact negatively on ability and scope to reinvest in product choice and innovation which is to the detriment of consumers in the long term.
- Copycat products may also limit the extent to which consumers can enjoy products made with milk from farm assured British dairy farms. Müller buys farm-gate milk from more than 1,200 British farms and the quality of this milk is fundamental to the quality of the products which we make.
- Damage to this supply chain caused by copycat products which do not share this commitment, will in turn damage Britain's dairy industry, weakening choice for consumers.

- Our company is a major employer in the UK, employing almost 6,000 people across production and distribution sites from Somerset to Aberdeenshire.
- Our colleagues maintain an efficient, world class, competitive manufacturing and distribution network which ensures that consumers can access innovative high quality products which are distinctive due to their packaging and recognised for these hallmarks and heritages.
- Copycat products gain traction because consumers believe that they come with the same hallmarks and heritage as the branded product they are copying and this is not the case. Consumers are therefore being disadvantaged.

Issue 3: The equivalent enforcement provisions existing in other Member States and how they have worked

Issue 4: The costs and benefits of giving businesses the right to take civil (injunctive) enforcement action against copycat packaging, including any effects on competition and innovation

- Allowing business to take civil enforcement action will reduce the number of unlawful copies on the market and more distinctive branding and packaging. This enables consumers to make more informed purchasing decisions which in turn reduces wasted resources for brand owners enabling further investment in innovation and choice.
- Business who invest in innovation will have additional resources to innovate further while competitors will be forced to compete on the basis of their own innovation as opposed to trading off the reputation of others.
- It will allow resources to be channelled more efficiently to investments in brands and trade marks that are known to contribute to productivity, jobs and growth..

Issue 5: How the power would work and what impact might there be on the way in which enforcement of the CPRs operates in the UK

- Claims of misleadingly similar packaging would be best brought before the same tribunals that currently handle trade mark, design, copyright and passing off cases;
- Using private sector resources will result in consumers being better able to make accurate, well-informed and efficient decisions, achieving higher levels of consumer protection at no cost to the taxpayer.

Issue 6: What legal changes might be needed to provide businesses with the right to take civil (injunctive) enforcement action against copycat packaging, including defining the practice covered by the private right of action in order to capture what is intended without providing too broad a power?

- Rights of enforcement are only sought in relation to misleadingly similar packaging. The right needs to embrace all relevant provisions of the CPRs relevant to that specific practice and should be available only to those with a legitimate interest. This might include measures requiring the infringing party to disclose how packaging was generated.

Issue 7: Whether there are any legal or policy issues to be resolved and the scope of any implementation task.

- At this stage without detailed proposals, we are unable to identify any significant risks in giving businesses civil injunctive power in the narrow area of misleadingly similar packaging. This would only be beneficial for consumers, businesses and local economies.

- In order to limit the number of cases brought, we believe that it should only be the brand owners of the product being copied who should have the ability to take action, not some wider body of claimant.

Issue 8: The nature and scale of any risks associated with both continuing the present arrangements and giving businesses a civil injunctive power.

- See the response to issue 7, which also addresses this point.