

Note of IPO BBG meeting to discuss IPI study on Lookalike Packaging

Some of the shortcomings of the report were discussed. It was agreed that it was disappointing that the retailers did not take part in the study or provide any data. Also the IPI research did not investigate the impact on consumer welfare – not exploring why they might have felt advantaged on purchasing a lookalike or why they may have purchased a lookalike deliberately.

The BBG felt that the assessment of some of the previous studies in the literature review was inaccurate and based on a lack of understanding by the researchers. The BBG also considered it unreasonable to dismiss studies in their entirety when some evidence could be drawn from them. The IPO did not comment on any of the specific cases but is aware that some previous studies do not meet accepted evidence standards.

The IPO and BBG agreed that there is a lookalike effect. This effect includes increased perceptions of common origin and of quality, although the BBG and IPO formed different interpretations of how powerful this effect is.

With regard to the findings that some consumers were advantaged and others disadvantaged the BBG felt that the IPI had portrayed the numbers as offsetting each other. The IPO was clear that there are consumers who report gain and loss; this being an indication that there are different impacts, which may be evenly distributed. It was however acknowledged by the IPO and BBG that consumers may feel advantaged but still may be misled and/or not advantaged in reality. The IPO was not seeking to draw a conclusion of net benefit or harm.

Although the study attempted to look at business harm the BBG believed that the approach was missing an important element as it did not consider the competitive advantages held by retailers – i.e. they set the price, shelf position and space, promotions, advance information of products etc – an important consideration when assessing potential competition effects. The IPO noted that these effects formed part of the structured interview questions of brand owners but that generally they were out of scope for the study it commissioned. The BBG also felt that the study didn't recognise the importance of maintaining the distinctiveness of packaging.

BBG did not believe that business harm could be reliably assessed – partly due to the inaccessibility of retailer data but also as the link to volume and price isn't necessarily straightforward as the effect of the many factors that influence purchases are difficult to isolate from each other.

During the meeting the IPO and BBG agreed on several key findings in the study:

1. There is a lookalike effect. In essence;
 - Consumers are more likely to make mistaken purchases if the packaging of products is similar and there is strong evidence that consumers in substantial numbers have made mistakes;
 - Consumers' perceptions of the similarity of the packaging of goods are correlated with an increased perception of common origin and to a material degree. There is also an increased perception of quality.

- The lookalike effect increases consumers' propensity to buy a product in similar packaging.
2. Better sales data might allow more reliable conclusions to be drawn on the impact of lookalikes on consumers and businesses, as current data has limitations.
 3. There may be limits to the UK's ability to legislate beyond the provisions of the Unfair Commercial Practices Directive in areas within its scope.
 4. The evidence exploring whether German unfair competition law provides a more advantageous regime for tackling lookalikes is inconclusive.