Similar packaging
Assessing consumer detriment and business harm

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Oxford Symposium;
Trends in Retail Competition
Agenda

• Big picture of IP research and reform
• Hargreaves review – main conclusion
• Lookalike research, background
• Emerging findings
  – International comparisons
  – Consumer confusion?
  – Business harm?
• Next steps
IPO Economic Research

• Programme started in 2010
  – Set of projects to understand IPRs in UK economy
  – Developing IPO and international data
  – Shared concepts and projects with other IP offices

• Main results so far
  – Quantifying IP investment by UK business
  – Evaluating university – business knowledge transfer
  – Studies on IP enforcement
  – Understanding incentives in trademarks and patents
  – In depth look at UK design and rights
  – Copyright and business impact
What the National Accounts **don’t** tell you

.... the ‘missing investment’ for growth

Source: NESTA Innovation Index

![Bar chart showing various sectors and their intangible (IP) investment in billions of pounds (GBP). The chart includes categories such as Intangible (IP) investment, Other Services, Transport/comms, Real Estate/Business Services, Distribution, Other Production, Manufacturing, and Construction. The IP investment is divided into two parts: IP included in GDP and IP not in GDP. The chart is sourced from NESTA Innovation Index.]
£40bn uncounted investment in IP Rights
.... in design, patents, trademarks and uncounted copyright

Source: Imperial College for IPO
‘Tradeable’ intangibles in five areas

.... branding is a significant part of the total

Source: Imperial College for IPO
The current intellectual property framework might not be sufficiently well designed to promote innovation and growth in the UK economy.”

July 2010
Hargreaves’ Review conclusion:

“Could it be true that laws designed more than three centuries ago... are today obstructing innovation and economic growth?

The short answer is: yes.”

May 2011
<table>
<thead>
<tr>
<th>IPR</th>
<th>Does it work?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade marks</td>
<td>Yes</td>
</tr>
<tr>
<td>Patents</td>
<td>Mostly</td>
</tr>
<tr>
<td>Design</td>
<td>Needs work</td>
</tr>
<tr>
<td>Copyright</td>
<td>Creating barriers</td>
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Why lookalike research?

- Questions raised at IPO Brands Conference
  - Do lookalikes damage functioning of brands?
- Set out to seek evidence on
  - How does UK legal framework on UCPD differ from other markets?
  - Are outcomes in UK different?
  - Are consumers misled by lookalikes on the shelf, and are they disadvantaged?
  - Do lookalikes disadvantage brand manufacturers and undermine innovation investment?
What we know

• Evidence from AIM / BBG commissioned research
  – Manufacturer brands tend to be more innovative
  – If they don’t innovate, brands decline
  – Brands can be an efficient way of getting new products to market

• Evidence from IPO commissioned research
  – Trademarks help smaller firms survive and grow
  – They help firms generate more and better jobs
  – There doesn’t seem to be a ‘bias to incumbents’
Emerging findings - Literature

• A growing mountain of studies!
  – Plenty of evidence on progress of ‘own brands’
  – Brands which are not leaders are main casualties
• Role of lookalikes in eroding brand innovation
  – Evidence that lookalikes can substitute for manufacturer brands which are not leaders
  – Some evidence that lookalikes trade on ‘familiarity’
    ...... but familiarity or trust enables innovation.
Emerging findings - Legal

• Hogan Lovells, most recent EU review
  – UK out of step and has inferior remedies to most member states

• Other sources
  – Gowers recommended stronger protection than passing off.
  – German comparison; ‘unfairness by avoidable deception regarding commercial origin’
  – No data on interim injunctions ... which make German system work.
Emerging findings - consumers

• Surveyed 330 consumers, 1160 comparisons across 12 categories
  – A manufacturers brand
  – A lookalike product
  – A control (a visually dissimilar brand)
• Asked about similarity, quality and origin
  – Rated comparators on a 1-5 score
  – Against the manufacturers brand
Consumers say sourcing common

Strong link between visual similarity and perception of origin
Emerging findings - sales

• Kantar data used for same products
  – To understand correlation brand / lookalike
  – To understand correlation brand / control
  – To see if there is a difference

• Data suggests different outcomes by product
  – Some significant brand / lookalike substitution
  – More cases where relationships are blurred
  – Some differences in timescale for significant relationships
Emerging findings - sales

Some look convincing; others are harder to read

**Comparison of Sales Sarson's Malt Vinegar and Samson's Malt Vinegar**

- **Sales in Supermarket**
- **Sales in Whole Market**

- **Samson’s Malt Vinegar (Lidl)**
- **Sarson’s Brown Malt Vinegar (W)**
- **Sarson’s Brown Malt Vinegar (S)**
Emerging findings - sales

Some show relationships – with gaps
Next steps

• Peer review and further analysis
  – Large amount of data to understand
  – What are factors where substitution significant?
  – What is the role of price?

• Consultation on data and options
  – Where might lookalikes qualify as unfair?
  – Where do they ‘blur’ brands
  – Is there any effect on capacity to innovate?
Thanks for listening

Details of UK IPO research at

http://www.ipo.gov.uk/pro-ipreasearch.htm