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Post-sale confusion and the Iconix judgment: A potential game-changer for tackling supermarket copycats?

For many UK food and drink brand owners, the battle against supermarket copycats can be an uphill task. But a recent Supreme Court decision in *Iconix v Dream Pairs*¹ may help to redress the balance, particularly in the context of “post-sale confusion”. In this article, we explore what this means for brand owners, and how the judgment could strengthen legal arguments against lookalike products – especially those found on discount supermarket shelves.

What is “post-sale confusion”?

Traditionally, cases in this area have focussed on whether consumers are confused *at the point of purchase*.

However, in *Iconix*, the Supreme Court confirmed that confusion can also arise *after* a purchase has been made. This is particularly relevant for consumer goods, such as fashion items, or food and drink products. Consumers might show off the branded packaging of these products or talk about it later, potentially leading others to mistakenly believe it is associated with a well-known brand.

The Court held that this type of confusion can be actionable under section 10(2) of the Trade Marks Act 1994, giving brand owners a new angle to challenge infringing products. Our previous article, linked [here](#), takes a further look into the *Iconix* judgment.

Why does this matter for the food and drink industry?

The food and drink sector has long been plagued by “parasitic packaging”, products designed to mimic leading brands just closely enough to create an association in the mind of the consumer. Discount retailers are particularly adept at walking the tightrope: mimicking fonts, colours and shapes of products but aiming to avoid directly copying logos or names.

Legal remedies have therefore traditionally been difficult to obtain.

Courts often accept that consumers know they are buying cheaper alternatives, making it hard to establish confusion at the point-of-sale. But the *Iconix* ruling could shift that dynamic.

Previously, copycat retailers could argue that clear labelling and price positioning avoided point-of-sale confusion. However, post-sale confusion now gives rights-holders a **stand-alone infringement route**, even where shoppers knowingly buy the lookalike.

In practice, this could apply where the product is shared or discussed on social media and mistaken for the branded item, the product is seen in a home and the consumer assumes a brand connection.

Strengthening the fight against copycats

This expanded concept of confusion gives food and drink brands another tool to combat unfair competition. Alongside arguments under section 10(3) of the Trade Marks Act, such as those successfully used by Thatchers in its case against Aldi, the *Iconix* decision widens the scope for enforcing trade mark rights.

Importantly, it may also shift judicial thinking in cases where parasitic packaging is designed to skate just beneath the threshold of infringement. If a brand can now show that confusion occurs later – whether at home, online, or in public spaces – it could tip the balance in their favour.

¹ *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc. and Top Glory Trading Group Inc* [2025] UKSC 25

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This also puts further emphasis on collecting evidence of consumer confusion in real-world settings, including:

- Online posts and comments on social media;
- Consumer surveys;
- Customer service complaints;
- Anecdotal or influencer feedback.

A Scottish tactical advantage?

As highlighted in previous Kernel articles and sessions, Scotland remains a brand-friendly forum for IP enforcement. Interim interdicts (the Scottish equivalent of a preliminary injunction) can be granted swiftly and without notice, leading to immediate removal of infringing products UK-wide. With the *Iconix* judgment now part of the legal landscape, brand owners may find the Scottish courts even more receptive to arguments based on post-sale confusion.

Key takeaways for food & drink brands

Monitor copycats: Keep a close eye on discount own-brand products mimicking your packaging, especially if they appear on shelves next to your own.

Collect evidence: Capture real-world examples of confusion occurring post-sale, particularly online and in social settings.

Re-evaluate enforcement strategy: If you've previously ruled out legal action due to weak point-of-sale confusion, the *Iconix* judgment may reopen that door.

Consider Scottish enforcement: The Court of Session remains a cost-effective, brand-owner-friendly forum for swift action across the UK.

Final thoughts

In a sector where brand equity is everything, protecting it requires agile legal thinking. The *Iconix* judgment signals a shift in the courts' willingness to recognise brand harm beyond the checkout. For food and drink brand owners navigating the minefield of parasitic packaging, this could be a pivotal development in the ongoing war against supermarket copycats.

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