

DIGITALES ARCHIV

ZBW – Leibniz-Informationszentrum Wirtschaft
ZBW – Leibniz Information Centre for Economics

Oguz, Ezgi; Marsden, Jamie

Article

Defending against copycat packaging : the role of design from a consumer's perspective

Provided in Cooperation with:

Athens Institute for Education and Research (ATINER)

Reference: Oguz, Ezgi/Marsden, Jamie (2023). Defending against copycat packaging : the role of design from a consumer's perspective. In: Athens journal of business & economics 9 (1), S. 73 - 90.

<http://www.athensjournals.gr/business/2023-9-1-5-Oguz.pdf>.

doi:10.30958/ajbe.9-1-5.

This Version is available at:

<http://hdl.handle.net/11159/631133>

Kontakt/Contact

ZBW – Leibniz-Informationszentrum Wirtschaft/Leibniz Information Centre for Economics
Düsternbrooker Weg 120
24105 Kiel (Germany)
E-Mail: [rights\[at\]zbw.eu](mailto:rights[at]zbw.eu)
<https://www.zbw.eu/econis-archiv/>

Standard-Nutzungsbedingungen:

Dieses Dokument darf zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden. Sie dürfen dieses Dokument nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, aufführen, vertreiben oder anderweitig nutzen. Sofern für das Dokument eine Open-Content-Lizenz verwendet wurde, so gelten abweichend von diesen Nutzungsbedingungen die in der Lizenz gewährten Nutzungsrechte.

<https://zbw.eu/econis-archiv/terms-of-use>

Terms of use:

This document may be saved and copied for your personal and scholarly purposes. You are not to copy it for public or commercial purposes, to exhibit the document in public, to perform, distribute or otherwise use the document in public. If the document is made available under a Creative Commons Licence you may exercise further usage rights as specified in the licence.

Defending Against Copycat Packaging: The Role of Design from a Consumer's Perspective

By Ezgi Oguz^{*} & Jamie Marsden[±]

Copycat packaging involves a type of imitation strategy in which the appearance of a market leader's packaging design is simulated by a low-cost alternative. Previous literature has focused on reactive strategies against copycat packaging, primarily involving litigation and packaging design changes; however, very little attention has been assigned to the role of packaging design as a proactive strategy for mitigating against copycat packaging. To address this issue, this study examined the role of design in mitigating copycat packaging from a consumers' perspective. We conducted an exploratory study of 37 semi-structured interviews to understand how consumers respond to the design components on visually similar packaging across a range of FMCG products. We found that packaging design cues have the greatest impact on purchasing decisions in cases where consumers have no familiarity with a brand, but less influence when consumers are already familiar with a brand. Consumers rank the importance of packaging design features differently depending on the product category. For high-cost items, consumers rank structural design as the most important feature, whereas colour is considered the most important for low-cost products. We end the paper by discussing the implications for brand managers and outline strategies for minimising the occurrence of copycat packaging.

Keywords: copycat, packaging design, similarity, packaging strategy, consumer evaluation

Introduction

Copycat packaging is a strategy where a lower cost brand attempts to mimic the appearance of a market leader's packaging design (Warlop and Alba 2004). By designing the components of the name, logo, colour, graphics, packaging shape and label shape in a visually similar way, copycat packaging attempts to exploit the positive associations related to a leader brand (Van Horen and Pieters 2012, Johnson et al. 2013). Such practices used to be isolated occurrences, with the first known case emerging in 1994 for Sainsbury's cola in the UK (Rafiq and Collins 1996). However, research shows that it is now a rapidly growing phenomenon (Johnson et al. 2013), with 42 per cent of all private label brands attempting to emulate the packaging design of the market leader (Vale and Matos 2015). Although copycats accounted for 2 per cent of the UK grocery market in 1998 (Johnson et al. 2013), the British Brand Group director said that currently, there is little to stop copycat in the UK (Masters 2013).

^{*}PhD Candidate, School of Design, University of Leeds, UK.

[±]Lecturer, School of Design, University of Leeds, UK.

Whereas counterfeits – another type of imitation – is an exact copy of the original product and is an illegal practice, copycats are equally damaging but yet a legal practice (Brondoni 2013). Copycat packaging can mislead and confuse consumers into mistaken purchases due to the visual similarity of a leader brand's packaging (European Brands Association Trade Mark Committee 2010). Such practice leads to crucial business harm for brand owners, such as lowering innovation, wasted costs on changing packaging, loss of sales, loss of followers, dilution of brand equity and reputation, and loss of fair competition (Kapferer 1995, Lee and Zhou 2012, Johnson et al. 2013). The impact of the resulting trade loss was estimated in 2004 to be at \$512 billion (Zaichkowsky 2006). As such, leader brands have little option but to defend against copycat packaging.

There are two types of strategies that brands can adopt to defend against copycat packaging: reactive strategy, which is based on responding to the copycat phenomena after it occurs, and proactive strategy, which focuses on minimising the copycat phenomena before it becomes a problem. Reactive strategies can involve tactics such as selling out, licensing and joint venture, negotiated settlements, legal action, and packaging changes; proactive strategies consist of legal protection and differentiation (Collins-Dodd and Zaichkowsky 1999, Schnaars 2002). However, these reactive and proactive strategies can be inadequate. Firstly, legal action is expensive (Doyle 1996) and time-consuming (Collins-Dodd and Zaichkowsky 1999), and may not result in favour of the leader brand because it is challenging to prove passing off and infringement claims in court (Rafiq and Collins 1996). Secondly, packaging changes can be costly for brand owners and are usually followed by other competitors (Johnson et al. 2013). Thirdly, when the owner of copycat packaging is confronted with a legal debate, they change its design slightly to protect themselves from enforcement. Finally, trademark infringement can be challenging to prove consumer confusion when some imitators copy only the most salient features of a design (Lopes and Casson 2012). Therefore, brand owners struggle to overcome copycat problems with these strategies.

Although the literature regarding imitation has predominantly investigated counterfeiting (Zaichkowsky 2006, Lai and Zaichkowsky 1999), previous research regarding copycat has addressed diverse topics such as consumers' similarity evaluation of copycat (Van Horen and Pieters 2012, Zaichkowsky 2006, Miceli and Pieters 2010), brand confusion caused by the similarity of the visual design (Kapferer 1995, Loken et al. 1986, Miceli and Pieters 2010, Warlop and Alba 2004, Satomura et al. 2014), copycat's effect on purchase behaviour (Vale and Matos 2015), the impact of product category on the brand evaluation of imitation (Le Roux et al. 2015) and potential business harm caused by copycat (Johnson et al. 2013).

With respect to defending against copycat packaging, previous literature has focused on reactive strategies, primarily involving legal action and packaging changes; however, very little attention has been assigned to the role of packaging design as a proactive strategy for mitigating against copycat packaging. Therefore, the aim of this study was to examine the role of design components in mitigating copycat packaging from a consumers' perspective, by exploring the following

research question: How do consumers respond to the design components of visually similar packaging? From our analysis of qualitative interview data, we found that packaging design cues have the greatest impact on purchasing decisions in instances where the consumers have no familiarity with a brand, either the leader brand or copycat brand; whereas their past experience has the greatest influence when they have familiarity. Moreover, we found that consumers respond to visually similar packaging differently depending on the product category. In other words, structural design was more influential for high-cost categories, whereas colour was more influential for low-cost categories. We expand on these results by suggesting that the impact of packaging's features can vary between different types of product, and that responses are influenced by brand recognition. We outline several practical recommendations for leader brands in their attempts at managing the challenge of copycat brands.

Literature Review

Packaging and Consumer's Purchase Decision

Packaging is a silent salesman on the shelf where enables the communication between the brand and the consumer (Simms and Trott 2010). Packaging provides information, choice, and satisfaction for consumers; moreover, it enables firms to be differentiated, segmented and commercialised (Dobson and Yadav 2012). It helps to distinguish the product from its competitive products, which leads to gain a competitive advantage by breaking through the noise on the market (Rundh 2005). Packaging plays a critical role in different types of industries, but especially in the fast-moving consumer goods (FMCG), which are non-durable goods such as food, groceries, alcohol, and toiletries. FMCG products are characterised as being quickly purchased by consumers with low involvement, under limited time for products with a short shelf life (Dobson and Yadav 2012, Silayoi and Speece 2007). In this highly competitive context, brands attempt to attract the attention of consumers through packaging.

Packaging has a crucial role in shaping the purchase decision of the consumer at the point of sale. It is estimated that two-thirds of consumer product purchase decision is made with quick recognition and rapid perception at the point of sale (Satomura et al. 2014). Packaging plays a vital role not only in assisting the consumer at the point of sale by serving as a cue and a source of information, which allow them to recognise brands they are looking for, but also influencing their future purchasing decisions (Dobson and Yadav 2012). According to the cue utilisation theory, consumers use some cues to assess the quality of the product when they are not certain about the product (Olson and Jacoby 1972). Therefore, the role of packaging as an indirect cue (extrinsic cue) is a mode of brand communication (Olson and Jacoby 1972).

Packaging conveys messages about the product attributes to consumers through visual or verbal elements such as colour, brand name, shape, logotype and material (Dobson and Yadav 2012). In addition, packaging also communicates

brand identity and brand associations via its verbal and visual elements (Underwood 2003). Being one of the five elements of a brand, including brand name, the logo and graphic symbol, the personality and the slogans (Keller 1998), the packaging is the physical embodiment of the brand identity whose each feature of packaging contributes to the unique brand propositions and values (Southgate 1995, Kotler and Keller 2016). Similar to the brand name, which functions obviously as a sign and conveys meanings based on brand associations, specific design elements, which are brand's design cue, function with the same logic of embodying meanings (Karjalainen 2004). Therefore, the packaging is a source of information not only about the product but also the brand.

As well as packaging, there are other crucial elements that have an influence on consumer's purchase decision. The first one is the price that can be the only reason for buying a product (Hustic and Gregurec 2015). The second one is prior experience with a product that is ranked as the most important considerations in purchasing decisions (Johnson et al. 2013). If the consumer has a past experience with a product, (s)he is familiar with it. Furthermore, familiarity with one or both brands may affect the similarity judgement of the consumer. In other words, a consumer who is unfamiliar may perceive the brands as more similar, whereas a familiar consumer differentiates the brands (Murphy and Wright 1984). The last reason is involvement level with a product category. Depending on a consumer's experience and knowledge, while some consumers are able to make quick purchase decisions, other consumers need to get more information and be more involved to make a purchase (Silayoi and Speece 2007).

Brand Differentiation through Packaging

Packaging is a critical strategic element for brand differentiation (Underwood and Klein 2002), because it offers both short-term and long-term advantage for firms by helping to gain an advantage by combatting competitors at the point of purchase and sustain competitive advantage by building brand loyalty which is the source of brand equity (Dobson and Yadav 2012). There are two main packaging tactics; distinctive packaging, which is based on the innovative strategy, and copycat packaging, which is based on the imitative strategy.

Distinctive packaging is defined as packaging that deviates strongly from the packaging in a specific category (Dobson and Yadav 2012); therefore, they break through the visual clutter of the marketplace and become the pioneer of the category. Creating unique packaging is an effective route for new entrants because it attracts consumer attention and raises consumer curiosity, which can lead to making a purchase decision (Dobson and Yadav 2012). Examples of packaging that is considered as distinctive are: the Toblerone chocolate bar, the Coca-Cola bottle, the Absolut vodka bottle, the Grolsch bottle, the Jack Daniels bottle, the Marmite's jar, the Chanel perfume bottle, the Campbell's soup can and the Toilet Duck bottle. These packages have remained similar over the years, apart from subtle changes.

Copycat Packaging

Copycat is known as lookalikes, me-too, trade dress imitation and parasitic. Copycat packaging is defined as imitating the visual appearance such as the name, logo, colour, graphics, packaging shape and label shape of a leading brand, which is not descriptive, functional and commonplace (Warlop and Alba 2004, Van Horen and Pieters 2012, Johnson et al. 2013, European Brands Association Trade Mark Committee 2010). Copycat packaging has some advantages for the imitator. Firstly, copycat packaging is a less risky strategy than distinctive packaging since it evokes associations that consumers are familiar with the leader brand (Brown et al. 2010). Secondly, it is a cost-effective strategy because imitators do not need to spend money on research and development and the design process (Wierzbicki and Nowodzinski 2019). Thirdly, it can lead consumers to exclude other brands apart from the leader brand and copycat brand from their consideration set (Vale and Matos 2015). On the other hand, copycat packaging has some disadvantages for the leader brand who invests time, money and effort in developing a unique visual identity. It can cause business harm, including lowering innovation, wasted costs on changing packaging, loss of sales, loss of followers, dilution of brand equity and reputation, and loss of fair competition (Kapferer 1995, Lee and Zhou 2012, Johnson et al. 2013).

Copycat packaging appears across different product categories such as cereal, detergent, drugs, drinks, personal hygiene, dairy products, and groceries (Mansfield et al. 1981, Vale and Matos 2015). There are some well-known examples of copycat packaging (see Figure 2 in Appendix). Firstly, in the beverage category, the Classic Cola, which was launched by Sainsbury in 1994 in the UK, imitated the packaging of Coca-Cola through the typography, the layout of graphics and the colour combinations (Warlop and Alba 2004). The Sainsbury's Classic Cola had a red can with white labelling, including the 'classic' word like Coca-Cola. Secondly, in the condiment category, the Realemon juice mimicked the unique packaging of the Jif lemon juice, which was launched in plastic lemon-shaped squeezzy packaging in 1955, in the UK, with respect to the lemon-shaped structural design, the colour and the placement of the label (Kuan 1990). Lastly, the Anti-Dandruff shampoo by Boots mimicked the distinctive packaging of the Head & Shoulders shampoo by using the curved structural shape, the graphic of water wave, and the colour combinations (Johnson et al. 2013).

Consumer's Evaluation of Copycat Packaging

One study has shown that copycat brands and leader brands are perceived to have a similar origin, similar quality and similar characteristics because of the mimicking of the visual cues (Johnson et al. 2013). The more similarly consumers perceive the copycat brand and the leader brand, the more likely they purchase. After buying a copycat brand, consumers may be dissatisfied with a copycat brand without realising that the product purchased was a copycat or they may be satisfied with a copycat brand which consumers are aware it is not original, which causes to switch brand preferences from the original brand to the copycat brand (Foxman et al. 1990).

Consumers evaluate copycat packaging critically depending on the degree of similarity and the presence of a leader brand (Van Horen and Pieters 2012, Van Horen and Pieters 2013). Firstly, in cognitive psychology, the similarity is assessed by a feature-matching process (Tversky 1977, Gati and Tversky 1984). According to this theory of similarity, the more common features that there are, the more similar the product is; however, the more distinctive features there are, the less similar the product is. Secondly, evaluation of the copycat brand is more positive in the case of the absence of the leader brand than the presence of the leader brand since consumers may interpret similarity in terms of substitutability (Van Horen and Pieters 2012).

Due to the visual similarities of the leader brand and copycat brand packaging, copycat packaging creates brand confusion. Typically, retailers place the copycat brand adjacent to the leader brand, adding to consumer confusion (Kumar and Steenkamp 2007). In contrast to high-cost packaging, low-cost packaging is more liable to confuse and mislead consumers (Balabanis and Craven 1997). It is reported that 38 per cent of consumers are confused or misled by similar packaging, and 33 per cent of consumers have mistakenly bought a copycat brand because of its similar packaging (Johnson et al. 2013, European Brands Association Trade Mark Committee 2010). Therefore, in UK law, the Consumer Protection from Unfair Trading Regulations aims to protect consumers against unfair commercial practices such as copycat packaging (The Consumer Protection from Unfair Trading Regulations 2008, 2008). In the context of copycat, unfair commercial practices can be constituted by containing false information or causing confusion by the imitation of the competitors' product or package (The Consumer Protection from Unfair Trading Regulations 2008).

Defending Strategies against Copycat Packaging

Firms use defensive strategies against copycat packaging because copycat packaging leads to crucial business harm for them. Reviewing the literature on defensive strategies, they can be categorised into two different types: reactive and proactive strategies. Reactive strategy is based on responding to the copycat phenomena after it occurs, while proactive strategy focuses on minimising the copycat phenomena before it becomes a problem. Reactive strategies are selling out, licensing and joint venture, negotiated settlements, legal action, and packaging change, and proactive strategies are legal protection and differentiation (Collins-Dodd and Zaichkowsky 1999, Schnaars 2002).

Firstly, in a growing market, a pioneer with a good reputation sells out for a high price to a firm (Schnaars 2002). Secondly, a pioneer agrees to license the technology with a strong partner (Schnaars 2002). Thirdly, negotiation is a commonly used strategy against a copycat brand because it guarantees the cessation of imitator's activity, and it is cheaper and quicker than other strategies (Lopes and Casson 2012). To illustrate, the Sainsbury's Classic Cola imitated the packaging of Coca-Cola through the typography, the layout of graphics, used 'classic' word as the product name and the red and white colour combinations. Coca-Cola and Sainsbury's negotiated that Sainsbury's change its packaging and

product name (Balabanis and Craven 1997). Fourthly, litigation is the most common way of defending against copycat packaging (Collins-Dodd and Zaichkowsky 1999). If an imitator has a blatant copy of the pioneer's packaging, the pioneer can stop the copycat packaging from selling through legal action. Many legal cases are resolved by packaging withdrawal or packaging redesign of the imitator brand (Shenkar 2014). Although taking legal action is a common way for combatting copycat, there are some reasons for not taking legal action to respond to imitation (Rafiq and Collins 1996). The first one is that it is challenging to prove passing off and infringement claims in court; therefore, not many cases win a legal debate, although there are many copycat brands in the market. However, many companies such as Coca-Cola, Unilever, Procter & Gamble and Kraft are often successful in pursuing trademark infringement and passing off in court (Kumar and Steenkamp 2007). The second one is that litigation is expensive, and the last one is that it is time-consuming (Collins-Dodd and Zaichkowsky 1999).

The first proactive strategy to defend against copycat packaging is legal protection. Packaging can be eligible for design, copyright, trademark protection and passing off or unfair competition. Packaging can be protected under design rights, which protects the features of a product such as lines, contours, colours, shape, and textures when it is novel and has an individual character (Registered Designs Act 1949 2021). However, design rights have some weaknesses in the context of copycat packaging, that is, enforcement problems. When the owner of copycat packaging confronts a debate, they change its design slightly to protect themselves from enforcement. As well as design rights, the packaging is eligible for copyright, which is an unregistered right. Still, the owners of copycat packaging can only claim copyright if it is an exact copy; therefore, copyright does not provide proper protection for the leader brand (Copyright, Designs and Patents Act 1988 2018).

Trademark is particularly crucial in marketing-based industries which are based on product design or image rather than on technology (Lopes and Casson 2012). A word, a logo, a shape (structural design), a colour, a pattern and a sound can be registered as a trademark if it has a distinctive character and is not functional (Trade Marks Act 1994 2021). For example, the Haig & Haig whiskey bottle is a registered trademark (Miaoulis and D'Amato 1978). Trademark law allows the owner to protect any words or design, which is distinctive from other competitors' goods, against unauthorised use such as copying and misrepresentation by third parties and gives the trademark owner monopoly rights (Trade Marks Act 1994 2021). Trademark protection provides the most prolonged period of protection than other protection types; it lasts indefinitely by renewing on payment of additional fees (Trade Marks Act 1994 2021). The trademark owner has the right to enforce when there is a likelihood of confusion; however, it can be challenging to prove the consumer confusion when some imitators copy only salient features of the design (Lopes and Casson 2012). Besides, 'trade dress', which is under trademark law, protects the total image and overall appearance of a product and its packaging and therefore includes size, shape, colour combinations, texture and graphics (Trade Marks Act 1994 2021, Lee and Sunder 2017).

'Passing off' in the UK, which is called unfair competition in other countries, has a broader scope than other intellectual property rights (Johnson et al. 2013). Unlike other rights, passing off is not a statute; it is based on case law. It gives a right to the brand owner to prevent competitors from misrepresenting their goods. In the context of copycat packaging, the scope of passing off is the imitation of the look and feel of the packaging, not only a direct copy. However, passing off in the UK requires proof of confusion, deception and damage, which are challenging to carry out; on the other hand, unfair competition in other countries does not need proof of confusion and deception (Burt and Davis 1999).

As the second proactive strategy, differentiation is crucial for keeping imitators out (Collins-Dodd and Zaichkowsky 1999). Design is a way of differentiation; however, competitors easily imitate the design of the leader brand. Therefore, design features which are hard to imitate, such as sophisticated printing, embossing, foil blocking, a unique logo or typeface and an unusual structural shape, have a crucial role in mitigating copycat packaging (Doyle 1996).

Copycat packaging is a significant problem for both consumers and brand owners. Defensive strategies against copycats can be inadequate mitigation tools for several reasons. Firstly, legal action as a reactive strategy may not result in favour of the leader brand because it can be difficult to prove passing off and infringement claims in court (Rafiq and Collins 1996, Lopes and Casson 2012). Secondly, constant changes of packaging – as a reactive strategy – becomes an ongoing expense to brand owners and is eventually imitated by other competitors (Johnson et al. 2013). Thirdly, legal protection as a proactive strategy can be inadequate because when the owner of copycat packaging is confronted with a legal challenge, they typically respond with a slightly modified packaging design to protect themselves from enforcement. With these aforementioned strategies, brand owners may not completely overcome a copycat problem. However, the role of packaging design has largely been overlooked as a potentially more optimum strategy for mitigating copycat packaging.

Methods

The purpose of this study was to understand how consumers respond to the design components on visually similar packaging designs across a range of FMCG products. To achieve this aim, the study adopted a qualitative semi-structured interview approach along with photo-elicitation as a trigger for initiating responses. The 37 interviewees consisted of 25 females and 12 males, 22 of whom were students and 15 professionals. These British and International participants were selected based on the criterion that they had lived in the UK for at least one year to ensure familiarity with FMCG products in the UK market. Due to the COVID-19 restrictions, interviews were conducted online through Microsoft Teams, each interview lasting between 30 and 60 minutes. The participants were initially asked to imagine they were in a supermarket aisle to give a sense of the shopping environment and then asked to think-out-loud in response to seeing a series of visual stimuli. Participants were asked to respond to visually similar packaging in

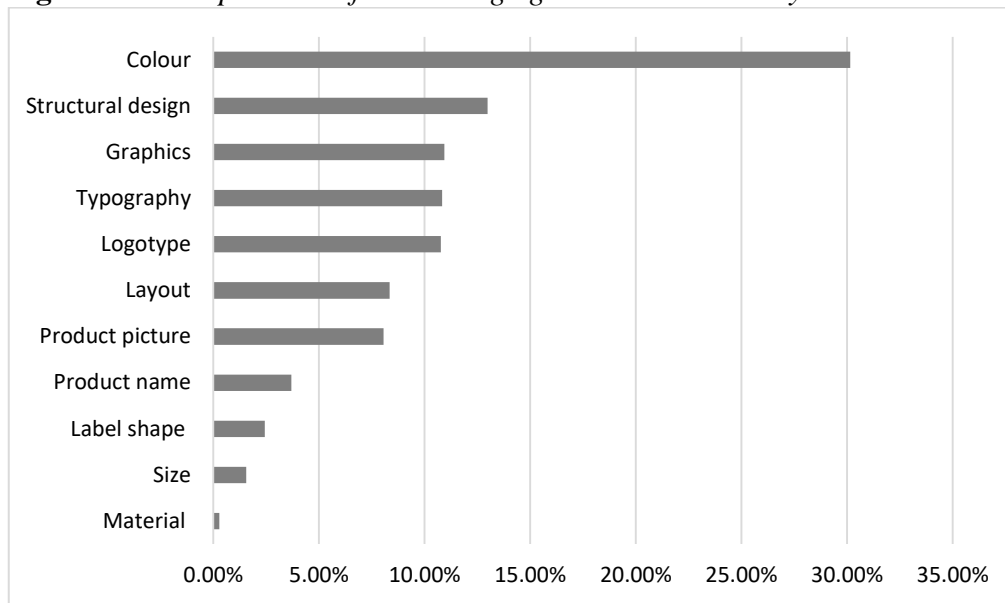
a side-by-side orientation, as would be expected within the context of a supermarket shelf. During the interview, each interviewee was asked about six pairs of packaged examples (215 pair-packaged examples in total) consisting of one leader brand and one copycat brand that was visually similar to the leader brand. All packaging examples were currently available in the UK market at the time of the interviews. Product examples were drawn from a range of FMCG product categories, the sector in which copycat packaging is most prevalent. The product categories consisted of low-cost and high-cost products to ensure the sample contained a sufficiently different selection of items in terms of cost and utility (see Figure 3 in Appendix). Every interviewee was assigned a selection of examples from the product categories that the interviewee regularly purchased (learned prior to the interview via a screening questionnaire). The packaging image examples were presented in a similar way to how they would be displayed on the supermarket shelf, with a front view that included the price and quantity (or amount). All interviews were recorded and transcribed immediately by the researcher. The analysis focused on how the participants processed visual similarity, such as the identification of the key features, the order in which the features were raised, personal opinions on the features, how such features made them feel, and what considerations they might make if deciding upon purchase from the given category.

Findings

The importance of each design element of the packaging depended on familiarity with the brand. We found that 70 per cent of the participants were familiar with one of the category brands, either the leader brand or copycat brand, with 30 per cent unfamiliar. From our analysis of the participant responses, we found that packaging design cues have the greatest impact on purchasing decisions in instances where the consumers have no familiarity or prior experience with a brand. It follows that with an absence of brand knowledge, consumers look to packaging (and price) for cues of product quality. In such instances, participants ranked colour as the most influential feature of packaging design, and the one feature that had the allure to influence the choice of customers (see Figure 1). The mimicking of established colour combinations was most impactful for copycat brands, particularly for its ability to mislead consumers into mistaken purchases. The two extracts below give a reflection of these themes.

“Although there is some difference between the products [chocolate examples], I think the colour combinations is really the reason of the mistake which I made.” Participant 1

“The bright green and purple colour [breakfast cereal examples], which is high contrast, are eye-catching and drawn me quite to it.” Participant 2

Figure 1. *The Importance of the Packaging Elements Ranked by the Consumers*

Source: Authors.

Furthermore, the participant's response to the importance of each design element of the packaging differed in response to low-cost products and high-cost products. That is if the product was high-cost, the participants ranked structural design as the most important element followed by colour; whereas for low-cost products the participants ranked colour as the most important element, followed by graphics. The results showed that 43 per cent of participants claimed to have mistakenly purchased visually similar items because they assign less attention to low involvement, low-cost product categories. The combination of lower consumer attention and copycat brands mimicking recognisable colour combinations increased the likelihood of purchase errors. Within the population of participants that had made purchasing errors, we found that 17 per cent related to high-cost products and 83 per cent related to low-cost products. This finding suggests that because the consumers are more attentive in the purchasing process of a high-cost product, there is less likelihood for misleading copycat purchases to occur within such product categories, which is consistent with Balabanis and Craven (1997).

For consumers with a familiarity of an existing brand, we found that graphics was ranked as the second most important feature. In such instances, consumers are relying on pre-existing awareness of graphical signals and therefore look to packaging design for recognition of graphical elements, such as the brand identity and combination of colour. However, when consumers have no familiarity with any of the brands on offer, we found that structural design – three-dimensional form – was the second most important feature behind colour. This was particularly pronounced for high-cost products where, in the absence of prior information, consumers look to packaging for cues of quality and the packaging's ability to visually reassure consumers that the product is likely to satisfy the purchaser's needs.

When consumers have familiarity with one of the category brands, either the

leader brand or copycat brand, their past experience has the greatest influence on their purchasing decisions, closely followed by the brand name. In such instances, packaging design has less influence on consumers because they are merely scanning the packaging for the most important information: the brand identity for brand recognition.

In situations where the brand leader's product was not available, 54 per cent of the participants stated they were willing to switch to another brand; however, 46 per cent said they would be unwilling to buy an alternative to their preferred brand. The interesting point in this finding was that, of the 54 per cent willing to try the copycat brand, participants considered the alternative item solely as a substitute of the "real thing". The visual similarity of copycat products led participants to perceive these items as substitutable and, therefore, less likely to generate brand loyal customers, which is consistent with the literature (Van Horen and Pieters 2012).

Discussion

In this paper, we explored how copycat brands use packaging design features to imitate the packaging of market leader brands, in order to appeal to consumers. We examined previous concepts that advocated the use of reactive strategies, which primarily involved litigation activities and continuous updates of packaging design. From our analysis of interview data, this paper considered how leader brands could be more proactive in their approach to packaging design and adopt a number of measures that present a greater deterrent to copycat imitators. From this analysis, we draw together the key points of the findings and outline several practical recommendations for leader brands in their attempts at managing the challenge of copycat brands.

Our analysis revealed that the influence of packaging design is dependent on whether a consumer has familiarity with a brand, as prior experience has a greater influence than packaging. We know from earlier studies (Johnson et al. 2013) that prior experience plays an influential role in consumer decision-making; however, our findings expand on this point by specifying how packaging design cues can better optimise the decision-making process for consumers. The implication for leader brands is that they would be best served to focus their packaging designs on brand recognition – in other words, displaying the brand name prominently. This is particularly important for lower cost items where cost restrictions limit the ability to make packaging sufficiently distinctive. More importantly, brand identity features, such as brand names and logos, can be legally protectable as trademarks, and therefore are less likely to be directly imitated by legitimate companies that create copycat brands.

The second implication is that leader brands should focus their efforts on achieving differentiation of the overall appearance of packaging within the category, through the design of a unique combination of features. While certain features such as colour ranked highly with participants, colour is a feature of brand identities that can be difficult to protect alone (Cadbury's purple is an exception).

Indeed individual features are easier for copycats to imitate without necessarily infringing on a brand leader's intellectual property rights. However, it is the unique combination of packaging features, such as the structural shape, colour, and logo, that collectively offer a much stronger basis for establishing a distinctive appearance to packaging, and therefore a firmer basis for achieving legal protection. Leader brands would be best served to focus on prioritising structural form alongside the application of colour, as these were the most impactful features in higher cost items where the expectations (and margins) allow for more imaginative use of design. Our findings give further weight to the arguments forwarded by Collins-Dodd and Zaichkowsky (1999) and Doyle (1996) whereby it is the distinctive combinations of features that better facilitate legal protection under both design right if they are novel and individual in character, and trade dress (under trademark right), if they are sufficiently distinctive (Registered Designs Act 1949 2021, Trade Marks Act 1994 2021). Our findings suggest that there is a distinct hierarchy in how consumers rank the importance of the various packaging design features.

As the results showed, consumers with no familiarity of an available brand use visible and tactile design cues in product packaging as indicators of quality. While packaging design has a greater influence on this subset of consumers, the population of consumers with no familiarity of an available brand becomes a diminishing pool: brand unfamiliarity only exists at the point of the first purchase. Thereafter consumers have familiarity with a given brand, and past experience becomes more influential than packaging design. Nevertheless, the implication for leader brands, in higher cost segments, is that distinctive packaging that incorporates an interplay of structural form, colour and brand identity components, act as a deterrent to copycat brands from imitating their designs too closely in two ways. The first is that copycat brands typically have tighter margins available for packaging production, which means there is an intrinsic restriction to reproducing more expensively produced designs. Second, the creation of unusual and distinctive packaging better facilitates any subsequent legal argument for demonstrating direct imitation.

Conclusion

In this paper we approached the issue of copycat packaging by considering the role of packaging design as a mechanism for deterring copycat brands. Prior literature has attempted to address this issue through reactive tactics alone, most frequently advocating legal responses (Collins-Dodd and Zaichkowsky 1999, Schnaars 2002). While we acknowledge that such responses may be unavoidable, our findings indicate that packaging has an important role in deterring such imitating practices. Our findings extend earlier studies that stressed the importance of differentiated packaging (Underwood and Klein 2002, Collins-Dodd and Zaichkowsky 1999) by demonstrating that particular combinations of packaging features, such as sophisticated print-finishing techniques, distinctive use of structural form, emphasised trademarks along with striking colour combinations,

generate greater appeal among consumers. We further argued that by incorporating these principles, leader brands create product packaging that is more difficult for copycats to imitate, has a stronger influence on consumers in higher cost segments, and enhances the claim for distinctive brand assets in any subsequent legal case.

There are four limitations that need to be acknowledged. Firstly, this research was restricted to a limited number of product categories. To mitigate this limitation, we selected a range of product items that spanned a number of product classes. Second, packaging examples were limited to products currently available in the UK. While we anticipate that such consumer preferences may differ across different cultures, this research provides a starting point for further research within the FMCG copycat packaging arena. The third limitation is that our current findings are based on a minimal set of participants. We intend to extend the reach of the interviews and incorporate a broader sample of participants. The fourth limitation is that, due to the pandemic situation, the data gathering technique depended solely on two-dimensional representative imagery delivered via online interfaces. Therefore, such findings are based on consumers lacking a certain tactile and sensory experience when evaluating the structural forms of packaging. Although we have to acknowledge that this may seem a reduced and somewhat artificial consumer experience, we also recognise that consumption habits are rapidly changing and have been accelerated by the recent conditions. With the rise of online shopping, it could be argued that such consumption practices are likely to become the norm rather than the exception.

Acknowledgments

The PhD research of Ezgi Oguz was sponsored by the Republic of Turkey Ministry of National Education.

References

- Balabanis G, Craven S (1997) Consumer confusion from own brand lookalikes: an exploratory investigation. *Journal of Marketing Management* 13(4): 299–313.
- Brondoni SM (2013) Innovation and imitation for global competitive strategies. The corporation development models of US, Japan, Korea, and Taiwan. *Symphonya Emerging Issues in Management* 1(Jun): 12–27.
- Brown D, Williams D, Abbott R, Wegrzyn N (2010) Do copycat brands reflect a lack of creativity in marketing? In *The Marketing Society Forum* 22.
- Burt S, Davis S (1999) Follow my leader? Lookalike retailer brands in non-manufacturer-dominated product markets in the UK. *The International Review of Retail, Distribution and Consumer Research* 9(2): 163–185.
- Chapman M (2015) *Why the cold war over 'copycat' branding may be set to heat up*. Campaign. Retrieved from: <https://www.campaignlive.co.uk/article/why-cold-war-copycat-branding-may-set-heat/1177796>. [Accessed 20 July 2021]
- Collins-Dodd C, Zaichkowsky JL (1999) National brand responses to brand imitation: retailers versus other manufacturers. *The Journal of Product and Brand Management* 8(2): 96–105.

- Copyright, Designs and Patents Act 1988 (as amended) (2018) Retrieved from: <http://www.legislation.gov.uk/ukpga/1988/48/contents>. [Accessed 20 July 2021]
- Dobson P, Yadav A (2012) *Packaging in a market economy: the economic and commercial role of packaging communication*. Report. British Brands Group.
- Doyle M (1996) *Packaging strategy: winning the consumer*. Lancaster: Technomic.
- European Brands Association Trade Mark Committee (2010) *Parasitic copying: trading on the innovation and creativity of others*. Report. European Brands Association Trade Mark Committee.
- Foxman ER, Muehling DD, Berger PW (1990) An investigation of factors contributing to consumer brand confusion. *Journal of Consumer Affairs* 24(1): 170–189.
- Gati I, Tversky A (1984) Weighting common and distinctive features in perceptual and conceptual judgments. *Cognitive Psychology* 16(3): 341–370.
- Hustic I, Gregurec I (2015) The influence of price on customer's purchase decision. In *Central European Conference on Information and Intelligent Systems* (2015). Faculty of Organization and Informatics Varazdin.
- Johnson P, Gibson J, Freeman J (2013) *The impact of lookalikes: similar packaging and fast-moving consumer goods*. Report. Newport, UK: Intellectual Property Office.
- Kapferer J (1995) Brand confusion: empirical study of a legal concept. *Psychology and Marketing* 12(6): 551–568.
- Karjalainen T (2004) *Semantic transformation in design: communicating strategic brand identity through product design references*. Helsinki, Finland: University of Art and Design in Helsinki.
- Keller K (1998) *Strategic brand management: building, measuring and managing brand equity*. Prentice Hall.
- Kotler P, Keller KL (2016) *Marketing management*. 15th Edition. Essex: Pearson.
- Kuan N (1990) Get-up of goods and the law of passing-off: case on lemons. *Malaya Law Review* 32(2): 333–345.
- Kumar N, Steenkamp JBEM (2007) *Private label strategy: how to meet the store brand challenge*. Boston: Harvard Business School Press.
- Lai KK, Zaichkowsky JL (1999) Brand imitation: do the Chinese have different views? *Asia Pacific Journal of Management* 16(2): 179–192.
- Le Roux A, Thébault M, Bobrie F (2015) Typicality impact on brand imitations evaluation and categorisation. In *4th International Brand Relationships Conference* (2015).
- Lee P, Sunder M (2017) The law of look and feel. *Southern California Law Review* 90: 529–591.
- Lee RP, Zhou KZ (2012) Is product imitation good for firm performance? An examination of product imitation types and contingency factors. *Journal of International Marketing* 20(3): 1–16.
- Loken B, Ross I, Hinkle RL (1986) Consumer “confusion” of origin and brand similarity perceptions. *Journal of Public Policy and Marketing* 5: 195–211.
- Lopes TDS, Casson M (2012) Brand protection and the globalisation of British Business. *Business History Review* 86(2): 287–310.
- Mansfield E, Schwartz M, Wagner S (1981) Imitation costs and patents: an empirical study. *The Economic Journal* 91(364): 907.
- Masters S (2013, Apr 12) *Have a break, have a copycat: the supermarket misleader; Consumer groups say shoppers are being left confused by traders who imitate branded goods*. The Independent: London Edition.
- Miaoulis G, D'Amato N (1978) Consumer confusion and trademark infringement. *Journal of Marketing* 42(2): 48–55.
- Miceli GN, Pieters R (2010) Looking more or less alike: determinants of perceived visual

- similarity between copycat and leading brands. *Journal of Business Research* 63(11): 1121–1128.
- Murphy GL, Wright JC (1984) Changes in conceptual structure with expertise: differences between real-world experts and novices. *Journal of Experimental Psychology: Learning, Memory, and Cognition* 10(1): 144–155.
- Olson JC, Jacoby J (1972) Cue utilisation in the quality perception process. In M Venkatesan (ed.), *Proceedings of the 3rd Annual Conference of the Association for Consumer Research, Association for Consumer Research*, 167–179. Iowa City, IA.
- Pinterest (n.d.) Retrieved from: https://www.pinterest.co.uk/pin/4173570904_40400789/. [Accessed 20 July 2021]
- Rafiq M, Collins R (1996) Lookalikes and customer confusion in the grocery sector: an exploratory survey. *International Review of Retail, Distribution and Consumer Research* 6(4): 329–350.
- Registered Designs Act 1949 (as amended) (2021) Retrieved from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957357/Registered-Designs-Act-1949.pdf. [Accessed 20 July 2021]
- Rundh B (2005) The multi-faceted dimension of packaging. *British Food Journal* 107(9): 670–684.
- Satomura T, Wedel M, Pieters R (2014) Copy alert: a method and metric to detect visual copycat brands. *Journal of Marketing Research* 51(1): 1–13.
- Schnaars SP (2002) *Managing imitation strategies: how later entrants seize markets from pioneers*. New York: The Free Press.
- Shenkar O (2014) *Copycats: how smart companies use imitation to gain a strategic edge*. Boston: Harvard Business Review Press.
- Silayoi P, Speece M (2007) The importance of packaging attributes: a conjoint analysis approach. *European Journal of Marketing* 41(11/12): 1495–1517.
- Simms C, Trott P (2010) Packaging development: a conceptual framework for identifying new product opportunities. *Marketing Theory* 10(4): 397–415.
- Southgate P (1995) *Total branding by design: how to make your brands packaging more effective*. London: Kogan Page.
- Tedium (2017) *Lemon juice squeeze bottles: plastic's natural element*. Tedium. Retrieved from: <https://tedium.co/2017/02/28/lemon-juice-squeeze-bottles-history/>. [Accessed 20 July 2021]
- The Consumer Protection from Unfair Trading Regulations 2008 (2008) Retrieved from: <http://www.legislation.gov.uk/ukxi/2008/1277/contents/made>. [Accessed 20 July 2021]
- Trade Marks Act 1994 (as amended) (2021) Retrieved from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957352/unofficial-trade-marks-act-1994.pdf. [Accessed 20 July 2021]
- Tversky A (1977) Features of similarity. *Psychological Review* 84(4): 327–352.
- Underwood RL (2003) The communicative power of product packaging: creating brand identity via lived and mediated experience. *Journal of Marketing Theory and Practice* 11(1): 62–76.
- Underwood RL, Klein NM (2002) Packaging as brand communication: effects of product pictures on consumer responses to the package and brand. *Journal of Marketing Theory and Practice* 10(4): 58–68.
- Vale RC, Matos PV (2015) The impact of copycat packaging strategies on the adoption of private labels. *The Journal of Product and Brand Management* 24(6): 646–659.
- Van Horen F, Pieters R (2012) When high-similarity copycats lose and moderate-similarity copycats gain: the impact of comparative evaluation. *Journal of Marketing Research*

49(1): 83–91.

Van Horen F, Pieters R (2013) Preference reversal for copycat brands: uncertainty makes imitation feel good. *Journal of Economic Psychology* 37(Aug): 54–64.

Warlop L, Alba JW (2004) Sincere flattery: trade-Dress imitation and consumer choice. *Journal of Consumer Psychology* 14(1&2): 21–27.

Wierzbicki M, Nowodzinski P (2019) Imitation and innovation in business environment. *Production Engineering Archives* 22(22): 36–40.

Zaichkowsky JL (2006) *The psychology behind trademark infringement and counterfeiting*. Mahwah, NJ: Lawrence Erlbaum.



Appendix


Figure 2. *Examples of Copycat Packaging*



Source: Pinterest (n.d.), Tedium (2017), and Chapman (2015).

Figure 3. *Pair-Packaged Examples from Different Product Categories*

Breakfast cereals		Crisps	
Leader brand	Copycat brand	Leader brand	Copycat brand
			
Biscuits and crackers		Chocolate and sweets	
Leader brand	Copycat brand	Leader brand	Copycat brand
			
Cooking ingredients and sauces		Rice, pasta and noodles	
Leader brand	Copycat brand	Leader brand	Copycat brand
			
Ready Meal		Desserts	
Leader brand	Copycat brand	Leader brand	Copycat brand
			

Butter and spreads		Energy drinks	
Leader brand	Copycat brand	Leader brand	Copycat brand
			
Alcohol drinks		Shower gel	
Leader brand	Copycat brand	Leader brand	Copycat brand
			
Cleaning product		Dishwashing	
Leader brand	Copycat brand	Leader brand	Copycat brand
			
Skin care		Shampoo	
Leader brand	Copycat brand	Leader brand	Copycat brand
	