Are brands really such big baddies?

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The European Court of Justice on 20th November 2001 put an end to the battle between brand owners and grey traders with a resounding victory for the former. In the joint cases of *Davidoff –v- A&G Imports* and *Levi Strauss –v- Tesco & Costco*, the court emphatically sided with the brand owners and their ability to stop imports of their brands into Europe without their consent.

The supermarkets have portrayed themselves as the consumer's friend throughout, fighting for the right to import cheap jeans from abroad and sell them in the UK at a discount. Meanwhile the brand owners have struggled to make their position fully understood in the face of such a powerful if superficial plea – money.

But it seems strange, if the matter is so clear-cut, that the highest court in Europe has sided with the brands. And why are brand owners prepared to put up with the inevitable and consistent bad press? There is more to it than meets the eye.

What is all the fuss about?

Grey trading is the import of goods from markets outside Europe where they are less expensive into the home market where prices are higher. Price differences between markets for the same product create the opportunity. The main reasons for these differences are commonly:

- differences in cost of getting the product to different markets;
- differences in distribution and marketing costs;
- differences in consumer tastes, wealth, culture, and attitude to the product in question;
- short-term fluctuations in exchange rates.

Take for a simple example a pair of GUCCI sunglasses. The market for these in say India will be entirely different to the market in the USA. The wealth of the average citizen as well as the cost of living in each is likely to influence the price. I would imagine that GUCCI is cheaper in India than in the USA. Is this wrong? Should the citizens of the USA, or the UK for that matter, be able to buy them for the same price as paid in India?

Damage to the brand

In a truly global, harmonised market the answer would be 'yes' but we are not in that market. If the prices were equalised the effect on the brand would be devastating. The very point of branding is to differentiate products and offer choice. Were GUCCI to be sold everywhere at rock bottom prices (rock bottom in the UK but top of the range in India) how would this affect their image in the UK consumer's mind? After a short period they would be regarded as basic, nondescript sunglasses. They would be commonplace, the antithesis to the luxury brand. The reduced returns to GUCCI would result in less ability to sustain quality, fewer new lines, and less investment in those features that make it different and special. In our fiercely competitive world, such results are terminal.

Why do we like brands?

Why should the consumer be interested in retaining luxury brands, or brands at all? Brands provide reassurance in a society full of choice. They help us make decisions quickly and, by always striving to be the best, provide benchmarks of quality that competitors seek to follow.

People now have more disposable income, fuelling a desire for designer names that allow us to stand out from the crowd or express our personalities should we so wish. The logical effect of allowing grey trade is the end of the designer name, the limiting of choice, and less innovation. Grey imports lead to a greyer life for us all.

The bigger picture

Studies have shown that preventing price differentiation around the world will not result in prices dropping to the lowest level. Rather it causes some prices to rise and brands to be withdrawn from cheaper markets. If wholesale prices are driven down, lower returns to brand owners means costs not recouped, less investment in innovation and fewer new products. One study found that lowering the barriers to grey trade would damage suppliers' profits in every sector (except alcoholic drinks) by around 15 percent and in some sectors by much more.

Free trade may sound attractive but there is a cost. A UK factory will be unable to compete with an equivalent factory in the far east. A UK exporter will be unable to develop new overseas markets by reducing prices. And a UK exporter will be unable to compete on price with low-cost domestic suppliers in markets outside Europe. Grey trading reduces UK competitiveness overseas and is a further nail in UK manufacturing and its associated jobs.

Is the decision of the ECJ right?

Legally there is no doubt that the decision is right. The question now is whether the law itself needs to be changed to allow parallel imports into Europe.

This law as it stands allows consumers to be confident in the quality and consistency of the brands they buy. It provides choice, with suppliers able to work with selected retailers to provide a differentiated offer. It prevents grey traders removing important consumer safety labelling from products. It preserves the ability of UK companies to export competitively and supports UK manufacturing jobs. Some may consider such benefits to be outweighed by the promise of lower prices. They should remember that, despite legitimate parallel trading within Europe for many years, the UK remains one of the most expensive countries in Europe. Clearly parallel trade is ineffective in reducing prices. The case to change the law has yet to be made.

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