# The Competition Effects of Lookalike Private Label Products

**Paul W. Dobson and Li Zhou**

**Abstract** This paper considers the competition effects of lookalike products, which seek to mimic the packaging, design and appearance of leading brands. Such products, most notable in the fast-moving-consumer-goods (FMCG) sector, are particularly associated with items promoted by retail organizations as part of their private-label programmes. The market power and control over the supply chain which the major retailers now enjoy means that by developing lookalike products they may have the opportunity to exploit unfairly and anti-competitively the image and goodwill that brand manufacturers have developed through careful and continual product and marketing investment. This, in turn, could distort the way and the extent to which manufacturers compete, enhance retailer control over the supply chain. In the process, this could undermine manufacturer branded goods which smaller retailers traditionally rely on, thus weakening their competitive position and resulting in further concentration of retail markets and less choice of store types and product varieties for consumers. The continuing absence of a rapid and effective legal remedy to prevent the rewards from brand investment being misappropriated by imitators means that such action will likely continue, with the upshot that manufacturer and retailer competition may be distorted to the detriment of consumer welfare and the public interest.

**Keywords** Lookalike products • Private label • Brands • Retailers • Market power • Consumer welfare

This paper revises and updates a previously titled paper by Dobson (1998b) ("The Competition Effects of Look-alike Products", University of Nottingham Business School Discussion Paper, No. 1998: VI, 1998).

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## 1 Introduction

Branding, which allows products to differentiate themselves from one another, can offer significant economic benefits in providing consumers with consistently high product quality and increased variety or customization. However, concern about damage to brand investment and goodwill with consumers has arisen from the arrival of lookalike products, which seek to mimic the packaging, design and appearance of leading brands (d'Astous, & Gargouri, 2001; Miaoulis & d'Amato, 1978; van Horen & Pieters, 2012). Such products, most notable in the fast-moving-consumer-goods (FMCG) sector, are particularly, though not only, associated with products promoted by retail organizations in the later stages of the evolutionary life of their private-label programmes (Kumar & Steenkamp, 2007; Phillip, Gibson, & Freeman, 2013). The temptation to avoid the considerable product and promotion investment necessary in establishing a new brand, while generalizing the quality or functionality of leading brands through exterior similarity, has led to a proliferation of copy-cat products, typically where retailers have sought to re-position private-label goods upmarket to imitate the leading brands (Hyman, Kopf, & Lee, 2010).

The issue of lookalikes has an intellectual property rights dimension to protect and encourage investment (Wadlow, 2011). However, law and regulations to deter unfair competition from imitating brands are weak in most countries. For example, in the UK, lawsuits around copycat trade dress are traditionally judged under the law of passing off, which requires establishment of three elements in order to proceeding a conflict in court: (1) distinctiveness of the trade dress of the original brand, (2) the likelihood of consumer confusion, and (3) actual damage caused by this confusion.[1] These three elements are notoriously difficult to establish, especially the third one.

Given the key concern of trademark infringement litigation centres on consumer confusion, research has focused on three key aspects: (1) demonstrating potential brand confusion caused by high similarity lookalikes (Howard, Kerin, & Gengler, 2000; Miaoulis & d'Amato, 1978; Warlop & Alba, 2004); (2) testing consumers' confusion propensity (d'Astous & Gargouri, 2001; Falkowski, Olszewska, & Ulatowska, 2014; Walsh, Hennig-Thurau, & Mitchell, 2007); (3) conceptualizing and measuring such confusion empirically (Kapferer, 1995; Walsh & Mitchell, 2005). Underlying this research is the basic belief is that the more similar the lookalikes are to national brands, then the stronger the likelihood of brand confusion and the stronger the positive evaluation that consumers would rate the lookalikes, in turn causing greater damage toward original brands (Howard, Kerin, & Gengler, 2000; Warlop & Alba, 2004). However, more recent research also suggests that compared to blatant and highly similar lookalikes, subtler and moderately similar lookalikes can be more easily accepted by consumers (van Horen & Pieters, 2012). When evaluation takes place comparatively, moderately similar copycats are

[1] For details on the legal position in a range of countries and a wide array of examples, see Phillip et al. (2013).

actually evaluated more positively than strongly similar copycats, especially when the leader brand is present rather than absent. This suggests that consumers react negatively to strong lookalikes when comparisons are direct and stark, being sensitive to the issue of not wishing to be duped or misled and aware of a deliberate intention to imitate. Nevertheless, outside of a laboratory experiment setting, in real shopping situations where purchase decisions are made in an instant on the basis of snap judgments, strong lookalikes still have the opportunity to attract consumers and, without care, could be mistaken for their brands they blatantly imitate.

While much of the literature has focused on these intellectual property aspects and the consumer psychology in buying lookalikes, this paper seeks to address the more neglected competition aspects of lookalikes and how they impact on competition at the manufacturing and retailing levels as well as ultimately on consumers in respect of the product choices, quality and prices on offer to them. The intention here is to provide a broad competitive perspective, looking at the effects of lookalikes on vertical competition between manufacturers and retailers, and the terms of trade, as well as on horizontal competition respectively amongst manufacturers and amongst retailers. This is still a nascent area of research and there remains significant scope for both further theoretical and empirical research.

## 2 The Effect of Lookalikes on Manufacturer Competition

Manufacturers develop brands as a means of differentiating their products from those of rivals, where the reward from the risky investment in undertaking innovative and promotional activity is the competitive advantage of having a product on the market which has a loyal consumer base (primarily for items bought on a recurring basis) (e.g. Anselmsson & Johansson, 2009). However, the proliferation of lookalike private label products, packaged very similarly to established branded goods, poses a threat to this healthy manufacturer competition directly in various ways: (1) revenue squeeze, (2) brand dilution, (3) innovation reduction, (4) packaging change waste, (5) secondary brands elimination, and (6) diversion of advertising (e.g. Phillip et al., 2013).

The source of these lookalikes is principally associated with large multiple retailers, though other manufacturers and importers may also be sources (British Brand Group, 2012). In particular, lookalikes have arisen where the major retailers have sought to position some private labels as a direct target to the leading manufacturer brands, drawing on the quality association and in effect free-riding on manufacturer brand investment for innovation and marketing (Morrin, Lee, & Allenby, 2006). Revenue is then taken from the branded goods manufacturer where uninformed or inattentive shoppers confuse the two products, i.e. the brand and the imitator, and purchase the lookalike by mistake (or they might recognise the different packaging but assume that the goods are otherwise identical and made by the same manufacturer) (Falkowski et al., 2014; van Horen & Pieters, 2012; Zaichkowsky, 2006). Thus the brand innovator is deprived of its returns to undertaking risky investment and its reputation, and thereby its sales, may suffer when consumers assume that the branded good and its look-alike are made by the same manufacturer whereas the quality of the look-alike turns out to be poor (Walsh & Mitchell, 2007).

The result is that the brand manufacturer is likely to suffer disproportionate brand dilution, either in the form of blurring its distinctive characters or tarnish its reputation, over and above what would be the effect from normal competition (Morrin et al., 2006; Pulling, Simmons, & Netemeyer, 2006). In order maintain the distinction from lookalikes and stay ahead, branded manufacturers are forced to re-design their packaging constantly, which may cause wasted cost in “over-innovation” (Dobson & Yadav, 2012). Furthermore, unlike the size and scale advantages and financial deep pockets that the main retailers possess, the smaller or more specialized brand manufacturers may lack such ability, being unable to finance and resource the continual innovation required for their packaging redesign or product reformulation, to compete effectively with lookalikes. Moreover, by controlling the choice of products stocked, the retailers can favour their lookalike private labels over the brands, even the extent of delisting them and removing them from their store shelves, making harder for these smaller brand manufacturers to survive with the loss of sales and loss of scale economies.

It should be emphasized, though, that the problem of lookalikes is not a problem of retailer private labels per se. Firstly, private labels can be distinctively packaged and distinctively marketed, and can represent genuine good value for consumers. Secondly, lookalikes are not necessarily at the instigation of retailers, but also come from other manufacturers and importers. Nevertheless, the market power and control over the supply chain which the major retailer now enjoy means that, by developing lookalike products (rather than distinctively presented private labels, which they are clearly capable of generating), they are best placed to exploit unfairly and anti-competitively the image and goodwill that brand manufacturers have developed with consumers through careful and continual product and marketing development (e.g. Richards, Hamilton, & Patterson, 2010).

Research shows that in a product category where there exists a stand-out leading brand, which has a high market share and brand awareness, private labels may well be better off positioning their products close to the leading brand, for the sake of consumer acceptance, drawing away sales from this brand and increasing the retailer’s negotiating position with the brand manufacturer (Ailawadi & Keller, 2004; Kumar & Steenkamp, 2007; Sethuraman, 2004). There is less incentive to mimic a particular brand when the market is more shared by various brands, and it might be better for the retailer to position private label more distinctly in its packaging as a point of differentiation and serving latent demand (Richards et al., 2010; Sayman, Hoch, & Raju, 2002).

With their size and scale and general expertise in developing private labels across multiple product categories and having generally flexible relationships with suppliers, retailers can respond quickly to new product developments to produce lookalikes shortly after new branded products are introduced (Dobson & Chakraborty, 2009; Fousekis, 2010). This ability greatly cuts the time for which a branded goods manufacturer can recoup its investment arising from the novelty of its product in consumers' minds before private label imitations appear and take sales away. These free-riding trends may ultimately reduce the quality and variety of goods available to the consumer. However, different from taking litigation action against each other when manufacturers spot trademark infringement, they are reluctant to legally fight against the retailer copycats, in the fear of being delisted or losing shelf space (Sethuraman & Raju, 2012).

The net result is that effective consumer choice is likely to be reduced as the number of brands diminishes, in particular where support for secondary brands is taken away, reducing inter-brand competition to the point where only the leading brands survive through continuous new product and packaging design to take on own-label goods. The decline in secondary brands, in a number of product categories in the major stores, suggests that this trend is already emerging (e.g. Davies & Brito, 2004). Nevertheless, little empirical evidence has been yielded to prove such negative effects to date on a general scale behind particular instances.

## 3 The Effect of Lookalikes on Retail Competition

Top branded FMCG products have extensive above- and below-the-line marketing support which helps create a carefully crafted brand image. The image may be of quality, performance or even a lifestyle associated with the product (Ferraro, Kirmani, & Matherly, 2013). By putting private label products in similar packaging, retailers hope to become associated with this brand image. Most importantly it may provide a signal to consumers to reduce their uncertainty, which acts as a central role at the very beginning of consumer choice (Kirmani & Rao, 2000). Clearly any strategy to improve quality perception will be of importance to retailers and imitation rather than innovation may be the preferred soft option when it comes to developing private label goods, made all the more easy by the weakness of existing legislation to protect against pirating product design and packaging features (Hyman et al., 2010; Phillip et al., 2013; van Horen & Pieters, 2013).

In developing lookalikes rather than distinctively packaged private labels, retailers are driven partly by the pure profit motive of avoiding the costs of establishing a new brand, but also by the competitive motive that mimicking may improve the quality perception of their own label goods and hence their perceived retail offer relative to rival retailers (Sayman et al., 2002). Thus even though innovative and distinctive private label products may be developed, retailers may for certain product categories turn to developing lookalikes when rewards to this route are more lucrative and less risky than developing more original products (Dobson & Chakraborty, 2009; Fousekis, 2010). The clearest gains to imitation are likely to accrue to those retailers which have extensive private label programmes, and so have a ready pool of suppliers able to imitate brand design, yet rely on stocking key brands to attract consumers to visit the store (Hyman et al., 2010). Category management can then come into play, recognising that the placement and arrangement of products within a store can have significant effects on the purchasing behaviour of consumers (Chandon, Hutchinson, Bradlow, & Young, 2009). In this situation, retailers can use product placement and arrangement, through the allocation of shelf-space, as well in-store promotion, to direct consumers to lookalikes in certain product categories and then use their control over retail prices, and perhaps deliberate stock-outs, to steer demand away from the relevant branded goods and in the process present the illusion of offering consumers better value for money (Dobson & Chakraborty, 2009; Richards et al., 2010).

In contrast, small retailers, with insufficient demand for private label production to be viable, are reliant on brands but at the same time they cannot negotiate prices as low as major retailers, and the costs of brands are increased by displacement by lookalike sales (when economies of scale are lost) (Bontemps, Orozco, & Réquillart, 2008). Specifically, lower demand may mean that the costs of production of brands rise, as there are fewer units of output over which to spread fixed and output indivisible costs such as advertising (Fabian, Philippe, & Vincent, 2004). Thus their competitive position is weakened vis-a-vis the large store groups, so reducing effective inter-retailer competition. Moreover, this competition may be further diminished if large retailers use lookalikes in a predatory manner (i.e. where prices are set close to or below cost in order to predate smaller retailers) (Bontemps, Orozco, Réquillart, & Trevisiol, 2005). Ultimately, the reduction in the number of retailers gives that remain enhanced market power and the opportunity to raise prices.

These effects on reducing inter-retailer competition need also to be put into the broader context of diminished retailer competition as a consequence of reduced consumer search activity across different stores where one-stop-shopping has become the norm; with store loyalty taking precedence over brand loyalty (London Economics, 1997). One consequence is that consumers' switching costs may then be sufficiently high that they would rather purchase lookalikes if the (original) brand is unavailable than go to a different store. Apart from the implications for branded manufacturers' returns to advertising and their overall sales, this raises the possibility of deliberate stock-outs by retailers in an attempt to induce consumers to switch to private label lookalike products. This is credible because consumers in most part visit stores to purchase a wide variety of products, not just a single branded good, and the greater the store loyalty the less likely consumers are to switch stores in search of any particular brand in response to price promotions or stock-outs (Dobson, 1998a). More generally it points to the market power which large retailers now possess, enabling them to set prices which allow for considerable retail margins and profits to be earned in the absence of vigorous competition (Dobson & Chakraborty, 2009; Fousekis, 2010).

## 4 The Overall Effect on Consumers and Societal Welfare

The imitation of branded goods remains a contentious (and litigious) area, given the scale of rewards involved, and the implications regarding how close producers may copy the character, design and packaging aspects of leading brands. Lookalikes go beyond drawing on simple visual cues associated with colours and shapes of existing brand packaging to mimic and thereby undermine the essential distinguishing features associated with the brand and its packaging, falling short of blatant reproduction but plagiarising the brand's trade dress (Miceli & Pieters, 2010; van Horen & Pieters, 2012). Furthermore, lookalikes do not arise by accident but are created deliberately with the intention of free-riding on investments undertaken by brand producers (Sethuraman, 2004). In response, brand owners will only invest in their brand if they are fairly sure of their ability to reap the reward from their investment, but if this is no longer so then manufacturers will become much less willing to make the necessary investments (Davies & Brito, 2004). For instance, in research conducted by Wilke and Zaichkowsky (1999), among the 30 companies investigated, 19 had been imitated by retailers, but only 9 firms (these firms were reported to have previously success experience in similar litigation) initiated legal action. In the long term, brands may become undermined to the extent that may disappear if they earn insufficient returns.

Without branded goods widely stocked across the retailer class, though, there will be significantly reduced inter-retailer competition adversely affecting consumer welfare, where price rivalry may be dampened and retailers concentrate on non-price methods of increasing store loyalty, raising consumers' switching costs and therefore reducing the elasticity of their own-label products (Bontemps et al., 2005). To a certain extent moves towards this situation are already occurring. Brands, and in particular secondary brands, are squeezed by private labels and lookalikes by a combination of factors. Notably, branded manufacturers' margins are pressurised at the wholesale level by the retailers' market power, reducing their ability to invest in products and process. This effect is compounded by private label and non-price promotions increasing store loyalty but diminishing individual brand loyalty (Kumar & Steenkamp, 2007). The result is that retailer competition is dampened, as shopping-around for groceries and other FMCGs diminishes, to the detriment of consumer and societal welfare.

Thus in the short term the introduction of look-alikes is in consumers' interests, as they gain the same level of product development and marketing but pay a premium price for a shorter period, in the long term it can be detrimental. Observing the swift introduction of imitations, brand manufacturers may either reduce the level of investment or continue to develop new aspects to products more quickly. The former reduces consumer welfare as the quality of products is less than without imitation (if quality is seen as a function of advanced development) and the variety is likely to be lower as fewer manufacturers engage in development, where in particular secondary brands may disappear. Alternatively, particularly for the leading brands, manufacturers may fight to maintain their position by continually revising product design and re-packaging.[2] This simply leads to socially excessive product development, a waste of resources and therefore lowers overall welfare where manufacturers are effectively pushed into rent-seeking behaviour to keep one step ahead of imitations. However, the present absence of rapid and effective legal remedy to prevent the rewards from brand investment being misappropriated by imitators means that such action will continue, in the process serving to distort manufacturer and retailer competition to the detriment of the public interest.

At present, there are limited legal remedies to prevent retailers developing lookalikes that fall short of being replicas or obvious imitations of established brands. Few FMCG products are protected by patents, and other than trade marks on brand names and logos, retailers have plenty of scope to develop very close lookalikes. For a brand manufacturer, the retailer is both its "customer" and its "competitor" when it develops, markets and sells private label goods (Dobson & Chakraborty, 2009). This "double agent" role gives the retailers consider leverage over brand producers and makes them reluctant to take legal action or threaten to boycott the retailer, which will simply result in lost sales and lost economies of scale. Faced with only limited options for retaliation, there is often little that brand producers can do to prevent their investments being undermined and competition being distorted and harmed by private label lookalikes. Ultimately this will be bad for consumers when it reduces product choice, undermines investments in quality, and raises prices when retail power increases and retail markets become more concentrated over time. As well as offering scope for further academic research, this consumer welfare aspect an onus on competition authorities to understand better the competitive dynamic taking place in these markets and ensure that competition at both manufacturer and retailer level is protected to the greater good of consumers.

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[2] For instance, Dobson (1998b) points to a notable case where following the introduction of a series of lookalike products resembling the cleaning product Flash in 1986, and after inconclusive court proceedings, Procter & Gamble re-packaged their product in 1992. This in turn was mimicked within 1 year. Further new packaging was introduced by P&G in 1994, again to be mimicked—for the third time. Similar tacking can be spotted when examines another P&G product—Head and Shoulders.

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