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Ana de Miguel
Consumer and Competition Policy
Department for Business, Innovation and Skills
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19 May 2014

Dear Ms de Miguel

Review of enforcement provisions of Consumer Protection Regulations 2008 in respect of copycat packaging

I write on behalf of The Coca-Cola Company ("TCCC"). You will be aware that TCCC is a world famous, multinational beverage corporation and manufacturer, retailer and marketer of non-alcoholic beverages. TCCC, through its distributors, sells many branded beverages throughout the United Kingdom, Coca-Cola being the most famous. Many of TCCC's products are market leaders, and are often emulated in copycat packaging.

TCCC is grateful for the opportunity to comment on the enforcement provisions under the Consumer Protection from Unfair Trading Regulations 2008 (the "CPRs"). TCCC requests that the information provided in this letter (including any personal data) be treated as confidential, and not circulated or distributed beyond what is necessary for the Department for Business, Innovation to complete this consultation. [TCCC is happy to be listed amongst the entities consulted.]

In the experience of TCCC, the current enforcement model under the CPRs does not tackle the issue of copycat packaging adequately. A civil injunctive power should be introduced to address the current enforcement gap left between the criminal sanctions under the CPRs on the one hand and, on the other hand, other intellectual property enforcement actions by brand owners and local authorities.

Broadly, TCCC agrees with the identified forms of consumer deception which arise as a result of copycat packaging, namely outright confusion and deception as to the origin or quality of a particular product. These are well known. Additionally, TCCC would add that copycat

packaging also distorts competition. It does this by narrowing a particular product field, such that a new product which does not conform to the packaging features of its competitors may be overlooked by consumers, who are confused as to what that particular product is. This also drives manufacturers to narrow the appearance of a particular product field, increasing the likelihood of consumer confusion. It is important to remember that the Unfair Commercial Practice Directive ("UCPD") reinforces the Treaty objective of attaining a "*high level of consumer protection*" (Recital 1). The UCPD itself requires Member States to implement "*adequate and effective*" means to combat unfair commercial practices.

In this context, TCCC is of the view that the CPRs lack the potency that was intended by the UCPD.

TCCC's legal representatives in the United Kingdom interact with Trading Standards officers frequently – almost on a weekly basis. We understand that the primary intellectual property enforcement focus of Trading Standards is counterfeit goods. This is understandable: counterfeit goods can be more readily identified, as are the owners of the relevant rights.

TCCC understands that Trading Standards has many competing priorities – not least enforcing the breadth of consumer legislation, including product safety. At this time of economic pragmatism, TCCC appreciates that Trading Standards must prioritise its resources in the most effective manner to achieve its objectives for the benefit of the wider community. It is therefore understandable that the focus on consumer protection under the CPRs has not been prioritised. One of the benefits of civil injunctive relief would, therefore, be to lessen the enforcement burden of Trading Standards, whilst still achieving the intention of the UCPD.

Also, brand owners are also experts in their own packaging and get-up. They will more readily identify copycat products in the market. That is not to say brand owners would aggressively pursue such relief. In TCCC's experience, in other European countries where legislation provides for protection from "unfair competition" or "slavish copying", litigation is no more common than in the United Kingdom. Indeed, if anything, litigation in these countries (and indeed the prevalence of copycat packaging and consumer confusion) is less frequent, most likely as the law is clearer, and as a result competitors are more aware of what is acceptable behaviour in designing and marketing competing consumer goods.

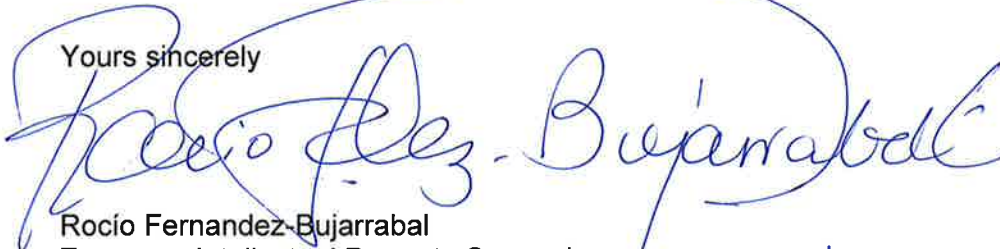
Without a tort of unfair competition (or injunctive remedies under the CPRs), brand owners in the United Kingdom may only tackle consumer confusion (or indeed deception) in the United Kingdom by trade mark infringement and passing off actions. Such actions are fraught with difficulties and are expensive and uncertain for both the brand owner and the alleged infringer.

The unfair practices set out in Regulation 5 of the CPRs provide a framework for both brand owners and the manufacturers to work within to avoid the uncertainties associated with the current legal framework. As such, a civil process would allow brand owners to reduce consumer confusion by providing a process for tackling copycat packaging. Indeed, it appears likely that instances of copycat packaging would fall, merely by the additional clarity provided by the CPRs.

By providing civil injunctive relief, legal certainty will be increased for the benefit of brand owners, manufacturers and consumers. Indeed, it was contemplated in Recitals 12 and 17 to the UCPD. Further, benefits to innovation and the packaging industry would result. Manufacturers would be encouraged to be more innovative when designing their packaging and their brands. In effect, this will increase competition and enhance consumer choice and reduce confusion. This should be welcomed.

Thank you for the opportunity to comment on these important regulations.

Yours sincerely



Rocío Fernandez-Bujarrabal
European Intellectual Property Counsel

