

A SME's checklist against parasitic copying



Parasitic copying is a big nuisance for those brand owners who fall prey to it. It can mislead shoppers, weaken brand distinctiveness and reduce shelf stand-out. The current law does not help much in tackling the problem once it arises. To avoid becoming a victim, putting the right intellectual property (IP) rights in place can help, along with a determined strategy, a carefully controlled budget and a degree of resilience in enforcing your brand protection rights!

1. The fight against parasitic copying by brand owners is an area where expert help is needed. IP is a specialist area and it is important to understand what aspects of your packaging are used most by shoppers and which can be protected by IP.
2. It is highly likely that a combination of protection will be needed to deter or fight off the copies. There is unlikely to be a single silver bullet.
3. Wherever possible, put the protection for your packaging in place right from the start, well before it is ever placed on the market. If that boat has sailed, do it as soon as you can.
4. Find an IP expert who understands how shoppers use packaging and how they shop. They will review your current IP protection to identify any gaps and how it may be strengthened.
5. They will identify the different IP rights that may help in protecting your particular pack design. Colours, shapes, logos, imagery and words may all come into play and you need to know what to protect. Those who set out to copy you will be looking to see which features are most influential and where protection may be weakest.
6. Remember, the more generic the imagery and design, the weaker will be the protection. Know the Dos and Don'ts of using a trade mark. If you do not know these, have a look at our "[Guide to Brand Protection](#)" on page 12. Using your trade marks correctly will help you build strong protectable brands.
7. For designs, the sooner you seek to register them, the surer you will be that they will qualify for protection. There are novelty requirements so you could lose the right to protect the designs if you leave it too late.

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8. Your trade marks should be capable of distinguishing your products from those of another. Weak trade marks are hard to defend. Do you have trade mark rights for all the important eligible aspects of your packaging and are they defensible? Trade marks are powerful rights and do not have a time limit for protection if they are correctly used and renewed.
9. Do monitor competitors' activities. If you are unfortunate enough to be faced with a parasitic copy, do not sit on the fence and do nothing. Your packaging is your voice to your shopper and the copy intends to disrupt that, at your expense. The faster you act, the stronger the message you send that you are serious. However, make sure that your first response is persuasive (this is where all your pre-planning and IP protection come to the fore).
10. In constructing your first response (and any future responses), it is important to express correctly how the copy breaches your IP rights and to make the strongest case why the copy should be withdrawn from the market and replaced in packaging that does not mislead shoppers or infringe your IP rights. Be careful not to make unlawful threats. Your IP expert will help with this.
11. Feel free to talk to us at the [British Brands Group](#) at any time. Where we can help, we will.

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