

When Life Gives you Lemons....Thatchers Successful as Court of Appeal Finds Aldi Copycat Products Amount to Trade Mark Infringement in the UK

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On 20 January 2025, the English Court of Appeal handed down its judgment in a highly anticipated appeal by Thatchers Cider Company, concluding that Aldi had infringed Thatchers' registered trade mark under section 10(3) of the Trade Marks Act 1994, by taking unfair advantage of Thatchers' packaging trade mark (see comparison below).



In February 2024 we reported on the High Court judgment in the case of *Thatchers v Aldi*, where Thatchers took action for trade mark infringement and passing off in relation to its 'Cloudy Lemon Cider' product (see our original post [here](#)). The Intellectual Property Enterprise Court (IPEC) held that there was no trade mark infringement or passing off by Aldi in respect of its 'Taurus Cloudy Cider Lemon' product.

The decision surprised many commentators and brands and left the future of trade mark law in the UK with respect to ‘copycat’, ‘dupe’ or ‘look-a-like’ products in a state of uncertainty. Thatchers appealed the decision on a number of grounds and brand owners and innovators will be pleased that the Court of Appeal unanimously allowed the appeal with respect to trade mark infringement for “unfair advantage”.

The Appeal

The Court of Appeal considered each aspect of Thatchers’ appeal in turn and noted in addition that Aldi had invited the Court to depart from the leading European case on unfair advantage, *L’Oreal v Bellure*, a point which Arnold LJ considered in detail in the conclusion of his judgment.

The key aspects of the Court of Appeal judgment were as follows:

1. *The IPEC judge had incorrectly assessed the similarity of the signs.*

In the first instance proceeding, counsel for Thatchers argued that Aldi had tried to ‘sail as close to the wind as they could’ when engaging designers for the Taurus product. In the appeal, the Court held that the overall ‘Sign’ of the Thatchers product included both the cardboard packaging used on a multipack of ciders, and the image on an individual can, agreeing with Thatchers that the first instance judge was wrong to hold the two-dimensional versus three-dimensional nature of both products as a ‘point of difference’.

Thatchers argued that the judge was correct to consider the distinctive and dominant elements of the marks for the purposes of assessing likelihood of confusion, but extending that conclusion to the analysis of the section 10(3) argument was incorrect. Although the Court of Appeal held that it can be commonplace for tribunals to make a single assessment on similarity, when looking at additional factors LJ Arnold concludes at [86] that the judge should have “*assessed the similarity as being somewhat greater than she did*”.

2. *The similarity of the signs was intended to create a link with the Aldi product and convey to consumers that the product was “like the Thatchers product, only cheaper”.*

The Court of Appeal held that the sign used by Aldi for the Taurus Cloudy Cider Lemon represented a ‘manifest departure’ from the house style used by Aldi in its Taurus range of products. The Taurus range was usually presented with white text on a black background with coloured ‘swooshes’. However, the Taurus Cloudy Cider Lemon product used black text on a pale yellow background, including prominent images of lemons and leaves.

This in conjunction with evidence presented of the Aldi design process using the Thatchers product as the only ‘benchmark’, led the Court to the ‘inescapable conclusion’ that the Aldi product was intended to remind consumers of the Thatchers product and that “*this can only have been in order to convey the message that the Aldi Product was like the Thatchers Product, only cheaper*” [99].

3. *The Aldi product achieved significant sales without any promotion; Aldi unfairly benefitted from Thatchers design and development of its own product.*

The Court deemed this to be significant, as Aldi made no attempt to prove that the impressive sales of its Taurus Cloudy Cider Lemon product would have occurred with branding closer to its Taurus ‘house style’ or as a result of Aldi’s own marketing efforts.

The Court concluded that it was clear that Aldi intended for its product to remind consumers of the Thatchers product, taking advantage of the trade mark in order to increase sales. The matter at hand was deemed to fall within the issues considered in the leading case of *L'Oréal v Bellure*, namely the issue of “riding on the coat-tails” of a registered mark by transferring the image of the mark to the infringing product packaging.

Comparing instances of real consumer comparisons and the volume of sales, the Court concluded that there was an unfair advantage, as Aldi was able to profit and benefit from the investment that Thatchers had made in developing, designing and promoting its product, rather than simply competing with Thatchers on the basis of the quality, price and promotional efforts of Aldi's own product.

It was clear to the Court that Aldi intended its product to remind consumers of the Thatchers trade mark and obtained an advantage from doing so. In a swift blow to ‘copycat’ brands, the Court concluded that “*Aldi's use of the Sign was not in accordance with honest practices in industrial and commercial matters because it was unfair competition*”[141].

Although not a key factor in this conclusion, LJ Arnold also mentioned the lower quality of the Aldi product as it did not contain real lemon juice, a point which Thatchers submitted was misleading in the presentation of Aldi's product.

Key Takeaways

The decision marks the end of a line of recent cases in the UK where brand owners have struggled to enforce their rights against similar packaging and logos. It will serve as a helpful precedent for future cases against ‘copycat’, ‘dupe’ and ‘look-a-like’ products across a number of industries, and bring the UK in line with European and other jurisdictions where claims against these products for unfair advantage, dilution and unfair competition have historically faced stronger prospects of success. Whether the case represents a “watershed” or “landmark” moment in trade mark law remains to be seen, and it will be important for brand owners to recognise that claims against ‘copycat’, ‘dupe’ and ‘look-a-like’ products in the UK will continue to present challenges.

It is noteworthy that there was evidence in the case that the Thatchers packaging and trade mark was fairly unique in the market for cider products, and that the products had only been launched in 2020. Thatchers had registered packaging trade marks shortly after the launch, a decision which served them well considering that registered trade mark infringement was the basis of the only successful claim against Aldi. Based on the evidence, the Court was prepared to find that the Thatchers packaging trade mark was “well known” even though it had only been in the market for a few years. The challenge for brand owners seeking to rely on this decision will be to show that they too have unique and well-known trade marks, and we expect that trade mark claims relating to more generic packaging and marketing assets, or products that are part of a market flooded with similar designs, will continue to face difficulty in the absence of strong evidence of benchmarking or copying.

Nevertheless, we expect there to be a renewed focus on challenging look-a-like products in the United Kingdom as a result of the decision, as well as an evolution of the approach taken by sophisticated copycats and retailers producing such products, and increased enforcement and litigation involving trade mark registrations for packaging and marketing assets in the coming years. Brand owners are likely to re-assess their pan-European and international enforcement efforts with a greater focus on the United Kingdom, and not only the more brand-owner friendly jurisdictions such as Germany, the Netherlands and France.

This case should be considered by brands in both offensive and defensive contexts going forward, and highlights the need for registered trade mark protection for packaging, logos and marketing assets. Passing off, unfair competition and trade mark infringement claims based on confusion remain difficult in this space, but the Court of Appeal has given a (measured) green light to claims of trade mark infringement for unfair advantage or detriment where a 'copycat', 'dupe' or 'look-a-like' product is clearly intended to remind consumers of the brand owner's original product by transferring their image and reputation to the accused product, and the evidence points to an intention to do so.

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