



INTELLECTUAL PROPERTY

Copycats beware, trade mark registration prevails

20 March 2025 5 min read

In January 2025 Thatchers Cider Company succeeded before the UK Court of Appeal (“CoA”) against Aldi Stores Limited, the large multi-national discount retailer. The CoA concluded that Aldi’s use of *Taurus Cloudy Lemon Cider* on its lemon cider cans and cardboard packaging infringes *Thatchers Cloudy Lemon Cider*, a registered UK trade mark.

“Aldi Sign”

“Thatchers TM”

Background

Section 10(3) of the UK Trade Marks Act 1994 provides that if a trade mark owner can show its trade mark has a reputation in the UK, there is a link between the trade mark and alleged infringer’s sign in the mind of the average consumer, and that use of the sign by the alleged infringer takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark, that use is without due cause and infringing.

In 2022 the UK High Court had dismissed Thatchers case of trade mark infringement in terms of UK Trade Mark Act 1994 – Sections 10 (1), 10 (2) and 10 (3) – simultaneously dismissing Thatcher’s claims of passing off against Aldi.

Appealing on the ground that the High Court had erred in its interpretation and application of Section 10 (3) of the UK Trade Marks Act 1994, Thatcher’s contended that the Aldi Sign takes unfair advantage of its Thatchers TM.

Where a mark is not registered but used, passing off may need to be established in that territory and succeeding in a passing off is generally very onerous. It requires extensive evidence of use of the mark to prove goodwill and repute and that, as a consequence of unauthorised use, that goodwill and repute has suffered harm. Passing off is commonplace where lookalikes, copying and dupes are at issue.

Generally, however, trade mark registration evidences exclusivity and ownership and any unauthorised use of a same/similar mark for same/similar goods/services in the territory concerned may be an infringement in terms of the relevant trade mark legislation. This CoA judgment therefore turns on the Thatchers TM, a registered UK trade mark granted in May 2020 and the infringement thereof by Aldi.

Decision

Founded in 1904 Thatchers produced only apple-based ciders until 2018. With market research identifying a gap in the market for a citrus-based cider, *Thatchers Cloudy Lemon Cider* was introduced, Thatchers TM filed in 2020 and *Thatchers Cloudy Lemon Cider* extensively marketed. Promotional expenditure from August 2020 to August 2022 exceeded £2.9 million across the UK and between February 2020 and August 2023 Thatchers sold 11.6 million litres, £29.6 million in sales at retail value of its *Thatchers Cloudy Lemon Cider*.

Favouring Thatchers and reinforcing the importance and significance of trade mark registration the CoA considered:

Global Assessment Concluding that a consumer would assume a link between the Aldi Sign and Thatchers TM, the CoA affirmed that a global assessment of the marks rather than focussing on the separate elements of each is required. This test requires consideration of the visual, aural and conceptual similarities of the two marks based on the overall impression and any dominant features. Aldi’s use of the same faint lines affirmed copying.

Benchmarking Aldi benchmarked *Thatchers Cloudy Lemon Cider* to develop its *Taurus Cloudy Lemon Cider* with its taste, quality and package design as its barometer. Using Taurus on its range of ciders since at least 2013 it then began using the Aldi Sign shortly after *Thatchers Cloudy Lemon Cider*, that packaging very different to its other Taurus products with Taurus in black on a pale yellow background for the lemon cider, instead of its usual Taurus in white on a black background.

The CoA said it would be possible to show that a product is lemon-flavoured without such a close resemblance, and that the resemblance therefore “*cannot be coincidental*”.

No investment yet an increase in sales Aldi’s sales of *Taurus Cloudy Lemon Cider* increased in comparison to others in the Taurus range yet with no evidence of any investment and no evidence from Aldi to show that it would have achieved equivalent sales without the Aldi Sign and that link or connection with the Thatchers TM.

Unfair advantage Aldi did not contend that it had not obtained an unfair advantage by using the Aldi Sign which assisted it to sell its *Taurus Cloudy Lemon Cider*. Aldi benefitted from Thatchers development and promotion of *Thatchers Cloudy Lemon Cider* rather than competing on its own merits.

Not in accordance with Honest Practices The CoA said it would have been reasonable for Aldi to have carried out a trade mark search but it did not disclose any legal advice it obtained. Aldi was aware of the repute in Thatchers TM, it intended to take advantage and had no justification for using the Aldi Sign. The CoA therefore concluded that Aldi’s use of the Aldi Sign was not in accordance with honest practices in industrial and commercial matters, rather that it was unfair competition.

Contact the [Werksmans Intellectual Property Team](#) for further advice.

Reference:- *Thatchers Cider Company Limited v Aldi Stores Limited* [2025] EWCA Civ 5



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