

Copycat branding

What is a copycat brand?

A copycat brand is a brand which copies, mimics or is made deliberately similar to an established brand in the marketplace. Copycat brands are also sometimes called “parasitic brands”.

What is an established brand?

An established brand distinguishes the product of one producer or trader from those of others. However an established brand can be much more than simply something which differentiates between a source of goods or services. A brand can evoke a lifestyle choice. A luxury brand for example can extend across automobiles, fashion clothing and jewellery and even extend to the interior design of apartments.

Brand owners will have spent millions or even billions of pounds in building up an established brand. After all that investment, they can either charge a premium price to their rivals or enjoy superior sales volumes at similar prices compared to their rivals as a result of that significant investment.

Perhaps the strongest established brand in the world is Coca-Cola ®. It would be difficult to displace Coca-Cola by another new cola brand, of which there are plenty of contenders. Coke® is so ingrained in people’s memories and experience that it has extraordinarily deep goodwill with the consumer. You might have had Coca Cola at your sister’s wedding, or when you had your first kiss. It’s difficult to displace a brand with so much nostalgia in people’s minds. Further if anyone can defend their brand in court then it would be the Coca Cola Company. However that doesn’t stop people trying to copy. No brand is safe from copycat brands.

Why do companies adopt copycat brands?

Quite simply, copycat brand owners want to take advantage of the brand owner’s investment which has gone into building up an established brand, without making that significant investment themselves. They want to get as close as they legally can to taking the benefit of that investment, and some of them are not afraid of testing where that legal

limit is in the courts. This is particularly true where the copycat brand owner has larger size or deeper resources than the established brand owner, or the copycat brand owner enjoys an asymmetric trading relationship with a smaller established brand owner who relies upon the copycat brand owner as a customer. Small established brand owners beware!

How does copycat branding work?

First of all we need to understand how a brand works. Brands work by providing a sense of familiarity to the purchaser. People like stability and familiarity. Even if the previous experience of a brand was mediocre or poor, faced with the choice of a known brand and several new or untested brands, it is human nature to revert to what is familiar. At least you know what you're getting.

Copycat brands work by taking familiar features from established brands and applying those to a newly made up brand so that the consumer feels comfortable with the made up brand. Copycat products look similar to the brand leader and their success relies predominantly on feeding off the familiarity which consumers have with an established brand.

Faced with a direct choice between an established brand and a copycat brand the consumer is more likely to choose the established brand all other things being equal, such as price, availability, and package size. However usually all other things are not equal, and the copycat brand is priced cheaper than the original brand.

If the consumer is looking at price first, the familiarity given by the copycat features on the made up brand reassure the consumer that it is OK to buy the made up brand product. If the consumer is looking at an established branded product next to a copycat branded product the copycat features give the message that this is an alternative to the established brand. The lower price can then seal the purchase.

When a consumer buys a copycat branded product they are not buying the original product. Common reasons why a customer would buy a copycat brand is because it is cheaper, because they cannot afford the original brand, or because the original brand is unavailable, or because they made a mistake and thought it was the original brand.

Examples of copycat branding

In the United Kingdom, common and well known occurrences of copycat branding are found in supermarket own brands for food and household products. But in other instances copycat branding extends to consumer goods such as toasters, kettles consumer electronics, mobile phones, and even complete automobiles. Typically a copycat brand mimics features of the shape, colour, feature layout, and / or relative placement of design features of an original product, but without copying exactly.



Above: Established brand on left, retailer own brand on right. The own brand has the blue cap with white bottle, an asymmetric bottle curved on one side, uses italicised main lettering slanting left to right, and carries a water splash feature.



Top: Range Rover® Evoque® top, retailing at approx. £40,000. Lower: Chinese LandWind copycat retailing at approx. £14,000. The primary similarity is the overall shape and appearance of the vehicle body.

[Do established brands suffer as a result of copycat branding?](#)

There is debate about this, but the common sense answer would have to be yes. If you imagine studying hard for your school examinations to the point where you were expecting good marks, but the person sitting next to you has done very little work at all and will most likely fail the exam. If they were allowed to secretly copy your answers, that would not affect your exam performance at all. Your candle still shines just as bright. You will still get the same high mark in the examination. Nothing has been taken away from you. And yet somehow most people would consider this to be unfair.

What has actually been stolen is your reputation as being the best or near best in class and the exclusivity of being the only person or one of only a few persons to achieve a good grade. Faced with multiple candidates each having good exam results, a prospective future employer need not pay as much for your services if there is more competition perceived as being at the same level. If every candidate has straight A's and distinctions, the value of those qualifications in the marketplace diminishes due to the laws of supply and demand.

It's a similar position with copycat branding. The established brand can have its reputation and exclusivity, and therefore its value diminished. The perceived distance between the established brand and the next best product is reduced. Depending on how close the copycat brand gets, copycatting can lead to downward pressure on the price premium which can be charged by the established brand, or erode sales volumes of the established brand product.

The effect of a copycat brand on an established brand can be:

- Drawing the consumer's attention away from the established brand, and towards the copycat brand;
- Impairment of the ability of the consumer to find the established brand;
- Mistakenly selecting the copycat brand instead of the established brand;
- Dilution of exclusivity of the established brand;
- Reduction in pricing power of the established brand;
- Reduced sales volumes of the established brand;
- Loss of contract with a customer or distributor and being replaced by a copycat product supplied by a cheaper competitor.

But by keeping the copycat brands as far away as legally possible, the detrimental effect of copycat brands on established brands can be minimised.

Advantages for retailers or producers in creating copycat brands can include:

- Diverting market share away from established brands to your own copycat brand;
- Replacing a more expensive established brand supplier with a cheaper alternative supplier, whilst maintaining sales volumes;
- Provide a lower cost equivalent product to the end consumer compared to an established branded product;

- Exert additional buying power over a supplier of an established brand by introducing an alternative competing copycat own brand;
- Occupy the profit margin residing in the price gap between a new unknown own brand and a well known established brand;
- Increase sales volumes of a little established brand or unknown brand product by re branding as a copycat brand.

Where is the line between fair and unfair competition?

In the UK, there is no law of unfair competition per se. Instead protection is given by a bundle of individual rights. These include registered trade marks, which protect features such as names, logos, designs, smells, sounds and shapes, the common law of passing off which protects against misrepresentations which cause damage to a trader, copyright which protects original works such as artwork packaging, registered designs which protect the appearance of products, and patents which protect technical innovations embodied in the way in which products work.

Whether a particular type of copying is “fair competition” or not depends whether any intellectual property rights are breached or not. If a copycat product is getting too close for your liking, but it doesn’t infringe any of your intellectual property rights, then although it might be unwelcome, blatant, aggressive, cheeky, lack integrity or even be laughable, and might even make you angry, if no rights or laws are breached then it is allowable.

On the other hand, if there is a breach of an intellectual property right or a law, then the competition is not fair and should be stopped.

Isn’t copycat branding just another name for fair competition?

That depends upon whether it infringes anyone else’s legal rights or not. Anything which infringes the legal rights of another person is not fair competition, but anything which does not infringe a legal right of another person, however blatant, or cheeky and no matter how damaging to the established brand, is legal.

Copycat product retailers may argue they are providing great value by providing a very similar product usually at a lower price than the original.

On the one hand owners of established brands have invested heavily in product development, marketing and brand development and have a legitimate expectation of generating an adequate return on investment.

On the other hand, monopolies are generally considered to be bad for society, with a few exceptions and free unrestricted competition is generally considered to be a good thing.

The great thing about capitalism is that anyone can have a go. If you want to invest heavily and build up an exclusive strong established brand in the expectation of a reasonable and adequate return on investment, then provided you stay within the law, you are free to do so.

Similarly, if you think that established brands are overrated, overpriced and consumers are being ripped off and are just paying for the brand, but you can provide an alternative or equivalent product of a quality acceptable to consumers but without the bloated price premium charged by the established brand, then you are free to do so provided you stay within the law and are not prevented from doing so by a legal right of another person, for example an intellectual property right.

The people who decide between the established brand or the copycat brand is the general consumer. It is a democratic decision with each consumer making their own personal choice on which product to buy.

The people who decide whether any intellectual property rights have been violated are the courts.

What is the difference between a copycat brand and an “own brand”

There is overlap, because inventors of copycat brands tend to protect them and create their own intellectual property rights to make the copycat brand their own.

However, in general an “own brand” particularly of a supermarket or retailer more likely does not copy a well known established brand, but rather is something which it is intended that the customer will identify with the brand owner as supplier. An example would be Morrisons supermarket “The Best” brand which extends across a range of products and is used to denote their premium own branded products.

An own brand is generally not intended to be a copycat brand.

What is the difference between a copycat product and a counterfeit product?

There are no clear cut definitions, but a counterfeit product usually aims at deliberately deceiving a consumer into thinking that it is the actual product of an established brand, whereas a copycat brand does not. Examples of counterfeits might include counterfeit Rolex® watches, and counterfeit mobile phone batteries. Usually, the counterfeit is of poorer quality than the original, and whilst it may function, it is unlikely to function as well as the original product and the materials will be cheaper.

At the extreme, counterfeit products can be unsafe or even life-threatening, for example counterfeit automobile brake parts, or counterfeit aircraft components.

Often, a counterfeit product breaches every type of intellectual property owned by the established brand owner, and is illegal. Often the counterfeit product is a direct rip-off of a product made by an established brand owner, with the intention to deceive the consumer into thinking the product is genuine when it is not.

On the other hand, a legitimate copycat product falls within the law and is not intended to blatantly deceive the consumer into thinking that the product is that of an established brand.

What is the difference between a copycat and a fake?

A fake product, or at least a good fake, can be virtually identical or indistinguishable from the original article, and could be of the same or even better quality than the original product. Further a fake is not necessarily illegal, and there is not necessarily any intention to deceive the buyer if the product is sold as being a copy or a reproduction. Where products are not protected by intellectual property, a good fake product can provide exceedingly good value for money for the consumer compared to purchasing the original product.

Example:



Left: Salvator Mundi by Leonardo Da Vinci, dated around 1500 original painting, cost \$450m USD. Right: Salvator Mundi fake copy available as an online print, cost less than £100, a saving of over \$449m US dollars for a visually virtually identical product. The original painting pre dates the existence of copyright laws and has no copyright protection.

[How can we help? – for copycats](#)

We have several years' experience in advising some of the main originators of copycat brands in just how far they can go in copying established brands without being liable for infringement of trade marks, copyright, patents, registered designs or falling foul of the common law tort of passing off. We provide product and brand clearance searches down to the specific details of individual packaging and advertising. So far we have a 100% track record of keeping our copycat brand clients out of trouble.

If you already have a problem with an established brand owner, we can advise you on which side of the infringement line you stand on depending on whether you are infringing or not, and either defend you or advise you on settling the case and re – branding.

How can we help? – for established brand owners and new brand originators

We can identify which types of protection apply to your products, we can create registered rights to protect your brands and the brand features of your products, and spot any gaps or weaknesses in your existing protection which could be exploited by a copycat product. We can help you build up and maintain the defensive wall around your products to keep the plagiarists as far away as possible from your established brand space or your new exclusive brand.

For more information on protection of your brand please contact one of our Chartered or European patent or trade mark attorneys.

Further reading:

1. The Effect of Branding on Consumer Choice, J Leighton, Mountainview Learning; Geoff Bird, University College London.

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