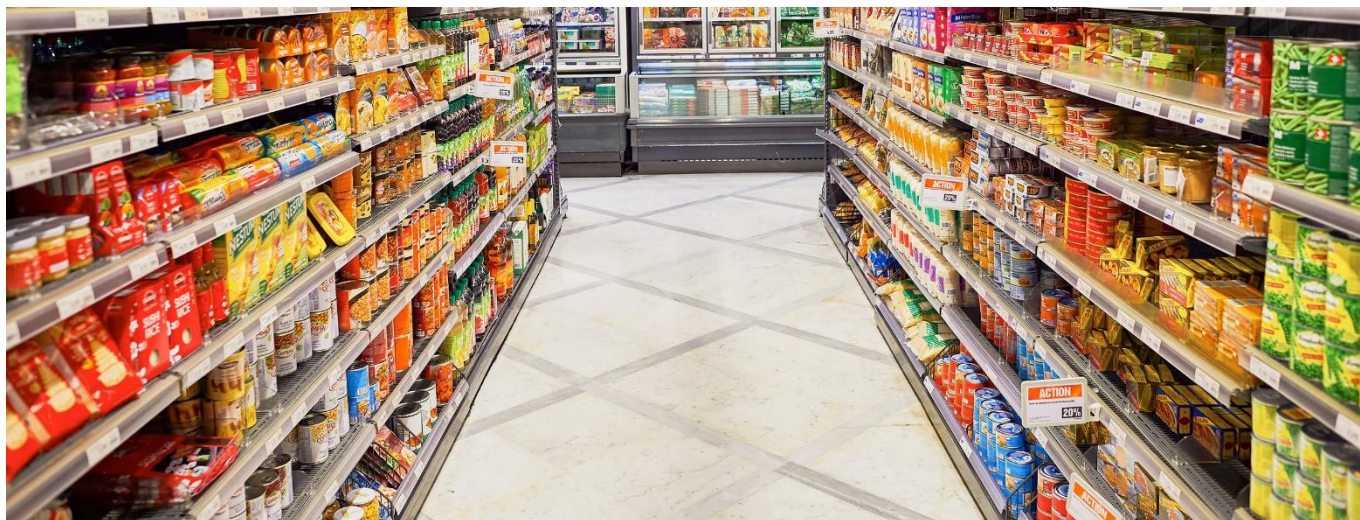


# THE SCIENCE OF SHOPPING

## Consumer perception of brands and decision making



A recent study has applied neuroscience to retail purchasing. The study produced by Acuity Intelligence provided participants with images of branded and "copycat" products and analysed the decision making process.

The results may be of interest to brand owners in considering product design and registrability of certain aspects of products as trademarks.

In addition, both claimants and defendants in trademark infringement and passing off actions may want to consider if any of its findings could be of wider application. Following the Court of Appeal's judgment in *Interflora v Marks & Spencer*, the use of consumer surveys in trade mark actions has been substantially reduced but there are signs this could lead to an increased reliance upon expert evidence. The judge acts as the average consumer but is there value in further evidence on unconscious behaviours that even the judiciary may not immediately perceive?

In the study, participants were shown a mock supermarket shelf, with various combinations of brands and "copycats" (brand present, no copycat, copycat present, no brand, both present, neither present) or where the colour from the images had been removed or the image was blurred. The direction given to participants was to locate the branded product.

The study found that in some instances around a fifth of the participants would select a copycat in the belief that it was the branded product where both were present, rising to over half of the participants where only the copycat was present.

The conclusion of the study was that these choices were driven by the visual presentation of the products, with colour being the "primary search feature" and having a "highly significant effect" in the search results. The study noted that when making a search, the brain will use the "most easily recalled information from memory" being typically the features most "strongly associated with the product (e.g. pack size, shape, general design aesthetic)" and not necessarily the brand logo or the precise spelling of the product name.

In trademark law, the average consumer is attributed an imperfect recollection of any mark. However, the Courts (both in the UK and EU) are sceptical that consumers perceive either colour or shape as an indication of trade origin in the absence of any brand name or logo. The findings of the study seem to suggest that these aspects may actually have more influence than believed.

However, the study was conducted by computer rather than in a real life shopping situation. The study noted that in real life there would be greater distractions (potentially raising a likelihood of misidentification) but also that in real life participants are likely to check pricing at the point of sale before concluding a purchase. There would be no confusion but is there an advantage? If so, is that advantage fair competition or unfair?

The study also contains some suggested design principles which brands could follow to maximise their products' impact with consumers, including large colour blocks, minimal use of promotional messages and larger pack size and design detail.

[Read the full study here.](#)

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