

The Impact of Lookalikes: UK Report

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The UK Intellectual Property Office recently published a report entitled 'Impact of Lookalikes: Similar Packaging and Fast-Moving Consumer Goods'. The report examines the area of lookalike consumer goods and the impact of such goods on consumers, retailers and brand owners.

A lookalike is often an own-brand product that is packaged or presented in such a way so as to imitate a branded product. The working definition of 'a lookalike' adopted in the report is

"a product sold by a third party which looks similar to a manufacturer brand owner's product and, by reason of that similarity, consumers perceive the lookalike to share a greater number of features with the manufacturer brand owner than would be expected simply because the products are in the same product category".

In an attempt to understand the 'lookalike effect' and the impact it can have on the sale of fast moving consumer goods, the UK Intellectual Property Office conducted consumer surveys and analyses of sales figures and stakeholder opinions.

The report concluded that almost as many consumers felt that they had benefitted from the lookalike effect as had been disadvantaged by it. However, the brand owners interviewed typically perceived lookalikes negatively and considered that sales may be lost to retailers selling own-brand products. The brand owners also generally viewed the law of passing-off as providing insufficient protection as lookalikes do not typically generate confusion as to origin, a prerequisite to grounding a claim in passing-off.

The report considered that it is probable that the prevention of lookalikes is within the scope of the EU Unfair Commercial Practices Directive (UCPD). It is therefore arguable that the right to an injunction under the Irish Consumer Protection Act 2007, which transposes the UCPD into Irish law, provides brand owners with the means to defend themselves from the negative effects of lookalike goods. The corresponding UK legislation does not provide a private right of action due to a fear of opening the floodgates. However, the report notes that to date there has been very little use of the remedy in Ireland and suggests that the 'floodgates' argument should not be a real concern for the UK legislators.

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