



Press Release

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THROWING NEW LIGHT ON “CONFUSION”

A new study launched today by the British Brands Group, law firm Speechly Bircham and Mountainview Learning explores how shoppers make decisions, arguing that behavioural science provides Judges with a predictable and quantifiable means of assessing confusion in trade mark and passing off cases.

Faced with an extensive array of choices in a modern supermarket, shoppers simply do not have the time to assess rationally the options available to them. Instead they rely on mental shortcuts – heuristics – to identify quickly the products they wish to buy.

Original research undertaken by Mountainview Learning identifies that branding is a powerful heuristic, with respondents taking only milliseconds to notice and recognise branded products. The research also found that, when consumers are faced with options which include a product in a pack very similar to that of a familiar brand, it takes them longer to identify products and more errors occur, which disrupts fluency of decision-making and damages shoppers’ propensity to buy.

Dr Jane Leighton of Mountainview Learning said, “The findings from this study have wide implications. They provide strong evidence for the important role of branding on decision making. Furthermore, they demonstrate for the first time that these effects are quantifiable using robust scientific techniques. Such techniques are relevant to a range of branding issues from packaging changes to legal disputes over misleadingly similar packaging.”

Alex Carter-Silk, Partner at Speechly Bircham, who identified the importance of heuristics to legal analysis and provided the catalyst for the research, said, “Advances in behavioural science allow us to assess empirically whether a competing, similarly packaged product is unfairly free riding on those heuristics, misleading shoppers. Judges now have a powerful tool to understand and measure shopper behaviour and better assess confusion in trade mark and passing off cases, supplementing oral evidence and their judicial opinion.”

John Noble, Director of the British Brands Group, said, “Companies wish to know with some predictability whether a particular packaging design is unlawful. This is as true for brand owners deciding whether to bring legal proceedings as it is for competitors seeking to avoid infringement. Behavioural science may well provide the means to substantiate confusion more robustly. We hope that the courts will begin to consider such evidence as a step towards more reliable judgments.”

Copies of the report “Unwrapped – the hidden power of packaging” are available from www.britishbrandsgroup.org.uk and www.speechlys.com

NOTES TO EDITORS

1. The report comprises three distinct studies:

(1) “Packaging in a market economy” – Research by Norwich Business School into the consumer, competition and economic importance of packaging.

Contact: Professor Paul Dobson Tel: 01603 592624 p.dobson@uea.ac.uk

(2) “The effect of branding on consumer choice” – Original consumer research from Mountainview Learning on how branding helps shoppers notice and recognise products, and the disruption caused when brand size is reduced or products are similarly packaged.

Contact: Dr Jane Leighton Tel: 020 7884 9160 Jane@mountainview.co.uk

(3) “Confusion, heuristics and the consumer” – a study from law firm Speechly Bircham on how consumers use heuristics in their decision making, how the effect of heuristics may be measured and how Judges may use behavioural science to identify and quantify, predictably and reliably, whether shoppers are confused by products that mimic the packaging of familiar brands.

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2. Examples of products in packaging that mimics familiar brands is available at www.britishbrandsgroup.org.uk.

3. The British Brands Group was founded in 1994 as a non-profit-making membership organisation. It speaks on behalf of brand manufacturers and seeks to deepen understanding of how brands benefit consumers, society and the economy through the provision of choice, value for money and innovation.

It represents its members collectively when commercial and regulatory issues threaten the ability of brands to deliver value and to be a positive force in society. It also provides the prime forum for its members on brand-related issues.

The British Brands Group is part of a global network of similar brand associations, and is the UK representative of AIM, the European Brands Association, based in Brussels.

For more information on the Group, please visit www.britishbrandsgroup.org.uk.

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