

*Teresa da Silva Lopes and Mark Casson*

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## Brand Protection and the Globalization of British Business

In expanding on earlier analyses of the evolution of multinational business that have drawn from concepts of competition and innovation, this study examines the strategies used by British multinationals, between 1870 and 1929, to protect the global reputation of their brands, which were crucial to their survival and success. Even after the passage of new trademark legislation in 1876, enforcement of trademarks remained expensive, and often firms preferred to negotiate, rather than to prosecute violations. Many trademark imitators were based in the newly industrializing countries of the time—the United States, Germany, and Japan—and were part of the British export supply chains as licensees, franchisees, or wholesalers. British firms responded to infringements by lobbying governments, appointing local agents to provide intelligence, and collaborating with other firms.

**T**he current demand for global brands by consumers across the developed world has stimulated the proliferation of imitators and counterfeiters, particularly in emerging markets like China.<sup>1</sup> The globalization and liberalization of markets, coupled with new technologies like the Internet, have changed institutional boundaries and reconfigured supply chains. In response, the owners of successful global brands

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<sup>1</sup>Imitation and counterfeit goods from emerging markets are estimated to account for 5 percent to 7 percent of world trade. “Estimates of International Trade in Counterfeit and Pirated Goods,” Anti-Counterfeiting Coalition (IACC) (Washington, D.C., 2008).

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have sought protection of their intellectual property rights worldwide.<sup>2</sup> Imitations and counterfeits are not recent phenomena. They were an important concern for businesses and governments long before intellectual property laws were enacted.<sup>3</sup> Imitations tend to proliferate in expanding industries with low barriers to entry, and they affect, in particular, successful products and services based on the exploitation of intangible assets, such as superior technology and patents or successful brands and trademarks.<sup>4</sup>

In this article, we analyze imitations and counterfeits in relation to one particular form of intellectual property rights: trademarks. Trademarks give firms the legal right to control the use of particular names or symbols that may be applied either to specific products or to an entire range of products. Trademarks protect the reputation of a product against rival producers.<sup>5</sup> Trademarks are particularly important in industries that rely on product design or image, rather than only on proprietary technology, to differentiate their products. Such industries may be termed “marketing based,” in contrast to those that are technology based.<sup>6</sup> We will focus on one particular type of marketing-based industry—fast-moving consumer goods—a category that includes food, drink, household goods, and toiletries and is made up of industries whose product image, provenance (certification of origin), and brand personality are important.

Business histories usually attribute the success of global consumer-goods brands in foreign markets to the entrepreneurial behavior of their

<sup>2</sup>The role of intellectual property rights protection in enhancing economic growth, and its ability to increase the returns to innovation, has been widely studied in economics and management. See, for example, Douglass C. North, *Structure and Change in Economic History* (New York, 1981); Harold Demsetz, “Towards a Theory of Property Rights,” *American Economic Review* 57, no. 2 (1967): 347–59; Mark Casson, *Information and Organisation* (Oxford, 1997); William M. Landes and Richard A. Posner, *The Economic Structure of Intellectual Property Law* (Cambridge, Mass., 2003); Keith E. Maskus, *Intellectual Property Rights in the Global Economy* (Washington, D.C., 2000); Ryo Horii and Tatsuro Iwaisako, “Economic Growth and Imperfect Protection of Intellectual Property Rights,” *Journal of Economics* 90, no. 1 (2007): 45–85.

<sup>3</sup>Gérard Beaur, Hubert Bonin, and Claire Lemerrier, eds., *Fraude, Contrefaçon et Contrebande, de l'Antiquité à nos Jours* (Geneva, 2006); Stephen Mihm, *A Nation of Counterfeiters: Capitalists, Con Men and the Making of the United States* (Cambridge, Mass., 2007); Maxine Berg, “From Imitation to Invention: Creating Commodities in Eighteenth-Century Britain,” *Economic History Review* 55 (2002): 1–30.

<sup>4</sup>Evidence presented to a Select Committee in 1862, before the British Trademark Act of 1875, confirms that there was intense competition in foreign markets by imitators of British successful trademarks. Report from the Select Committee on Trade Marks Bill and Merchandise Marks Bill (1862), Q.9, Q.929, Q.2461.

<sup>5</sup>Mark Casson and Nigel Wadeson, “Export Performance and Reputation,” and Per H. Hansen, “Co-branding Product and Nation: Danish Modern Furniture and Denmark in the United States, 1940–1970,” both in *Trademarks, Brands, and Competitiveness*, ed. Teresa da Silva Lopes and Paul Duguid (New York, 2010).

<sup>6</sup>Teresa da Silva Lopes, *Global Brands: The Evolution of Multinationals in Alcoholic Beverages* (New York, 2007).

managers, their development of efficient organizational structures, their unique product design, their distinctive advertising and distribution networks, and their sophisticated pricing strategies. These histories hardly mention, however, the strategies firms use to protect their brands against imitation in foreign markets.<sup>7</sup> Conversely, while firms are often criticized for lack of enterprise and innovation, poor management, and misguided strategy, they are rarely criticized for failure to protect their brands.

This study encompasses a succession of international business regimes from 1870 to 1929, stretching from the zenith of the British Empire and the rise of the modern U.S. corporation to the Great Depression. Before 1914, international trade expanded, aided by falling international transport costs. Political and cultural change, coupled with the growth of advertising, helped diffuse mass marketing and mass consumption throughout the developed world. The process was patchy and punctuated by setbacks, though. Before 1914, protectionism had a strong hold outside the British Empire, particularly in the newly industrializing countries such as Germany and Japan that were seeking to catch up with Britain. These countries protected infant industries through tariffs and subsidies, and they encouraged indigenous firms to copy British products.

During this period of increased trademark use, the scope for imitation increased too, and the law had to struggle to keep up with the challenge. The United Kingdom established a trademark law in 1875, but this was of limited value to firms selling overseas, as their businesses required consistent international application of statutory trademark law, a factor that was missing. The advance of international law was by no means uniform. It occurred in fits and starts as some countries took the lead and others followed. France set the pace, while the United Kingdom and the United States lagged behind.<sup>8</sup> U.S. and U.K. firms had to rely on common law, criminal law, and copyright or even design law for trademark protection.

We will examine how firms responded to the fitful advance in international trademark legislation. British exporters of consumer goods often catered to wealthy customers, including expatriates and settlers

<sup>7</sup> See, for example, Stephen J. Nicholas, "The Overseas Marketing Performance of British Industry, 1870–1914," *Economic History Review* 37, no. 4 (1984): 489–506; Derek F. Channon, *Strategy and Structure of British Enterprise* (London, 1973). For an exception, see Paul Duguid, "Developing the Brand: The Case of Alcohol, 1800–1880," *Enterprise & Society* 4, no. 3 (2003): 405–41.

<sup>8</sup> Paul Duguid, Teresa da Silva Lopes, and John Mercer, "Reading Registrations: An Overview of 100 years of Trademark Registrations in France, the United Kingdom and the United States," in *Trademarks, Brands, and Competitiveness*, ed. Teresa da Silva Lopes and Paul Duguid (New York, 2010), 9–30.

in the Empire and Latin America. They relied on trademarks to support images of social exclusiveness. Prior to 1914, British foreign direct investment was mainly conducted by free-standing firms in extractive and utility industries, although manufacturers of other items, including consumer goods, took part as well.<sup>9</sup> Britain remained competitive in consumer goods after 1929, despite its relative economic decline in many technology-based sectors.<sup>10</sup> Of all the British foreign direct investments before 1929, those in the consumer-goods sector were among the longest lasting. Brands recognized today as global were then in the early stages of internationalization.

In examining both the strategies pursued by imitators and the counter-measures adopted by British firms, we explain how these firms adapted their responses to the circumstances of each case. We identify the factors governing the measures that were taken, in particular the laws and institutions of the foreign countries involved. Most critically, we examine the interactions between trademark protection and other strategies that were designed to exert control over foreign entries.

Our study draws on many primary sources, including trademark registrations published by national and regional trademark agencies, parliamentary committee reports, accounts of legal trials, newspapers, and the archives of exporters and advertising agencies. We selected trademarks according to the following criteria: association with long-established British consumer brands; earlier (or present) rank among the world's top brands in their product categories; and the existence of accessible records.

The sample is not representative of all the British trademarks that were exploited overseas, but it does cover the most successful ones that have demonstrated survival value. This focus is useful for two reasons. First, because successful brands tend to attract more imitators than unsuccessful ones, they face more severe problems of imitation. Second, the behavior of survivors identifies strategies that are sufficiently powerful to defend profitable brands. The brands analyzed in the study are listed in the Appendix.

<sup>9</sup> Geoffrey Jones, *Multinationals and Global Capitalism* (Oxford, 2005), and *British Multinational Banking* (Oxford, 1993); John Benson, *The Rise of Consumer Society in Britain, 1880–1980* (London, 1994); W. H. Fraser, *The Coming of the Mass Market, 1850–1914* (London, 1981); Stanley D. Chapman, "British-based Investment Groups before 1914," *Economic History Review* 28, no. 2 (1985): 230–47; Peter Dicken, *Global Shift: Mapping the Changing Contours of the World Economy* (London, 2010).

<sup>10</sup> Alfred D. Chandler Jr., *Scale and Scope: The Dynamics of Industrial Capitalism* (Cambridge, Mass., 1990). About British economic decline, see, for example, Bernard Elbaum and William Lazonick, *The Decline of the British Economy* (Oxford, 1986); and also Stephen N. Broadberry, *The Productivity Race: British Manufacturing in International Perspective, 1850–1990* (Cambridge, 1997).

Imitation, Counterfeiting, and Trademark Protection

It is an established economic principle that successful new products attract imitators whose entry into a market increases competition and reduces price. Imitation may benefit consumers, but, by lowering price, it also decreases the innovator's rewards. Indeed, innovators may find it difficult even to recover their set-up costs. When they cannot do so, their ability to innovate may be deterred, causing consumers also to lose out in the long run. Countering the obstacles presented by imitation and protecting the innovators require barriers to entry. One strategy is to award exclusive legal rights to innovators, in the form of patents, trademarks, or both.

A trademark is a name, symbol, or other device that acts as a distinguishing feature of a product or of an entire range of products. Unlike a patent, a trademark is not necessarily linked to a specific product or process. There are other differences, too. While patents are awarded for originality, trademarks only have to be different. Patents normally expire after a fixed number of years, and they may lapse earlier if unused. The life of a trademark can be indefinite, however. The literature often assumes implicitly that a patented product will be marketed using a trademark, creating a false impression that enforcement of trademarks and patents raises similar issues. Scientific and technical evidence is less important in registering trademarks than patents, but resolving competing claims to the same name, and avoiding the customer confusion created by similar marks, can avoid serious difficulties.

Trademarks are part of the branding process. A brand may be defined as an identity that differentiates a product from substitutes by associating it with specific characteristics.<sup>11</sup> These characteristics may be objective, such as performance and reliability, or subjective, such as an association with particular celebrities or lifestyles. Brands are often used to signal quality and to enhance the perceived status of the consumer. They are particularly useful in signaling the value of nondurable goods in order to encourage repeat buys, as a memorable brand makes it easy for the consumer to recognize the product subsequently.<sup>12</sup>

Brands themselves are not legal entities, but trademarks are.

<sup>11</sup> Lopes, *Global Brands*.

<sup>12</sup> Jennifer L. Aaker, "Dimensions of Brand Personality," *Journal of Marketing Research* 34, no. 3 (1997): 347–56; Celia Lury, *Brands: The Logos of the Global Economy* (London, 2004); Paul Milgrom and John Roberts, "Price and Advertising Signals of Product Quality," *Journal of Political Economy* 94, no. 4 (1986): 311–29; Frank I. Schechter, "The Rational Basis for Trade-Mark Protection," *Harvard Law Review* 40 (1927): 813–33; Mark Casson, "Brands: Economic Ideology and Consumer Society," in *Adding Value: Brands and Marketing in Food and Drink*, ed. Geoffrey Jones and Nicholas J. Morgan (London, 1994).

*Table 1*  
Two Dimensions of Imitation Strategy

<i>Imitate Trademark</i>	<i>Imitate Product</i>	
	<i>No</i>	<i>Yes</i>
<i>No</i>	No imitation	Imitation without trademark infringement
<i>Yes</i>	Trademark infringement	Counterfeiting

Trademarks can reinforce brand value and help to defend it.<sup>13</sup> The name, typeface, design, color, and symbolism may be chosen to resonate with the values associated with the brand. A trademark design must be recognizable—even attention grabbing. Rivals that attempt to imitate a product may therefore try to copy its trademark, too. Not all product imitation involves mimicking a trademark, however, and conversely, not all counterfeit trademarks are based on product imitation. The process is illustrated in Table 1, which sets out two main dimensions of the strategy available to an imitator in response to an innovator who has taken out trademark protection. The imitator must decide whether to produce a look-alike product and whether to imitate the trademark too. Alternative trademark imitation strategies are indicated along the table rows, and alternative product strategies are shown in the columns.

The top cell of the table's left column indicates a successful outcome for the innovator, whereby there is no imitation of either its product or its trademark. The case in which imitation occurs without trademark infringement (top cell in the right column) exemplifies the situation normally discussed in the economics literature. The bottom cell of the left column corresponds to a case of trademark infringement (or unauthorized brand extension), in which the imitator applies the trademark to one of its own products, rather than to a copy of the innovative one. The bottom right cell corresponds to the most damaging scenario for the innovator—counterfeiting. The counterfeiter's aim is to confuse the consumer and thereby take trade away from the innovator.

Consumers may be confused even when an imitation is not an identical copy. The name on the label may differ by only a single letter, or it may sound the same when spoken, while small variations in design and

<sup>13</sup> Christian Helmers and Mark Rogers, "Trademarks and Performance in U.K. Firms," in *Trademarks, Brands, and Competitiveness*, ed. Teresa da Silva Lopes and Paul Duguid (New York, 2010), 56; Sandro Mendonça et al., "Trademarks as an Indicator of Innovation and Industrial Change," *Research Policy* 33 (2004): 1385–404.

*Table 2*  
Two Dimensions of Counterfeiting Strategy

<i>Quality of Imitation</i>	<i>Price of Imitation</i>	
	<i>Same</i>	<i>Lower</i>
<i>Same</i>	High-quality imitation selling for regular price	High-quality imitation selling for lower price
<i>Lower</i>	Low-quality imitation selling for regular price	Low-quality imitation selling for low price

color may also go undetected. Impulse buyers of low-value products are particularly vulnerable to such confusion. From the imitator's point of view, an inexact copy may be preferable to an exact copy, because the courts may rule on technical grounds that the presence of discrepancies means that trademark infringement has not occurred.

Counterfeiting itself can take various forms. Two further dimensions of this imitation strategy are investigated in Table 2, namely, the quality of the imitation and the price for which it is sold. Quality strategies are shown along the table rows, and price strategies are listed down the two columns. The imitator may either match the quality of the innovator's product (top row) or produce an inferior variant that is superficially similar (bottom row); he or she may charge the same price as the innovator (left column) or undercut the innovator's price (right column).

Matching both price and quality (top left cell) reduces the risk of detection, while selling a low-quality imitation at the regular price (bottom left cell) maximizes the imitator's unit profit. Selling a high-quality imitation at a low price (top right cell) steals long-run market share from the brand owner, while selling a low-quality item at a low price can build a new mass market alongside the brand owner's market. Choice of strategy will reflect both the imitator's assessment of consumers' discernment and the price elasticity of demand. The worst possible outcome for the brand owner is a variant of the final outcome: namely, a mass market develops in cheap counterfeit items, and the brand's reputation for exclusivity is destroyed.

The most direct way for an innovator to tackle trademark infringement is to take the offender to court, but objective evidence of deliberate infringement may be difficult to obtain. The judicial process itself may be costly, and in certain countries the system may be prejudiced against foreign firms. Trademarks have to be enforced in local courts; they cannot be enforced extraterritorially. Furthermore, a court case



may attract publicity that undermines consumers' confidence in their ability to identify the authentic product.

An alternative strategy is for the innovator to buy off the offender. For a valuable brand, however, the requested compensation may be large. To reduce the payment, the innovating firm may threaten legal action, but if it has no intention of pursuing the action, the offender may call its bluff. Furthermore, if news of a payment leaks out, other imitators may start to blackmail the firm by demanding payments of their own. Innovators can, however, invest in preventive measures at the time that their trademark is registered, by, for example, using a simple and striking symbol or a powerful and distinctive color that makes infringement costly to implement and easy to detect. An innovator may avoid selling in countries where legal protection of trademarks is weak, or, alternatively, it may take on a local partner. Partnering strategies like licensing, franchising, and joint ventures are double edged, however. While local partners may be well placed to detect and prosecute local infringements, they are themselves potential imitators. As authorized users of the trademark, franchisees have access to advertising material and contacts with customers who may be looking at a cheaper variant of the product. Licensees will normally have access to production technology as well. It may not matter to the imitator that a local customer has discovered the product is not authentic, provided the customer has confidence in the imitation's quality. The imitator's main goal is preventing the trademark owner from finding out what he has done. The trademark owner's solution is to monitor his partners while simultaneously relying on them to monitor others. Employing an agent or local representative may be useful for this purpose. Alternatively, the trademark owner can use a wholly owned sales subsidiary to distribute the product.

Third parties can be encouraged to play a part in deterring imitation. Trademark owners may lobby their own governments to put pressure on foreign governments to sign international treaties that protect international property rights. Small firms can lobby through their trade associations. Foreign governments can be encouraged to impose rigorous health and safety standards and other forms of consumer protection on their local producers, making it more costly to produce cheap imitations.

### The Historical Context

The first British trademark law of 1875 resulted from the combined efforts of firms, governments, and the courts. It reflected both the traditional ways used by traders to differentiate their products at that time



and the conservatism of the lawyers who drafted the law.<sup>14</sup> The coverage was narrow, however, and there were loopholes that stimulated lobbying for further change. For example, in the 1880s there were many court cases about shapes, because shapes were not protected legally.<sup>15</sup>

Concepts of protection varied between countries. The first international convention, the Paris Convention for the Protection of Intellectual Property, was only created in 1883.<sup>16</sup> This convention was advantageous for business, because it granted reciprocal rights for registration by citizens of the participating states. Britain joined in March 1884.<sup>17</sup> The Treaty of Madrid of 1891, which was a specialized agreement under the Paris Convention, facilitated simpler international registration of marks. After completing the initial registration in his or her home country, a trademark owner could submit an international registration, which was then passed on to the required country or countries.<sup>18</sup>

Early internationalizing firms had nonetheless begun extensive foreign registration prior to the Paris Convention and the Madrid Agreement. (See Appendix.) Figure 1 illustrates the evolution of the proportions of total foreign registrations in France by different countries from 1886 to 1905. The figure reveals a sharp increase in foreign registrations in the late nineteenth century. By 1890, British firms accounted for approximately two-thirds of all foreign registrations, although their participation decreased after 1902.

Before 1870, marks mainly indicated provenance that was, in turn,

<sup>14</sup>The Trade Mark Act of 1875 allowed registration of the following: a name of an individual firm printed in a particular and distinctive manner; a signature by an individual firm; a distinctive device, mark, branding, label or ticket; any special and distinctive word or words or combination thereof used before the act came into force. Devices and labels, packaging and advertising or marketing were for a long time protected by copyright law, as they related to the tangible aspects of the brand's appearance.

<sup>15</sup>Cases such as *Re James Trademark Application* in 1886 show that traders used shapes as marks, although they were not protected by law. As a result, companies such as Coca Cola were only able to register the shape of their bottles in 1994. Only in the 1993 Trademark Act were three-dimensional shapes allowed to be registered as trademarks. *Re James' Trade Mark v. Soulby* (1886) 33 Ch. D. 392.

<sup>16</sup>Arthur Greeley, *Foreign Patent and Trademark Laws: A Comparative Study with Tabular Statements of Essential Features of such Laws* (Washington, D.C., 1899). For an overview of national systems of trademarks registration in the United Kingdom and France, see Lionel Bently, "The Making of Modern Trademark Law," in *Trade Marks and Brands: An Interdisciplinary Critique*, ed. Lionel Bently et al. (Cambridge, 2008); and Paul Duguid, "French Connections: The International Propagation of Trademarks in the Nineteenth Century," *Enterprise & Society* 10, no. 1 (2009): 3–37. Latin American countries and Japan had quite different systems of registration in relation to European countries.

<sup>17</sup>International Convention for the Protection of Intellectual Property (1883); British Accession: Industrial Property Convention of March 20, 1883 (17 Mar. 1884), FO 93/33/124, National Archives, Washington, D.C.

<sup>18</sup>The Madrid Agreement Concerning the International Registration of Marks from 1891 to 1991 (Geneva, 1991).

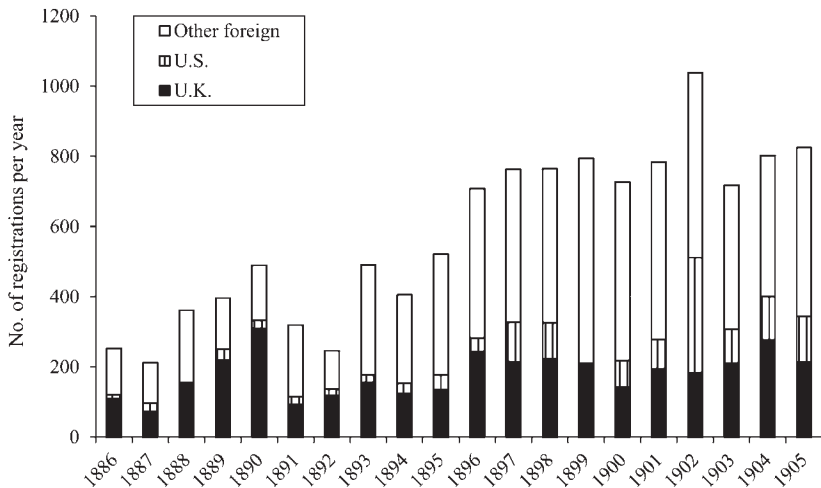


Figure 1. Foreign trademark registrations in France, 1886–1905. (Source: Based on trademark registrations, Institut National de Propriétaire Industrielle [INPI], France.)

an indicator of quality (e.g., Sheffield cutlery).<sup>19</sup> With changes in legislation and the globalization of trade, however, trademarks became allied with brands and began to figure prominently in efforts to reinforce product image. Trademark owners began to license or franchise their products to local partners, often on different continents, and in some cases they engaged in foreign direct investment.<sup>20</sup>

The agent, or traveler, was a critical figure in British business, both at home and abroad. Travelers, operating as the brand owners' appointed sales agents, were assigned to specific territories. They sold goods to retailers, either in their own names or as representatives; they could be independent resellers, fee-earning associates, or ordinary employees. Travelers often acted as sources of information and gave advice to trademark owners on how to counter competition. They understood how customers used the product, and they were well situated to detect counterfeiting and trademark infringements. In fact, many of the cases of infringement that we discuss in the next section resulted from reports prepared by travelers and agents in foreign markets. Once reported, firms would

<sup>19</sup> David Higgins and Geoffrey Tweedale, "Asset or Liability? Trade Marks and the Sheffield Cutlery and Tool Trades," *Business History* 37, no. 3 (1995): 1–27.

<sup>20</sup> Herbert C. Ridout, "National TM is Unsound Advertising," *Advertiser Weekly*, 14 Feb. 1919, 5; "Proprietary Articles," *Advertising World*, May 1905, 576; Frank I. Schechter, *The Historical Foundations of the Law Relating to Trade-Marks* (New York, 1925); Mira Wilkins, "When and Why Brand Names in Food and Drink?" in *Adding Value: Brands and Marketing in Food and Drink*, ed. Geoffrey Jones and Nicholas J. Morgan (London, 1994).

take advice from local trademark agencies, in-house lawyers, or legal firms.<sup>21</sup> Some firms went even further, investing in their own distribution facilities. To spread their costs, firms often went into partnerships—sometimes with local firms and sometimes with other British firms. The trading company Atlantis, for example, was an alliance established by two competitors, J. & J. Colman and Reckitt & Sons, in 1913, in the South American market.<sup>22</sup>

### Evidence of Imitation and Counter-Strategies for Brand Protection

Brand owners faced a range of duplicitous strategies devised by imitators, and in response they resorted to numerous counter-strategies. Imitators not only copied trademarks but also added their own brand names to products bearing the trademarks, and they even claimed to have been the first ones to develop the trademarks they had infringed. Most imitators opted to produce counterfeits, that is, they imitated both the product and the trademark, sometimes producing convincing imitations of a high standard. Many imitators were already part of the British firms' international supply chains and therefore had ready access to labels and, in some cases, to the production technology as well. Generally, the imitators were not based in countries whose populations were poor and unskilled but were found in newly industrializing countries with highly skilled workers, such as the United States, Germany, and Japan.

British firms devised many methods to counter imitation. Choice of strategy depended on both the location of the foreign market and its institutional environment, and on the importance of the brand to the firm's portfolio of products. Firms had to decide not only whether to incur the costs of registering their trademarks in foreign markets, but also whether to spend money on litigation in countries where they were unfamiliar with local laws or where they faced discrimination against foreigners in local courts. Many firms chose to negotiate with their imitators and to extract guarantees that they would cease their activities. Multiple solutions were found, which ranged from sharing the costs of destroying the imitated products or labels, to simply not pursuing the matter through litigation under an agreement that the imitators would

<sup>21</sup> Algernon Warren, *Commercial Travelling: Its Features, Past and Present* (London, 1904); Walter Friedman, *Birth of a Salesman: The Transformation of Selling in America* (Cambridge, Mass., 2004); special issue of *Business History Review* on salesmanship, vol. 82 (Winter 2008).

<sup>22</sup> Colman's, 3 Apr. 1914, Directors' and Managers Meetings Minute Books, vol. 1 (box label 191) CON/1996/127, Unilever Archives, Port Sunlight, U.K.

destroy the goods they had copied. Where negotiations did not work, firms might join forces to lobby foreign governments, sometimes asking their own governments to act as intermediaries. When local partners proved untrustworthy, an agent might be sent to the country with orders to report directly back to Britain about the integrity of local distributors; and where local sales were sufficiently large, firms might choose the option of foreign direct investment. While conventional business theory suggests that foreign investments were often made to protect property rights in technology, the evidence we have cited here highlights the importance of investments in protecting the integrity of brands as well. In smaller markets, however, firms might simply withdraw from the locale in order to prevent imitators from gaining access to products they could copy.

*Imitators' Strategies.* The evidence reveals that all significant infringements involved imitation of both the trademark and the product. Established trademarks were not copied for use on novel products produced by imitators. Potential imitators, it appears, believed that consumers would not be deceived by seeing an established name applied to a product not already associated with that brand. Thus, the trademark of the imitated product was always imitated as well. Although there are cases in which well-known industries today, such as fashion textiles, copy product designs but do not copy labels, we do not cover these cases in our study. All the examples presented here, therefore, exemplify counterfeiting as defined in Table 1.

While some imitations matched the quality of the authentic product, poor-quality imitations also represented a recurring problem. This was the experience of the British merchant Henry Browning, who shipped Hennessy cognac to Ireland, Australia, and other colonies from Britain. He received letters from many parts of the world informing him about piracy of his brandy label and complaining about the poor quality of the brandy. He believed that German and Japanese firms, and also some British firms, were mainly responsible for this piracy. German imitators filled Hennessy casks with colored common spirits and sent them out to the colonies as Hennessy brandy.<sup>23</sup> The counterfeit brandy was sold at regular prices, rather than at the heavily discounted prices that might have alerted consumers to the product's inferior quality.

<sup>23</sup> Mr. Henry Browning, Merchants and Agents, of Messrs. James Hennessy & Company of Cognac to the Select Committee on Trade Marks Bill (1862), Q. 2462–2479. The primary concern was preventing use of trademarks abroad, especially in Germany. R. J. S. Hoffman, *Great Britain and the German Trade Rivalry, 1875–1914* (New York, 1964); Christoph Buchheim, "Aspects of Nineteenth-Century Anglo-German Trade Rivalry Reconsidered," *Journal of European Economic History* 10 (1981): 273–89.

Some imitators did not directly copy trademarks but merely imitated salient features of their designs in order to confuse the customers. They defended themselves by claiming that their designs were different, and they even sometimes portrayed themselves as victims of counterfeiting by the innovators. An example of such a tactic appears in the case initiated in the United States by Colman's Mustard against Samuel Crump, a printer of mustard labels, in 1870, the year U.S. trademark law was introduced. J. & J. Colman began to sell its product overseas soon after achieving success at home.<sup>24</sup> As early as 1840, Colman's sent a representative to the United States to select dealers for the brand. This representative filled various roles, such as providing advice on marketing and packaging product and on the best ways to protect the trademark. When Colman's began prosecution for infringement of its trademark in 1870, it had not yet registered the trademark in the U.S. market. Colman's claimed infringement of its distinctive labels, which had featured a bull's-head device on a yellow background since 1855. The final judgment handed down in 1877 from the Superior Court of New York ruled that Colman's was entitled to the exclusive use of the bull's-head figure as its trademark on labels attached to the mustard.<sup>25</sup> Following this success, Colman's initiated additional action against the other counterfeiters in the supply chain, such as manufacturers, dealers, and grocers, who were also selling cans of mustard bearing a bull's head.<sup>26</sup>

A variant of this strategy involved an imitator associating its own name with the counterfeit product by combining its name with that of the brand. An example is the sale of bottled beer by Guinness's U.S. bottler, Burke, which by 1910 was using the label and advertising Guinness's exported Irish stout as "Burke's Bottled Guinness Stout," thus implying that the stout was the product of the bottler, rather than of Guinness.<sup>27</sup> Guinness had embarked on a rapid strategy of internationalization soon after it went public in 1886. It granted franchises to independent companies to bottle much of its stout, requiring them to sign agreements to restrict their bottling of that drink to the Guinness brand. From the turn of the twentieth century, however, the company sought to promote bottling in the countries of destination. In the United States, where much of Guinness's foreign trade was located, this involved establishing new agreements with local bottlers and transferring

<sup>24</sup> "The Advertising Art of J. & J. Colman Ltd.," Oct. 1977, BRA 120, Unilever Archives, Port Sunlight, U.K.

<sup>25</sup> "Colman's vs. Samuel Crump," Nov. 1870, Superior Court of the City of New York, Book of U.S. Cases, 1996/27 (box label 167), Unilever Archives.

<sup>26</sup> "Mustard Pots," *New York Times*, 1 Feb. 1872, 2.

<sup>27</sup> S. R. Dennison and Oliver MacDonagh, *Guinness, 1886–1939: From Incorporation to the Second World War* (Cork, 1998), ch. 5.

U.K.-based bottling plants to the United States. Guinness's system of labeling further complicated the protection of its trademarks, as the bottlers could choose their own label designs featuring Guinness's name, subject to approval of the labels by Guinness. From 1895, Guinness began to require bottlers in both the domestic and overseas markets to use only Guinness's own trademark label—a buff oval featuring its famous harp design. A bottler was permitted to add its name in the lower half of the label.<sup>28</sup>

Imitators presented themselves as injured parties by claiming that they had greater rights to the trademarks than the trademark owners. This ploy was often adopted by foreign firms seeking to protect their domestic market against entry by British firms. They apparently hoped that nationalist sentiment would persuade the courts to rule that they had a prior claim to the marks. This situation was particularly common in newly industrializing countries, like Germany and Japan, that were trying to “catch up” with Britain. An example is Huntley & Palmers, a biscuit manufacturer, which had registered its trademark featuring a buckle-and-garter design in Germany. In 1899, it was confronted by several court cases instigated by German rivals that were trying to remove the label from the trademark register. Eventually, the German Imperial Patent and Trademark Office ruled in favor of Huntley & Palmers.<sup>29</sup> Until then, Huntley & Palmers had not initiated any actions to protect its trademarks. The firm did not register the names of its biscuits in France, only to discover that another company was using the brand name for one of its own biscuits. Meanwhile, realizing that it was not keeping systematic records of its global registrations, the company commissioned a register of such marks.<sup>30</sup> This led, in the German case, to the board of Huntley & Palmers appointing an individual to oversee the case and authorizing him to appoint legal counsel. Following the trial in February 1900, Huntley & Palmers began registering its labels in a large number of foreign markets where its biscuits were being sold.<sup>31</sup>

*Defensive Strategies of Brand Owners.* Given the availability of trademark protection, it is surprising that some firms did not register their trademarks when they could easily have done so. The expense

<sup>28</sup> *Ibid.*

<sup>29</sup> Minute Books, 1, 5 Dec. 1899, 24 Jan. 1900, and 19 Feb. 1900, Huntley & Palmers Archives, Reading, U.K.

<sup>30</sup> Minute Books, 1, 5 Dec. 1899, 20 Jan. 1900, 13 Feb. 1900, and 26 Nov. 1901, Huntley & Palmers Archives.

<sup>31</sup> These markets were Holland, the Dutch East Indies, Hong Kong, Cape of Good Hope and Natal, France, Australia, and China. Minute Books, 19 Feb. 1900 and 24 Jan. 1900, Huntley & Palmers Archives.

entailed in registration was a deterrent for firms with small export businesses, therefore resulting in limited exposure to the risk of foreign imitations. In addition, some firms trusted both their business partners and their rivals, and they believed that disagreements should be resolved without recourse to the law.

Rowntree, a leading British biscuit and chocolate producer at the end of the nineteenth century, was very late in registering trademarks in foreign markets, and it avoided litigation as much as possible. Before the interwar period, Rowntree's exports were insignificant. Foreign registrations and trademark protection were not considered important. The manager in charge of trademarks, T. H. Appleton, had many other responsibilities.<sup>32</sup> The board members considered the task of registering the firm's trademarks, such as "Rowntree" and "Elect," unduly onerous. Because the markets where the Rowntree brand was sold were small and relatively unknown, the board believed there were no incentives for pirates to imitate their trademarks. Rowntree only applied for registration once exports to a particular market achieved a significant level.<sup>33</sup>

It was the firm's legal agent, T. B. Browne of London, who first suggested engaging in extensive foreign registration. When his idea was rejected, he reminded the firm that other clients who delayed registering overseas had found their marks usurped by other firms.<sup>34</sup> When Gregg & Co. produced fake "Rowntree's Table Jelly Powders" in New Zealand, Rowntree tried to settle out of court. Gregg & Co. agreed to stop using the word "Rowntree," but refused either to remove existing counterfeit products from the market or to pay Rowntree's legal expenses.<sup>35</sup>

Ultimately, Rowntree's failure to register and ensure legal protection of its trademark contributed to the company's demise under its original ownership.<sup>36</sup> The same fate befell Pears soap, whose owners, despite innovative advertising and substantial exports, disregarded the strategic importance of brand protection.<sup>37</sup> Although the secret process

<sup>32</sup> Papers of T. H. Appleton, Factory Manager, R/DP/F (19–33), Rowntree Archives, York, U.K.

<sup>33</sup> Correspondence to and from T. B. Browne, 19 Aug. 1912, R/DP/F/2; 30 Jan. 1915, R/DP/F/26/2, Rowntree Archives.

<sup>34</sup> Browne considered that money spent on worldwide registration was not like money spent in advertising, which must be kept up to be of value, but the name was one of the foundation stones of business. Report on interview with Mr. Griffin of T. B. Browne & Co., R/DP/F/21, Rowntree Archives.

<sup>35</sup> Correspondence with T. B. Browne & Co. regarding the Table Jelly Powder Infringements in New Zealand, from 19 Oct. 1909 to 15 Sept. 1910, R/DP/F/26/2, Rowntree Archives.

<sup>36</sup> Teresa da Silva Lopes and Mark Casson, "Entrepreneurship and the Development of Global Brands," *Business History Review* 81 (Winter 2007): 651–80.

<sup>37</sup> In 1899 Thomas Barratt, the chairman of Pears, was honored by newspapers around the world for his work in advertising. Unilever, "A Brief History," Pears Collection, Unilever Archives; Charles H. Wilson, *The History of Unilever: A Study in Economic Growth and*



for making the soap could not be copied exactly, competitors produced counterfeit bars of identical shapes packed in almost exactly the same wrappers. After acquiring Pears in 1915, Lever Brothers radically changed Pears' mode of entry into foreign markets by setting up wholly owned distribution channels in markets that were considered strategic and, when possible, by suing imitators, their distributors, and other agents.

The majority of firms in the sample, however, made full use of the law by registering their eligible trademarks. Guinness, for example, took the initiative in protecting its marks by registering them in foreign markets. It registered the label for its Guinness Foreign Extra Stout soon after it was created.<sup>38</sup> In 1910, the company introduced a new standardized label for its foreign stout, and, by the following year, registration of the label had been completed in sixty-four foreign territories.<sup>39</sup>

Bass pursued registration of its trademark and prosecuted infringers more aggressively than other firms.<sup>40</sup> Bass began exporting to continental Europe in 1784 and established a substantial trade abroad in the 1820s. Bass either exported beer (in barrels or bottles) or subcontracted to bottlers in or near British ports. The partner firms also labeled the bottles, which, beginning in 1854, also included Bass's distinctive triangular trademark. However, some British bottlers produced counterfeit beer for export.<sup>41</sup> Later, Bass also hired bottlers abroad. In markets like India, the labeled bottles were often filled with beer of inferior quality after the initial beverage had been consumed. During the late nineteenth century, many beverage firms used a wide range of triangle marks resembling those used by Bass.

In the 1894 case of *Bass v. Wendell*, a Boston bottler was accused of selling ale using forged Bass labels. Bass agents in the United States

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*Social Change* (London, 1954), 72. For example, in 1887, Pears created the famous Bubbles ad, based on the painting of a young boy blowing bubbles by Sir John Everett Millais. Barratt also created glamour advertisements, using famous people such as the actress Lillie Langtry. Pears Collection, AFP 12/5/1, Unilever Archives.

<sup>38</sup> It spent almost £300 registering its mark in twenty-two countries or territories in 1887—six years before international registration was simplified under the Treaty of Madrid. General Purposes Sub-Committee Minutes, 12 July 1887, Guinness Archives, Dublin. However, it was not until 1889 that the company trademarked the word "Guinness" in the U.K. Board minutes, London, 1 June 1889, Guinness Archives. "Guinness," trademark number 87294, *Trademark Journal* 1889, U.K.

<sup>39</sup> Secretary's Report, 1912, 206, Guinness Archives. A steady flow of registrations continued in the intervening years; for example, in 1904, the company registered its marks in a further seven countries. Secretary's Report, 1904, Guinness Archives.

<sup>40</sup> For example, it was the first company to register its trademark in the United Kingdom when the Trademark registry opened on January 1, 1876. See Duguid, Lopes, and Mercer, "Reading Registrations."

<sup>41</sup> Colin C. Owen, *The Greatest Brewery in the World: A History of Bass, Ratcliff & Gretton* (Derbyshire, 1992).

employed detectives to monitor Wendell, even renting office space in his building in order to spy on the bottler's activities.<sup>42</sup> When the case was brought to trial following a far-reaching investigation, the court sentenced Wendell to five years' imprisonment with hard labor.<sup>43</sup> The outcome attracted press attention that intensified when Bass published notices in numerous newspapers publicizing the sentence and warning against future infringement.<sup>44</sup>

Litigation was normally a last resort. Private agreements with offenders were cheaper and quicker, both because they could be kept confidential and because they avoided unduly alarming consumers about quality or alerting them to the possibility of purchasing a substitute at a cheaper price. Bass imitators, for example, initially received letters alleging infringement. This strategy was often applied to European companies, particularly Belgian and German brewers. Bass's strong position in the British market and its reputation for aggressiveness persuaded offenders to compromise. Typically, they would agree to amend their labels to exclude any objectionable marks. To facilitate the process, Bass usually paid the cost of destroying any labels or other stationery. Sometimes a formal agreement would be signed that limited the imitator's right to use a similar mark. Such an agreement was reached in the case of *Bass vs. Wielmans-Ceuppens*, a Belgian brewery, in 1921, after Bass had begun proceedings at the Tribunal of Commerce. In exchange for Bass's agreement to abandon the case, the defendant agreed to destroy its stock of labels, for which Bass paid half the costs, and to refrain from any further use of the deceptive design.<sup>45</sup>

As Bass had done in its case against Wendell, firms often publicized their victories over imitators in legal cases. In negotiated settlements, the trademark owners often required written apologies from the imitators that the owners sometimes even published in the newspapers.<sup>46</sup> For instance, in 1908, Guinness's U.S. representatives, Masten and Nicholls, reported on the sale of bogus stout under the company's label. Although it had reached an agreement with the offender, Guinness nevertheless published the transgressor's letter of apology in which it affirmed the superiority of the authentic brand. A similar strategy was

<sup>42</sup> Henry T. Nichols to Bass, 16 Feb. 1894; Jim Stewart to Bass, 18 Sept. 1894, both in Label Book, Bass Archives, Burton Upon Trent, U.K.

<sup>43</sup> Price & Stewart to Henry T. Nicholas, 31 July 1894; Price & Stewart to Bass, 6 Dec. 1894, both in Label Book, Bass Archives.

<sup>44</sup> Agreement between Bass and Wielmans-Ceuppens, June 1921, Label Book, Bass Archives.

<sup>45</sup> Ibid.

<sup>46</sup> Guinness preferred to prosecute individual firms rather than prosecute a number of imitators together. Trade (Dublin & Vicinity), *Annual Report 1898*, Guinness Archives.

employed at other times to brands such as White Horse and Johnnie Walker Scotch whiskey and Apollinaris bottled water.<sup>47</sup>

In some foreign markets, trademark protection was very weak. Even when there were no local producers, British exporters might face competition from imitators based in third countries. Thus, they were compelled to monitor all markets in which their products were sold in order to establish the provenance of counterfeit goods. Counterfeiting of Pears soap continued in India after the firm's acquisition by Lever Brothers in 1916. Because Indian law offered only weak trademark protection, foreign companies experienced difficulties in stemming the flow of counterfeits, and prosecutions by the company continued into the early 1930s.<sup>48</sup> The company would respond to infringement in one market, only to find that the product was being manufactured in another country, reaching the market through a different chain of dealers and retailers. Lever arranged for counterfeit stocks of Pears soap to be confiscated and obtained injunctions to stop firms from importing further supplies.<sup>49</sup> Around this time, Japanese counterfeits were being sold in Australia, and U.S.-made soaps appeared in South African markets.<sup>50</sup> In South Africa, for instance, in the case of the "Unscented Colonial transparent soap" in 1916, the infringement manifested itself in strong similarities in how the soap was pressed and wrapped, in the shape (showing the same depression at the top and bottom of the cake), in the use of the word "colonial," and in the color, typography, and outline of the wrapper design.<sup>51</sup>

Japan's trademark law was different from Britain's. As a result of a protocol attached to the Anglo-Japanese Treaty of 1894, Japan joined the International Convention for the Protection of Industrial Property

<sup>47</sup> "Guinness Extra Stout Apology from Hugh McMullar," *Belfast Telegraph*, 25 Mar. 1939; "Apology to White Horse Distillers Limited," *Daily Record*, 1 June 1932; "Apology to John Walker & Sons," *Kilmarnock Herald*, 16 Mar. 1933. Apollinaris used the letter of apology from one of its imitators (Fisher) more repeatedly. This led Fisher to begin legal procedures against Apollinaris to stop them from publishing the apology repeatedly. "Police Court: Apollinaris Water," *Times*, 19 Oct. 1874, 14 and 28 Nov. 1874, 11; "Fisher & Co. (Ltd.) vs. Apollinaris Company Ltd.," *Times*, 24 Mar. 1875, 12.

<sup>48</sup> Letter from Payne in India to Pears, 19 Aug. 1916; Letter to Rishton Lever Brothers from the Secretary of Pears, 12 Oct. 1916, AFT/04/3, "Imitations and Infringements," Pears Collection, Unilever Archives; *Times of India*, 4 Mar. 1929 and 20 Feb. 1933.

<sup>49</sup> Letter from Pears to Gollin & Co., 2 Apr. 1917, "Imitations and Infringements," Pears Collection, Unilever Archives.

<sup>50</sup> Correspondence between Gollin & Co. (Proprietary Limited), A. & F. Pears Ltd., Ed. Waters (Patent Attorneys) and D. Tilley about the infringement by the latter of Pears trademarks, for their unscented soap label in Melbourne, 7 Feb. 1917, 12 Feb. 1917, 2 Apr. 1917, AFP/04/8 and AFP/04/9, "Imitations and Infringements," Pears Collection, Unilever Archives.

<sup>51</sup> Letter from Armour & Company (Chicago, Illinois), 8 Aug. 1916, "Imitations and Infringements," Pears Collection, Unilever Archives.

and Copyright, and, in response, the Japanese government revised its trademark law in 1899. Under the terms of the revision, if an existing foreign trademark had been registered by a local Japanese firm before the foreign firm arrived in Japan, the foreigner would be subject to criminal prosecution if it used its trademark in Japan.<sup>52</sup>

Many well-known foreign trademarks had been registered by Japanese firms, and in many cases the registrants had neither the intention nor the ability to apply the trademark to production. Instead, they simply wished to blackmail the rightful owners who sought to enter the Japanese market. In 1905, for example, James Buchanan and Co., owner of Black and White Scotch whiskey, had been given the power of attorney to register Black & White in Japan. However, the trademark had already been registered, and an imitation was being produced by Nishikawa, a wine and spirits company in Osaka. The bottles contained a mixture very different from the actual Black & White whiskey, but the labels were almost identical. Buchanan alleged that the imitation was fraudulent, but the case was dismissed on the grounds that the labels were not absolutely identical. Buchanan took the case to the court of appeals, which also dismissed the charge.<sup>53</sup> In the long run, the solution was for British firms to register its trademarks in Japan at an early stage of production, which gave them priority if and when they wished to enter the Japanese market at a later date. However, given the costs of registration, the uncertainty of the legal process, and doubts about the potential size of the market, it is not surprising that few British firms pursued a preemptive registration policy at this time.

A similar problem arose in Latin America, where in countries such as Argentina and Mexico the first registrant of a trademark was entitled to its exclusive use, which meant that any local manufacturer, by registering an existing foreign trademark, could exclude the innovator from that market.<sup>54</sup> This situation created opportunities for unscrupulous businessmen to register well-known trademarks and thereby prevent imports to South America.<sup>55</sup> In some countries, however, British companies obtained protection by becoming members of local trade associations, such as Sociedade União Industrial contra a Contrefacção

<sup>52</sup> The law was changed in 1907, but even then, cases where the trademark had been infringed before the change of the law were dismissed. "Imitations of Trademarks in Japan," *Economist*, 14 Dec. 1907, 1–2.

<sup>53</sup> *Ibid.*; Power of Attorney for the Purpose of Registration of the Words Black and White in Japan, James Buchanan, 4 Apr. 1905 and 5 Nov. 2007, Minute Books, Diageo Archives, Menstrie, Scotland, U.K.

<sup>54</sup> "Trademark Piracy in Mexico," *New York Times*, 10 Aug. 1919; Dudley Maynard Phelps, *Migration of Industry to South America* (New York, 1936).

<sup>55</sup> "Urge Trademark Reform—Latin American Laws Held to Open Avenue for Extortion," *New York Times*, 15 Apr. 1915, 14.

(Industrial Union Society against Counterfeiting) in Brazil. This procedure was followed, for example, by Apollinaris, which at the turn of the century was exporting bottled water to Brazil, where it found multiple counterfeits for sale. By becoming a member of the association, Apollinaris was able to reestablish its trademark rights.<sup>56</sup>

An interesting example of a preventive strategy for countering discrimination against foreign firms in a problematic market was the lobbying carried out in 1907 by British businessmen operating in China, where they discovered many Japanese imitations of British brands. British merchants in China complained that Japan's open-door policy was a delusion. As a way of protecting its country's businesses, which relied on the production of imitations, the Japanese government declined to enter into an agreement with the United Kingdom for the mutual protection of trademarks in China. In the meantime, Russia, Germany, France, and other powers had agreed to sign agreements with the British for reciprocal protection of trademarks in China.<sup>57</sup>

Some brand owners designed their products or their labels to make them hard to copy. Holograms were sometimes attached to labels, and distinctive forms of packaging were employed in order to differentiate the products. For example, the appearance of imitations in India led Johnnie Walker to create a device for sealing its whiskey bottles before switching to a square bottle with a wired cork stopper.<sup>58</sup>

To overcome any problems that might originate with local business partners upon entering the U.S. market, Guinness hired a permanent representative and set up a local office. The representative sent information to headquarters about the evolution of the U.S. market, the problems associated with charging a high retail price for imported beer, and the target markets (at that time Guinness was sold as a medicine). He estimated U.S. sales and calculated how many bottles of beer sold as Guinness were actually knockoffs (around 10 percent in 1900), and he stressed the advantages of advertising the brand. Soon after his appointment, U.S. sales began to increase, and the U.S. market rose from under 30 percent of total foreign sales in 1900 to over 40 percent in 1914.<sup>59</sup> Many other firms, including Pears, used the same approach, which proved to be very successful.

<sup>56</sup> *Grocers Journal*, 11 Feb. 1905.

<sup>57</sup> In this period, China did not have trademark law in place, but the Chinese were not yet considered to be a threat in the production of imitations. "British Trade Hurt by Japan in China," *New York Times*, 19 May 1907, C1.

<sup>58</sup> These were adopted for home and foreign markets. Minute Books, 10 Oct. 1912, 26 Feb. 1920, 14 May 1935, and 9 Dec. 1935, John Walker & Sons, Diageo Archives.

<sup>59</sup> A. T. Shand, the representative appointed, had been a former traveler for Allsopps in the American market. Dennison and McDonagh, *Guinness*, ch. 5.

Firms often formed alliances to deal with particular imitators that posed a common threat, adopting a strategy of cooperation to share the costs of litigation, negotiation, and employment of agents. The allies could be firms operating at different stages within the same supply chain, and they could even be owners of competing brands.

The alliance between Guinness, Bass, and their U.S. bottler and labeler, E. & J. Burke, for the purpose of taking action in 1907 against Bowie & Co. in Canada for fraudulent labeling is a good illustration. Burke had detected Bowie selling ale under the “Black Bass” label, and stout with a “Guinea Stout” label. Through their attorneys, the allied companies arranged for the withdrawal of the imitation labels and for a new label to be issued bearing the name of the brewery (Bowie & Co. Brewery Ltd. Porter).<sup>60</sup> Another example of cooperation was the appointment of a traveler to the West African coast in 1914 by an alliance of food and drink firms, including J. & J. Colman, Huntley & Palmers, A. Gilbey, and others.

## Conclusion

In this article, we have introduced a new dimension to the study of the evolution of international business by showing that, in marketing-based industries, it is necessary to analyze global competition based on imitation, as well as on innovation. By focusing on consumer goods, where brands and trademarks are critical sources of competitive advantage, we argue that protection of these intangible assets is essential to a firm’s long-term survival and growth. Trademarks are the aspects of a brand that can gain legal protection through registration. They are different from other forms of intellectual property, such as patents and copyrights, as they are not necessarily indicative of invention. Their management on a global scale involves dealing with multiple institutional environments, in particular different legal systems.

Given their importance, trademark infringement and counterfeiting have received surprisingly little attention in the literatures of international business, business history, and business strategy in general. Counter-imitation strategies based on trademark protection have played an important role in the history of British business, and their omission from established historical narratives has in some cases given a misleading impression of the successes and failures of British business.<sup>61</sup>

Despite the perception that imitation is a phenomenon associated with the recent wave of globalization, where countries like China play a

<sup>60</sup> Secretary’s Report, 1907, Guinness Archives.

<sup>61</sup> P. L. Payne, *British Entrepreneurship in the Nineteenth Century* (London, 1974).

leading role, imitation has been a serious issue for a long time. Significant strategic thinking has been applied to the problem. From 1870 to 1929, the most powerful imitators of British brands were mainly from the United States, Germany, and Japan, although other European and Asian countries, and some Latin American countries, were also implicated. All the major imitators subsequently became leading economic powers, indicating an apparent connection between learning by imitation and economic growth.

In this article, we have revealed clear patterns in the most common types of imitation. Imitators tended to market products of similar design using similar trademarks. The trademarks, though not identical, were sufficiently alike to confuse the customer, and the copied products were generally of lower quality than the originals. Even with trademark law in place, registration and prosecution could be costly and time consuming, making it advantageous to resolve conflicts through informal agreement where possible.

Many imitations were produced by partners in the supply chain. Counterfeits were distributed with the connivance of licensees, franchisees, or independent distributors—notably, labelers, bottlers, and wrapper manufacturers. The imitations might be produced locally or imported from low-cost sources of supply. Newly industrializing countries often favored local imitation as a mechanism for catching up with more advanced nations, and obtaining trademark protection in such countries could be difficult.

Trademark owners could employ various strategies to counter imitation. They could design their trademarks in ways that would render them inherently difficult to imitate. They could avoid producing or selling in markets where intellectual property rights were insecure, although they might lose opportunities in valuable markets as a result. They could take outright ownership of their foreign operations, which, however, raised the capital requirements of foreign-market entry, thereby slowing the growth of firms. A more flexible strategy was to employ a trusted foreign agent—typically an expatriate—who reported on the activities of independent franchisees and licensees and provided forecasts of market growth.

Cooperative strategies were also available. Trademark owners could join industry trade associations and lobby their domestic governments to persuade other countries to strengthen their laws for protecting property rights. They could also collaborate in prosecuting imitators in foreign countries, or in operating secure distribution channels that excluded potential local imitators. The mix of strategies chosen by British firms generally reflected the strategic importance of a product to a firm, the size of the foreign market, and the institutional environment of the host country.



# Appendix

## Samples of Brands and Firms

Trademark	Firm	Foundation of Firm Owner of Trademark	Country of Origin	U.K. Registration	U.S. Registration	French Registration	Product Category
Apollinaris	Apollinaris	1873	U.K.	1876	1877/1878 <sup>a</sup>	1878	Other drinks (water)
Bass	Bass	1777	U.K.	1876	1874	1872	Alcohol (beer)
Black & White	James Buchanan	1884	U.K.	1904	Not found	Not found	Alcohol (whisky)
Colman	Colman	1814	U.K.	1876	1886	1897	Food (mustard)
Elect	Rowntree	1862	U.K.	1905	Not found	Not found	Food (cocoa)
Guinness	Guinness	1759	U.K.	1876	1888	1900	Alcohol (stout)
Hennessy	Hennessy	1765	France	1876	1872	1862	Alcohol (champagne)
Huntley & Palmers	Huntley & Palmers	1822	U.K.	1876	1887	1893	Food (biscuits)
Johnnie Walker	John Walker & Sons	1886	U.K.	1909	1910	1910	Alcohol (whiskey)
Pears	Lever Brothers	1885	U.K.	1878	1882	1895	Toiletries (soap)
Rowntree	Rowntree	1862	U.K.	1889	1907	Not found	Food (pastilles, gum drops)

<sup>a</sup> 1877, German company; 1878, British company.

Sources: Foundation of the firm: companies' private archives or biographies; U.K., U.S., and French registration and product categories: trademark registrations published near respective trademark agencies.

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TERESA DA SILVA LOPES is professor of international business and business history at York Management School at the University of York and director of the Centre for Evolution of Global Business and Institutions, also at York. Her recent books include *Global Brands: The Evolution of Multinationals in Alcoholic Beverages* (2007) and *Brands, Trademarks and Competitiveness* (2010).

MARK CASSON is professor of economics at the University of Reading and director of the Centre for Institutional Performance. Among his recent publications are *The World's First Railway System* (2009), *The Multinational Enterprise Reconsidered* (with Peter J. Buckley) (2010), *Entrepreneurship: Theory, Networks and History* (2010), and an edited volume, *Markets and Market Institutions: Their Origin and Evolution* (2011).