

Brand Protection and Globalisation of British Business

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Abstract

While conventional knowledge on the evolution of multinational business draws on concepts of competition and innovation, this article expands existing knowledge by providing new historical evidence about internationalisation strategies. By focusing on the case of British consumer goods firms and their leading brands from the late nineteenth century until 1929, this article shows that counter-imitation strategies and tactics aimed at protecting brand reputation have also played an important role in explaining globalisation and survival of British Business. The analysis draws on multiple sources including trademark registrations, private and public company archives, parliamentary committee reports and accounts of legal trials.

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Introduction

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The current demand for global brands by consumers across the developed world has stimulated the proliferation of imitators and counterfeiters, in particular from emerging markets such as China.¹ The globalisation and liberalisation of markets, coupled with developments of new technologies such as the internet, has changed institutional boundaries and re-configured supply chains. In response, the owners of successful global brands have sought protection of their intellectual property rights (IPR) in all parts of the world.²

Imitations and counterfeits are not a recent phenomenon. They were an important concern for businesses and governments long before IPR laws came into place.³ Imitations tend to proliferate in expanding industries with low barriers to

¹ In present times, imitation and counterfeiting goods from emerging markets such as China, are believed to contribute to around 5 to 7% of world trade. “Estimates of International Trade in Counterfeit and Pirated Goods”, *Anti-Counterfeiting Coalition (IACC)*, (Washington DC, 2008).

² The role of IPR protection in enhancing economic growth, and its ability to increase the returns to innovation, have been widely studied in economics and management, even though there are no conclusive results, in particular because of the externality problems from the use of knowledge and information goods. Douglass C. North, *Structure and Change in Economic History* (New York, 1981); Harold Demsetz, “Towards a Theory of Property Rights”, *The American Economic Review*, Vol. 57, No. 2 (1967): 347-359; and, *Information and Organisation* (Oxford, 1997); William M. Landes and Richard A. Posner, *The Economic Structure of Intellectual Property Law* (Cambridge MA, 2003); Keith E. Maskus, *Intellectual Property Rights in the Global Economy* (Washington DC, 2000); Ryo Horii and Tatsuro Iwaisako, “Economic Growth and Imperfect Protection of Intellectual Property Rights”, Vol.90, No.1 (2007): 45-85.

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

entry, and tend to 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.⁴

Imitation and protection against imitation are analysed here in relation to one particular form of intellectual property rights – trademarks. A trademark is a legal right to control the use of a particular name or symbol that may be applied to a product or an entire range of products. Trademarks typically instantiate the reputation of the product for quality and reliability.⁵ Trademarks are particularly important in supporting leading brands in marketing-based industries, even they tend to be considered less important in explaining economic growth than patents. Marketing-based industries are industries where imagery, certification of origin and personality of brands are more important than the technology behind the products or services to which the products relate.⁶ This article focuses on one particular type of marketing-based industry, fast-moving consumer goods. These included disposable goods such as food, drink, household goods and toiletries.

There are many works of business history that analyse successful global consumer-goods brands. They usually attribute success in foreign markets to the entrepreneurial behaviour of managers, the development of efficient organisational structures, unique product design, superior technology, distinctive advertising, the creation of effective distribution networks and sophisticated pricing strategies. There is hardly any mention of how firms protect their brands against imitation in foreign markets.⁷ Conversely, whilst firms are often criticised for lack of enterprise and

⁴ For instance in 1862, before the British Trademarks Act was implemented, the evidence provided by businessmen, industry representatives and other parties before the Select Committee, confirms that there was intense competition in foreign markets by imitators of British successful trademarks, in particular brands with high reputation and market share in those markets. Report from the Select Committee on Trade Marks Bill and Merchandise Marks Bill (1862), Q.9, Q.929; Q.2461.

⁵ Mark Casson and Nigel Wadeson, “Export Performance and Reputation”, in Teresa da Silva Lopes and Paul Duguid (eds.), *Trademarks, Brands, and Competitiveness* (New York, 2010).

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

⁷ See for example Stephen J. Nicholas, “The Overseas Marketing Performance of British Industry, 1870- 1914”, *Economic History Review* Vol.37, No.4 (1984): 489-506; Derek F. Channon, *Strategy and Structure of British Enterprise* (London, 1973). For one of the exceptions see Paul Duguid,

innovation, poor management and misguided strategy they are rarely criticised for failing to protect their brands, even when the evidence suggests quite strongly that this has been the case.

The period of analysis covers the ‘First Global Economy’, 1870-1929, looking primarily at the period before the First World War. This period witnessed the rise of mass marketing and mass consumption, a sharp fall in international transport costs, and increased mobility of labour. A dramatic growth in trade between Britain and the United States, Latin America, Asia and Africa also took place. International bond issues and foreign direct investment expanded in line with the growth of London as an international financial and administrative centre.⁸ The growth of international trade and foreign direct investment were particularly significant in industries producing fragile and perishable goods. Production processes that required intensive use of unskilled manual labour, raw materials and energy were off-shored to countries rich in natural resources, whilst local operations were established in foreign markets to cater for the needs of wealthy foreign customers, including expatriates and settlers. Overseas operations sometimes involved wholly-owned subsidiaries and sometimes partnerships with local businesses. These partnerships could involve equity joint ventures, or purely contractual arrangements such as licenses, subcontracting and sales agency.⁹

Britain was particularly competitive in consumer goods and remained as such throughout the twentieth century, despite its relative economic decline in other,

“Developing the Brand: The Case of Alcohol, 1800-1880”, *Enterprise & Society*, Vol.4, No.3 (2003): 405-441.

⁸ The first global economy lasted in most accounts until 1929. 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 Mass Market 1850-1914* (London, 1981); Stanley D. Chapman, “British-based Investment Groups before 1914”, *Economic History Review*, Vol.28, No.2 (1985): 230-247; Geoffrey Jones (ed.), *British Multinationals: Origins, Management and Performance* (Hants, 1986).

⁹ Geoffrey Jones, *Merchants to Multinationals* (Oxford, 2000); Geoffrey Jones (ed.), *The Multinational Traders* (London, 1998).

technology-based sectors.¹⁰ Of all the foreign direct investments made by British manufacturers before 1929, those in the consumer goods sector were probably amongst the most long-lasting. Brands known today as global brands, were then in early stages of their internationalization and establishment of a reputation in foreign markets.

Outside the ‘free trade area’ provided by the British Empire, there was significant protectionism – particularly in newly industrialising countries seeking to catch up with Britain. Whilst these countries participated in the general growth of trade and investment, they protected infant industries through tariffs and subsidies, and encouraged indigenous firms to copy British products and technologies.

During the period of this study the legal protection of trademarks advanced, but as goods and marks spread, so too did the risk of imitation. Furthermore, the advance of the law was not uniform; it occurred in fits and starts, with some countries taking the lead and others following. In contrast to some civil law countries, the United States and the United Kingdom were particularly late to introduce statutory law, relying primarily on common law protections. In other cases, firms had to rely on criminal law, copyright or even design law. The lack of uniformity posed serious challenges for the firms seeking to internationalize successful brands.

This article examines the consequences of this fitful advance in international trademark legislation. It discusses the importance of brand protection in the globalisation strategies of British businesses, and assesses the importance of trademarks within the long-run strategies of internationalising firms. It shows that, although trademark strategy has been neglected in much historical analysis of British multinational firms, it played a crucial role in the success of many of these firms. Had trademark legislation been better developed, British firms might have enjoyed more enduring success, and imitators based in rival countries might have faced more substantial barriers.

The study draws on a multitude of sources, including trademark registrations published by national and regional trademark agencies. Extensive research has been carried out in private and public archives, including the archives of advertising

¹⁰ Alfred D. Chandler, Jr., *Scale and Scope: The Dynamics of Industrial Capitalism* (Cambridge MA, 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).

agencies, parliamentary committee reports, accounts of legal trials, and newspapers, have been consulted, together with secondary sources such as commissioned business histories.

The trademarks were selected for this study according to the following criteria: they are associated with long-established brands that rank among the world's top brands in their product categories; they once ranked (or still rank) among the world's top brands in their product categories; there exist accessible records; and the owners of the trademarks operate in the consumer goods industries specified above. Also they provide interesting and significant examples on which to base generalisations. While all the brands in the main sample are British, some brands from other countries (in particular France), are also discussed for purposes of comparison.

Leading brands analysed in this study are listed in Table 1 in Appendix. The include Apollinaris bottled water, Bass beer, Black & White whisky, Colman mustard, Elect cocoa, Guinness beer, Huntely & Palmer biscuits, Pears soap and Rowntree pastilles and gum drops.¹¹ This table also provides information about the year of foundation of the firm that created the trademark, the country of origin, and also information on the dates on which the trademark was registered in the United Kingdom, United States, and France (when available), and its product category.

The article is organised in five parts. After the introduction section two defines and discusses key concepts of brand, trademark, imitation (as opposed to innovation), and protection. It also provides a framework about alternative imitation and strategies. This framework was built drawing on the evidence provided in the following sections. However, in order to make the analysis of the evidence simpler and clearer, these generalisations are introduced prior to the evidence. These Section three offers an overview of how British business evolved during the 'First Global Economy' and what the predominant modes of entry of British firms in foreign markets were, providing some illustrations of consumer goods firms and how they sold their brands in foreign markets. Drawing on the typology of imitation presented in section two, section four addresses three key questions relating to the internationalisation of British business, as to what were the most common forms of imitation firms

¹¹ Apollinaris, a bottled water company was first created in Germany in 1851 and in 1874 established itself at a British company. Valentina Romei "Was there a 'Queen of Table Waters?' Apollinaris and its Marketing Strategy", paper presented at the European Business History Conference, Frankfurt 1-3 Sept. 2005.

encountered in foreign markets; what were most common forms of protection or counter-imitation strategies and tactics they used, and how did they affect the choice of mode of entry. Finally section five provides generalisations on strategies and tactics used by internationalising British firms to protect their trademarks in foreign markets against different types of imitations. For those brands and trademarks are key sources of competitive advantage of firms in marketing-based industries such as consumer goods.

Key concepts: imitation, counterfeiting and trademark protection

It is a well-established economic principle that successful new products attract imitators. The entry of imitators into a market increases competition and reduces price. Other things being equal, therefore, it benefits consumers. However, by reducing price, the innovator's prospective rewards are reduced. Where innovation involves substantial sunk costs, it may be difficult for the innovator to recover all their costs if imitators can freely enter the market. In this case innovation may be deterred, so that in the long run consumers lose out. To protect the innovator, barriers to entry are required. In response to this, exclusive legal rights may be awarded to innovators, in the form of either patents, or trademarks, or both.

Patent protection concerns the design of a product, or the process by which it is produced. A trademark, on the other hand, concerns a name, symbol or other device that can act as a distinguishing feature. Unlike a patent, therefore a trademark is not necessarily linked to a specific product or process, but rather may be linked to products of different types. There are other differences too. Patents are normally awarded for a fixed number of years, after which they expire, and they may lapse earlier if they are not used. The life of a trademark may normally be extended indefinitely, however.

The differences between patents and trademarks are not always clear in the literature. It is often assumed implicitly that a patented product will be marketed using

a trademark, and this has encouraged the view that the enforcement of trademarks raises the same issues as the enforcement of patents, but this is not strictly true.¹²

The enforcement of trademarks differs from the enforcement of patents in that scientific and technical issues are not so important. Enforcing trademarks does, however, raise difficult questions about whether two trademarks are sufficiently similar to confuse the customer or not. It also leads to difficulties when individuals with similar names wish to appropriate the same name for themselves. Thus while registration is easier for trademarks than for patents, the opposite may sometimes be true where enforcement is concerned.

Trademarks are often treated as synonymous with brands. A brand may be defined as a product identity that differentiates a product from substitutes by associating it with specific characteristics.¹³ These characteristics may be objective – such as performance and reliability – or subjective – such as associations with particular celebrities or lifestyles. Brands are often used to signal quality, or enhance the value of a product to the consumer by signalling that the owner of the branded product is discriminating, wealthy, or of high status. They are particularly useful in non-durable goods where repeat buys are likely, as a memorable brand makes it easy for the consumer to recognise the product on a subsequent occasion.¹⁴

¹² The incentive to apply for a trademark is in some respects much stronger than the incentive to apply for a patent. A patentee needs to demonstrate that they are uniquely responsible for a specific invention, once the contribution of existing patents is taken into account; if the invention does not appear original, or priority is disputed, then the examiners may refuse the application. Furthermore, patented inventions are published, and this provides an opportunity for competitors to study their specifications and invent around them in order to achieve the same results by different means. The disclosure requirement is a potentially serious deterrent to patenting that does not apply to the registration of a trademark.

¹³ Lopes, *Global Brands*.

¹⁴ Jennifer L. Aaker, “Dimensions of Brand Personality”, *Journal of Marketing Research*, 34 (1997) 3: 347-356; C. Lury, *Brands: The Logos of the Global Economy* (London: 2004). P. Milgrom and J. Roberts, “Price and Advertising Signals of Product Quality”, *Journal of Political Economy*, Vol.94 No.4: 311-29; F. I. Schechter, “The Rational Basis for Trade-Mark Protection”, *Harvard Law Review*, 40 (1927): 813-33; M. Casson, “Brands: Economic Ideology and Consumer Society”, in Geoffrey Jones ?”, in Geoffrey Jones and Nicholas J. Morgan (eds.), *Adding Value – Brands and Marketing in Food and Drink* (London, 1994).

Brands themselves are not legal entities, but trademarks are. Trademarks can reinforce brand value and can be employed to defend it.¹⁵ The name, typeface, design, colour and symbolism may be chosen to resonate with the values associated with the brand. A trademark design needs to be easily recognised – even attention-grabbing – and easy to memorise, for the reasons given above. Rivals that attempt to imitate a product may therefore attempt to imitate its trademark too. Not all product imitation involves trademark imitation, however, and conversely not all trademark imitation involves product imitation. The situation is illustrated in Table 1.

Table 1: Two dimension of imitation strategy

Imitate trademark	Imitate product	
	No	Yes
No	No imitation	Imitation without trademark infringement
Yes	Trademark infringement	Counterfeiting

The table sets out two main dimensions of strategy available to an imitator and explains the relationship between them. The imitator discussed in the table is responding 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 strategies are indicated along the rows and alternative product strategies down the columns.

The top left-hand cell indicates a successful outcome for the innovator, in which there is no imitation of either its product or its trademark, though this may not be enough to prevent aggressive trademark owners from taking threatening or legal action. The top right-hand cell represents the case in which imitation occurs without trademark infringement. This is the case normally discussed in the economics literature. The bottom left-hand cell corresponds to a case of trademark infringement

¹⁵ Christian Helmers and Mark Rogers, "Trademarks and Performance in UK Firms", in Lopes and Duguid (eds.), *Trademarks, Brands*: 56; Sandro Mendonça, Tiago S. Pereira and Manuel M. Godinho, "Trademarks as an Indicator of Innovation and Industrial Change", *Research Policy* Vol.33, No.4 (2004): 1385-1404.

(or unauthorised 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-hand cell corresponds to the most damaging scenario so far as the innovator is concerned – passing off, in which an imitation product is produced and sold using an imitation of the innovator’s trademark. The aim is to confuse consumers and thereby take trade away from the innovator.

Given its importance, counterfeiting and also trademark infringement have received surprisingly little attention in the literatures on international business, business history, and business strategy in general. Counterfeiting is examined in detail in Table 2. Two further dimensions of strategy are investigated; namely the quality of the product and the price for which it is sold. The imitator may match the quality of the innovator’ product or produce an inferior variant that is superficially similar; they may charge the same price as the innovator, or undercut them. Quality strategies appear on the rows and price strategies down the columns.

Table 2: Two dimension of counterfeiting strategy

Quality of imitation	Price of imitation	
	Same	Lower
Same	High-quality imitation selling for regular price	High-quality imitation selling for lower price
Lower	Low-quality imitation selling for regular price	Low-quality imitation selling for low price

According to the top left-hand cell, the imitator mimics the innovation by selling a similar quality of product at a similar price. He takes a modest share of the market, earns a modest profit per unit and minimises the risk of detection, since both the price and the quality are the same as the authentic product. In the case of the top right-hand cell the imitator is more aggressive, and sets out to capture a larger share of the market by selling a high quality product at a low price. The imitator can afford to do this because he has not incurred the same sunk costs as the innovator. He combines a larger share of the market with a lower profit per unit, and runs an increased risk of

detection because of the difference in price. In the bottom left-hand cell the imitator passes off low quality items as high quality items at the regular (high) price. He maximises profit per unit, since the low-quality imitation is cheap to produce, but runs a risk of detection because the quality differs from the authentic item. He is also liable to prosecution by market regulators if his quality is below statutory standards, so his high profits may be short-lived. A succession of such entrants can, however, inflict considerable damage on an innovator. The bottom right-hand corner corresponds to what is potentially the worst-case scenario for the innovator, in which a mass market is created for a low-price low-quality item that carries the high quality trademark. The imitator makes large sales with a modest profit per unit, but runs a high risk of detection because both price and quality are low.

This discussion leads naturally to the issue of the strategies available to the innovator for protecting a product against imitation. The first point to note is that a trademark can be used to protect a commodity when a patent cannot. If a product is not original in a technical sense then it cannot be patented, but it may still be protected by a trademark. This applies when the product is so closely associated in the consumer's mind with the trademarked name that they will not buy an identical product unless it also carries the trademark. Indeed, many brands thrive on the basis of product tradition rather than product innovation. The same point applies if an original product is not patented because of the disclosure problem noted above. Trademarks are therefore particularly important in the defence of trade secrets [an innovation when the innovation either cannot be patented, or it is considered uneconomic to do so.

In addition to these measures, trademark owners can invest in preventative measures at the time their trademark is registered. The most significant of these is to design the trademark so that infringement is costly to implement and/or easy to detect. Using a simple and striking symbol, a powerful and distinctive colour and an unusual name all increase the costs of successful imitation. They also mean that any imitation, even though it may be legal, is unlikely to confuse the consumer.

Government lobbying is another strategy. Where IPR is weak the innovator may join with other trademark owners in urging the host country government to strengthen IPR. This may be done under the auspices of a trade association. If the government is reluctant to strengthen IPR then it may be urged to be more zealous in

enforcing the legislation that it already – e.g. statutory healthy and safety standards the low-quality counterfeiters regularly breach.¹⁶

The historical context

Trademark legislation

When trademark law first came into place in the United Kingdom in 1875, it resulted from a combination of efforts between firms' strategies and their lobbying near government and courts and also the understanding of governments and the legal system to what they believed the needs of businesses were. It reflected the ways in which traders identified and distinguished their products from those of competitors at that time and the conservatism of the lawyers who oversaw the writing of the initial law.¹⁷ Even though there was a reasonable fit between the law and the characteristics of markets and competition, there were holes in the law, which were spotted by some imitators. For example in the 1880s there were many court cases about shapes. This is because shapes were not protected legally.¹⁸ Over time innovators felt the need to also protect this part of their intellectual property and lobbied in its favour.

¹⁶ In some cases trademark protection may be enhanced simply by making registration cheaper. The overall cost of registration to the firm includes not only the registration fee but also the management time and legal expense in making the registration. By reducing fees and simplifying procedures, governments may turn registration from an expensive luxury into an affordable necessity. Innovative firms may therefore prefer to drop their more ambitious policies for strengthening IPR and concentrate on lobbying for modest changes of this type.

¹⁷ The Trade Mark Act of 1875 only allowed registration of one of more 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/marketing were for a long time protected by copyright law as they related to the tangible, literally and statistics aspects of the brand appearance.

¹⁸ Cases such as *Re James Trademark Application* in 1886 show that traders also used shapes as marks even and yet they were not protected by law. As a result of situations like this companies such as Coca Cola were only able to register the shape of their bottle in 1994. Only in the 1993 TM Act was the word 'brand' used for the first time.

But differences in the legal systems and in the concept of protection also vary across markets. When analysing firms with operations spread across multiple institutional environments, and when dealing with diverse intellectual property rights regimes, the issue of protection of trademarks becomes even more complex during this period, when countries such as the United States, most of Europe, set up national systems of trademark registration which varied substantially.¹⁹

It has never been possible for businesses to draw on their home country's trademark law to protect their trademarks internationally, unless when countries where those businesses were based had formed an international reciprocity treaty or were part of an international convention.²⁰ The first international convention, the Paris Convention for the Protection of Intellectual Property, was only created in 1883. This Convention was advantageous for business in the sense that it granted reciprocal rights for registration by citizens of the participating states. However, Britain was not an original signatory, only joining in March 1884.²¹ The Treaty of Madrid of 1891,

¹⁹ Douglass North, *Structure and Change in Economic History* (New York, 1981); A. Greeley, *Foreign Patent and Trademark Laws: A Comparative Study with Tabular Statements of Essential Features of such Laws* (Washington DC, 1899). For an overview of national systems of trademarks registration in the United Kingdom and France see Bently, "The Making of Modern Trademark Law", in Bently et al (eds.), *Trade Marks and Brands*, and Paul Duguid, "French Connections: The International Propagation of Trademarks in the Nineteenth Century", *Enterprise & Society*, Vol.10, No.1 (2009): 3-37. Latin American countries and Japan had quite different systems of registration in relation to European countries. See Andrea Lluch, "Marketing Strategies and Trademark Protection Pursued by U.S. Companies in Argentina, 1900-1930", and Julio Moreno, "Global Trademarks, Local Laws, and the Impact of Institutions on US Corporate Expansion Abroad", both published in this Special Issue *Business History Review*.

²⁰ Examples of International Reciprocity treaties between Britain and other countries are: Treaty of Commerce and Navigation with Russia (St Petersburg, 12 January 1859), Treaty of Commerce with France (Paris, 23 January 1860); and Treaty of Commerce and Navigation with Belgium (London, 23 July 1862). The foreign office responded by conducting a detailed inquiry into the laws of foreign states through the network of consuls and embassies. Most laws were seemingly based in ideas of forgery, counterfeiting and deceit. The Foreign Office decided to attempt to negotiate bilateral treaties protecting British traders, following the modes of the existing copyright bilaterals. Bently, "The Making of Modern Trademark Law": 14; Duguid, "Developing the Brand".

²¹ The members that joined in 1883 were Belgium, Brazil, Spain, France, Guatemala, Italy, Holland, Portugal, Salvador, Serbia and Switzerland. Even though Britain became part of the treaty in 1884, until 1900 The UK Patent Office continued requesting, foreign firms to apply to register their marks under British Trademark Law, thus ignoring the fact that under the treaty, trademarks registered in the

which was a specialised agreement under the Paris Convention, also facilitated simpler international registration of marks. After initial registration in their home country, a trademark proprietor could make an international registration that was then passed to the required country or countries. This scheme made the international registration of marks simpler and more appealing to businesses seeking to protect their brands abroad.²²

Early internationalising firms had nonetheless begun extensive foreign registration prior to the Paris Convention and the Madrid Agreement. Table 1 and Figure 1 in the Appendix provide evidence of that. Table 1 shows, for individual trademarks their dates of registrations in different markets (the United Kingdom, France and the United States). Figures 1 and 2 in the Appendix provide, as an illustration, the evolution of the proportions of registrations of foreign based firms in France from 1886 until 1905. It illustrates that there is a significant proportional increase in registrations by foreign companies in the late nineteenth century. Particularly there is a large proportion of registrations by British firms by 1890, by which time they make up two-thirds of all foreign marks registered in France. Figure 2 illustrates the first twenty years of international registrations under the Paris Convention. It also provides information about trademark registrations in the United Kingdom. It also provides information about trademark registrations in the United Kingdom. When compared with the total number of registrations in the United Kingdom over time, the number of trademarks that were internationalising was quite small, despite the increasing number of countries which had joined Paris Convention,. The two curves follow, to a great extent, the shape of the wave of globalisation that took place during the ‘First Global Economy’, reaching a peak just before World War I.

country of origin were automatically protected in other countries of the Union. International Convention for the Protection of Intellectual Property (1883); British Accession: Industrial Property Convention of March 20 1883 (17 March 1884), National Archives: FO 93/33/124.

²² The Madrid Agreement Concerning the International Registration of Marks from 1891 to 1991 (Geneva, 1991).

International business strategy

The role of trademarks has changed over time.²³ When big business first developed during the ‘First Global Economy’, trademarks were an important indicator of origin of the product (e.g. Sheffield cutlery).²⁴ With changes in trademark legislation and globalisation of economies, however, trademark owners began to subcontract or license the manufacture of their products to third parties, often not even based in the same continent, became common practice.²⁵

In the case of British business, a variety of foreign market entry modes were used, ranging from the use of travellers and trading companies, to alliances with competitors (home or host country based), licensing agreements, and greenfield investments. Travellers were the brand-owners’ appointed sales-agents, assigned to regions at home and abroad. Their main functions were to sell the goods, either in their own name directly to customers, or by acting as representatives to retailers. But they also had other roles such as acting as sources of information and advice to producers on how to counter competition, monitoring use of the brands they handled and providing feedback, and detecting counterfeiting and trademark infringements. In fact, many of the cases of infringement discussed below resulted from reports prepared by travellers and agents in foreign markets. Once reported, firms would take advice either from local trademark agencies, in-house lawyers or legal firms.²⁶

In other cases firms opted to hire their own travellers. An example is the traveller appointed by J & J Colman in the West Coast of Africa in 1914, in conjunction with other firms among which were Huntley & Palmers and A. Gilbey Ltd. Another mode of entry used by brand owners in foreign markets was through the establishment of distribution channels – trading companies. The trading company

²³ UK Trademarks Act (1996), Section 10; Belinda Isaac, *Brand Protection Matters* (London, 2000).

²⁴ David Higgins and Geoffrey Tweedale, “Asset or Liability? Trade Marks and the Sheffield Cutlery and Tool Trades”, *Business History* Vol.37, No.3 (1995): 1-27.

²⁵ Herbert C. Ridout, ‘National TM is Unsound Advertising’, *Advertiser Weekly*, 14 February 1919: 5; ‘Proprietary articles’, *Advertising World*, May 1905: 576; F. 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 Jones and Morgan (eds.), *Adding Value*.

²⁶ 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); *Salesmanship - Special issue of Business History Review*, Vol.82, No.4.

Atlantis Ltd. Was formed by an alliance between two competitors J & J Colman and Reckitt & Sons Ltd in 1913, which covered the South American market.²⁷

Imitation and Brand Protection: The Evidence

This section reviews the historical evidence on the use of trademarks to protect British consumer brands in overseas markets. As previously mentioned, this evidence was used to build the frameworks presented in section 2 on imitation strategies. It demonstrates the importance of trademark strategy in the history of British business and shows how the omission of such strategies from established narratives has in some cases given a misleading impression of the successes and failures of British business.²⁸ It identifies the most common forms of imitation encountered by innovative firms in foreign markets, the main brand protection strategies they employed, and the way that these strategies affected their internationalisation and foreign market entry strategies as a whole.²⁹

Common Types of Foreign Imitation

Drawing on the typology presented in section 2, it is possible to find trends in terms of the most common imitations firms faced in foreign markets, based on the ways in which products were marketed, their quality, and the parties involved in their

²⁷ Colman's, 3 April 1914, Directors' and Managers Meetings Minute Books CON/1996/127, Vol.1 (Box Label 191), Unilever Archives. In 1921 the association with Reckitt & Sons Ltd was extended to cover other overseas markets in 1923 an American subsidiary J & J Colman (USA) Ltd was established; and in 1926 the French & Co. of Delaware and G. and F. French, of New York, manufacturers of powder mustard were acquired. In 1938 J & J Colman and Reckitt & Sons Ltd. merged, all the functions of the two companies being carried out under the title of Reckitt and Colman Ltd. Roy Church, and Christine Clark (2001), "Product Development of Branded, Packaged Household Goods in Britain, 1870-1914: Colman's, Reckitt's and Lever Brothers", *Enterprise & Society*, Vol.2 No.3 (2001): 503-542.

²⁸ P.L. Payne, *British Entrepreneurship in the Nineteenth Century* (London, 1974).

²⁹ Documents on this topic held at companies' archives often describe problems that firms were having in foreign markets with various actors in the value chain such as competitors, distributors, and retailers, bottlers, or labelling companies, which were imitating or selling imitation of their products. They discussed possible courses of action, ranging from non-contractual and passive measures, to hierarchical and active investments. Suggestions for withdrawal from markets are also found.

production and distribution. In terms of the ways in which imitations were marketed there were two main types. They were either marketed using the same brand name as the innovator or a different brand but similar enough to confuse the consumer (to make him think it is the innovator's brand); or they used a different brand on the original product. The quality of the imitations tended to be inferior to that of the original product, even though in some cases the quality was in fact similar if not the actual product which sometimes appeared labelled as it had been produced by the distributor. In terms of agents in the value chain responsible for the infringement, there are not clear trends, being market and product specific. Below, are illustrations of each of these common types of imitations.

There are multiple cases where imitators used the same trademarks as the innovator but a worse quality product. Bass, was one of the most aggressive firms at registering its trademark and also at prosecuting infringers during that period.³⁰ Bass began exporting to continental Europe in 1784, and established a substantial trade abroad from the 1820s. Bass either exported beer in barrels or in bottles, subcontracted to agents in or near UK ports. Apart from bottling the beer, these agents also labelled the bottles, which from 1854 also included Bass's trademark. However, this policy made Bass vulnerable to UK bottlers, some of which produced counterfeit Bass beers for export.³¹ Later Bass also hired bottlers abroad. In markets such as India, after the beer had been consumed, the labelled bottles were often filled with beer of inferior quality. During the late nineteenth century there were multiple cases of beverages firms (either brewers or other drinks companies such as wine or bottled water producers) using a triangle of virtually any description who received correspondence from Bass claiming infringement. European companies, particularly Belgian and German brewers, frequently found themselves subject of action by Bass. Bass's strong position in the British market and its aggressiveness in dealing with imitation often led firms to agree to amend their label to exclude any objectionable

³⁰ For example, it was the first company to register its trademark in the United Kingdom when the Trademark registry opened on 1 January 1876. On this subject see 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 Lopes and Duguid (eds.), *Trademarks, Brands and Competitiveness*: 9-30.

³¹ Colin C. Owen, *The Greatest Brewery in the World: A History of Bass, Ratcliff & Gretton* (Derbyshire, 1992).

mark. To facilitate the process Bass usually paid for any stock of labels, and other stationary, which it required to be replaced and destroyed. In cases where no informal agreement was reached with imitators, Bass would either litigate or suggest an agreement defining limitations of rights of use for a similar mark. These agreements were often adopted as last resort to prevent a court case.

An illustration of an agreement that Bass proposed to firms that it saw as inadvertent infringers, is the case of Bass vs. Wielmans-Ceuppens a Belgium brewery in 1921. This case was agreed after Bass had begun Tribunal of Commerce proceedings, ensuring Bass of an outcome that was acceptable to them. The agreement provided for the abandonment of the case, in exchange of destruction of the defendant's stock of contentious labels for which Bass paid half the costs, and renunciation by Wielman-Ceuppens of the objectionable label and the non-use of a diamond design thereafter.³²

Poor quality imitations also affected successful foreign brands. An illustration is the Cognac Hennessy exported worldwide and in particular to Ireland, Australia and other colonies via Britain, by the British merchant and shipper Henry Browning. This merchant and Hennessy constantly received letters from different parts of the world informing them about piracy of brandy labels, and with a mention of the poor quality of the brandy inside the bottles. Like with most other imitations of poor quality during this period Germany and Japan (and also some firms in the United Kingdom), were usually responsible for this piracy. German imitators filled Hennessy casks with coloured common spirits, and these were sent out to the colonies as Hennessy brandy.³³

³² Agreement with Wielmans-Ceuppens in Belgium (June, 1921) Label Books, Bass Archives. Other similar cases include the Agreement with Les Brasseries Breuvar D'Armentieres in France for using an inverted triangle on their own label, and the case with H. Deetzan, a brewer and bottler in Bremen Germany who sold imitations of Bass beer in New Orleans in the United States. Agreement with Les Brasseries Breuvar D'Armentieres (March, 1926), Label Books, Bass Archives; Mr Thomas Coxon, Manager in London of Bass & Company, representing Bass in the Select Committee of 1862: Q. 2480 - 2567.

³³ 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 trade marks abroad, especially in Germany. R. J. S. Hoffman, *Great Britain and the German Trade Rivalry, 1875-1914* (New York, 1964); C. Bucheim, "Aspects of XIXth Century Anglo-German Trade Rivalry Reconsidered", *Journal of European Economic History* 10 (1981): 273-89.

Other types of imitations used different trademarks in goods of similar or worse quality, but they were similar enough to confuse the consumer. An example of this is the case of Colman's mustard in the United States and its action against Samuel Crump, a printer of mustard labels in 1870, the same year US trademark law was introduced. J & J Colman began internationalisation soon after its success at home.³⁴ As early as 1840, Colman's sent a representative to the United States to select dealers for the brand. This representative had various roles such as to provide advice on marketing and packaging of the product and also on the best ways to protect the trademark. When Colman began the prosecution for infringement of its trademark in 1870, it had not yet registered the trademark in that market. Colman's claimed infringement of its distinctive labels, which featured a bull's head device on a yellow background since 1855. The final judgement came in 1877 from the Superior Court of New York was that Colman's was entitled to the exclusive use of the figure of a bull's head as their trademark on labels attached to the mustard.³⁵ Following this success against imitators, Colman's moved to take additional action against the other imitators in the supply chains such as manufactures, dealers, and grocers who were also selling cans of mustard bearing a bull's head.³⁶

There were cases where the imitation actually used a product of the same or lower quality on a different brand. An example is Guinness and the sale of bottled beer by its US bottler 'Burke', who by 1910 was using the label and advertising Guinness's exported beer (Guinness beer mixed with other beer of lower quality) as 'Burke's Bottled Guinness Stout', thus implying the stout was the product of the bottler rather than Guinness.³⁷ Guinness, the Irish stout manufacturer had embarked on a fast process of internationalisation soon after it went public in 1886. It franchised out much of the bottling of its stout to independent bottlers, requiring them to sign

³⁴ Its also rapid success abroad was such that it introduced brands such as Savora, the first ready made mustard (which was sold in stone jars), in foreign markets in 1907 which only became available in Britain in 1914. "The Advertising Art of J. & J. Colman Ltd.", October 1977, Unilever Archive (BRA, 120).

³⁵ "Colman's vs. Samuel Crump", Nov.1870, Superior Court of the City of New York, Book of US Cases, Unilever Archives, 1996/27 (Box label 167).

³⁶ "Mustard Pots", *New York Times*, 1 Feb. 1872: 2.

³⁷ S. R. Dennison and Oliver MacDonagh, *Guinness 1886-1939: From Incorporation to the Second World War* (Cork, 1998): chapter 5.

agreements restricting their bottling of stout to only the Guinness brand. From the turn of the twentieth century, however, the company sought to promote bottling in the country of destination. In the United States, where much of Guinness's foreign trade was located, this involved establishing new agreements with local bottlers, and the transferral of UK-based bottling plants to the United States. Guinness's system of labelling further complicated protection of its trademarks, as the bottlers could choose their own label design featuring Guinness's name, subject to the label being approved by Guinness. From 1895, Guinness began to restrict bottlers in the domestic market and overseas markets to use Guinness's own trade mark label, a buff oval label featuring its famous harp design. Bottlers were permitted to add their name in the lower half of the label.³⁸

Depending on the foreign markets where the brands were being sold, the distribution systems in place, and also the type of product, it is possible to find trends in terms of the agents in the value chain which could be involved in the production and distribution of imitations. For example, in brewing there is a lot of evidence on the need for protection against bottlers and labellers in markets such as the United States and the United Kingdom. In soap, protection strategies tended to target retailers. A lot of evidence is available for markets such as India, Australia, South Africa, France and the United Kingdom.

Brand protection strategies and their impact

British firms dealt with different types of imitation using multiple counter imitation strategies and tactics, which depended to a great extent on the market and its institutional environment, and also on the brand and its importance in the firm's portfolio of products. Sometimes taking action meant collaboration with other firms and agents in the value chain to lobby near governments, high courts, and other institutions. But most times it meant taking individual actions, targeted at individual imitators, the producers of the imitations, its distributors, or other agents in the value chain which were involved in the value chain. These actions could be formal and legally binding, such as the registration of trademarks, or the use of courts to prosecute infringement and fraud; or they could be informal, such as the use of letters sent to the imitator, visits to his premises, or other forms of contact to persuade

³⁸ *Ibid.*

imitators to stop their infringement. Below are some examples of the different types of actions taken by firms and the impact they had on the companies' strategies and performance in these foreign markets.

An example is the lobbying carried out by British businessmen doing business in China in 1907. They found that there were a lot of Japanese imitations of British brands in that market. British merchants in China complained that Japan's open door policy was a delusion. As a way of protecting their businesses, which relied on the production of imitations, the Japanese Government declined to enter into an agreement with Great Britain for the mutual protection of trademarks in China. In the meantime Russia, Germany, France, and other powers had agreed to sign agreements with the United Kingdom for reciprocal protection of trademarks in China.³⁹

There were also cases of protection where competitor firms made alliances to deal with single imitators. The alliance between Guinness, Bass, and their bottler and labeller in the United States E & J Burke in 1907, against Bowie & Co in Canada for fraudulent labelling is an illustration of that. Bass had detected that Bowie was selling an Ale under the 'Black Bass' label, and also a Stout with a 'Guinea Stout' label, very similar to that used by the bottler of Guinness in the United States E & S Burke. Through their attorneys the allied companies arranged for the withdrawal of the imitation labels to be carried out and for a new label to be issued bearing the name of the brewery (Bowie & Co Brewery Ltd, Porter to replace the Guinea Stout design).⁴⁰

The most common individual formal way by which firms protected their brands abroad was through registration of their trademarks. Guinness, apart from being very proactive at protecting its marks was very eager on registering them in foreign markets. For instance it sought to register its trademark label for its stout and Foreign Extra Stout soon after it was created.⁴¹ In 1910 the company introduced a

³⁹ In this period China did not have trademark law in place yet, 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.

⁴⁰ "1907 Secretary's Report", Guinness Archives.

⁴¹ It spent almost £300 registering its mark in 22 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 UK: Board minutes London (1 June 1889)

new standardised label for its foreign stout, and the following year registration of the label had been completed in 64 foreign territories.⁴²

On the other hand, leading consumer goods companies such as Rowntree, a biscuit and chocolate producer, were late at registering trademarks in foreign markets, and avoided getting involved in litigation as much as possible. Prior to the interwar period Rowntree's exports were an insignificant part of the total sales of the firm.⁴³ Therefore, foreign registrations and trademark protection were certainly not considered to be strategic for the firm. T. H. Appleton, the factory manager, was responsible for the management of trademarks. He also accumulated other roles such as being in charge of exports, employees' welfare, wages, holidays, timekeeping, machinery and new building, factory and office rules among other tasks.⁴⁴ The board of directors considered the question of a world-wide registration of Rowntree's trademarks (such as 'Rowntree' and 'Elect') to be onerous and not justified in markets other than those in which they already operated, and had already applied for registration. Their argument was that markets where the Rowntree brand was small and unknown to the consumers, there were no incentives for pirates to imitate the trademark. Therefore, Rowntree only applies for registration once exports into a particular market were of any significance.⁴⁵

Although reluctant to embark on potentially-unnecessary foreign registrations, Rowntree did, however, systematically review its existing overseas marks, aware of

⁴² 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: 1904 Secretary's Report, Guinness Archives.

⁴³ In 1904, for example, exports represented 3 percent of total sales. By 1914, apart from some investments cocoa plantations in India, exports mainly targeted British empire markets such as Australia and New Zealand. The products exported were essentially gum, as cocoa brands such as 'Elect cocoa' were believed to require extensive advertising support and direct control, which Rowntree did not have in those markets. It is only in the interwar years that Rowntree truly develops as a multinational in the chocolate industry, as a way of dealing with tariff barriers in foreign markets, and with competition (mainly from Cadbury-Fry). Fitzgerald, *Rowntree*: chapter 14.

⁴⁴ Papers of T. H. Appleton- Factory Manager, R/DP/F (19-33), Rowntree Archives.

⁴⁵ Correspondence to and from T. B. Browne, 19 August 1912, R/DP/F/2; 30 January 1915, R/DP/F/26/2, Rowntree Archives.

the potential for imitation if its rights lapsed.⁴⁶ For Rowntree, much of its awareness of the need to register and of the risks posed by infringers may be attributed to its trademark legal agent, T. B. Browne based in London. It was Browne who suggested extensive foreign registration and, when this idea was rejected by Rowntree, Browne reminded the firm that other clients who delayed registering had found their mark registered by others in those countries.⁴⁷

An illustration of how Rowntree dealt with cases of infringement in foreign markets is the case of Gregg & Co. in New Zealand, for the production of fake “Rowntree’s table Jelly Powders”. Rowntree received advice from its agent in New Zealand and Browne on this matter, and tried to deal with the case without having to go to court or having to incur much costs. They managed to reach an agreement with Gregg & Co, in which the former agreed to stop using the word ‘Rowntree’ in future goods produced and sold, but refused to remove the counterfeit products from the market and to pay any expenses incurred by Rowntree to deal with the case.⁴⁸

Ultimately the lack of both registration and legal protection of the trademark contributed to the lack of long term survival of the firm, under the original ownership.⁴⁹ This is what happened to Pears soap, which despite its very high success internationally was acquired by Unilever 1915. After its acquisition, Lever Brothers changed radically Pears mode of entry in most foreign markets and also its counter-imitation strategies, by setting up wholly owned distribution channels and, when possible by suiting a very large number of imitators, their distributors and other agents in the value chain across the world. Pears toilet soap was created in 1789 by Andrew Pears a hairdresser. In 1835 Andrew Pears joined by son Francis, and A & F Pears began selling the product. Since the beginning the brand was very successful and well advertised being displayed at the Great Exhibition of 1851. In 1865 Thomas Barratt

⁴⁶ There are, for example, instructions for the routine for renewing foreign and domestic marks in the Book of Trademark Registration Information: 2, R/DP/F/19, Rowntree Archives.

⁴⁷ Browne considered that money spent on world wide registration was not like money spent in advertising, which expenditure 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 TB Browne, R/DP/F/21, Rowntree Archives.

⁴⁸ Correspondence with T. B. Browne & Co regarding the Table Jelly Powder Infringements in new Zealand from 19 October 1909 until 15 September 1910, R/DP/F/26/2, Rowntree Archives.

⁴⁹ Teresa da Silva Lopes and Mark Casson, “Entrepreneurship and the Development of Global Brands”, *Business History Review* 81 (Winter 2007): 651-680.

who had married into the family joined the company as an investor and manager and turned it upside down. When the home market proved too limited Barratt turned to other markets. The United States was his first target outside the British Empire. Here Barratt embarked on his greatest advertising campaign, featuring Pears soap on the front page of the New York Herald and advertisements in hundred of other American papers. He used wild promotional plans, bold eye-catching press and advertisements, and outrageous publicity stunts.⁵⁰ He was later called the ‘father of modern advertising’.⁵¹ However, Barratt disregarded the strategic importance of protecting a successful brand from imitation. As the reputation of Pears’ Original Transparent Soap grew, rivals began to copy the product, and some too scrupulously. The secret process could not be copied exactly, but competitors at other levels of the value chain were now producing ‘counterfeits’ packed in wrappers exactly similar to those which Pears was using, or using similar soap shape as Pears. This led eventually to the sale of Pears to Unilever.

But counter-imitation strategies also served other aims, apart from protecting the reputation of the brand and the exclusive use by firms of their trademarks. They also served as important ways of creating barriers to competition. Established firms often prosecuted new entrants into their markets on the grounds that they were producing imitations, even if that was not so clear. This argument also applied for well established firms trying to enter foreign markets. Host country firms tended to sue the investing company and the deliberations from courts depended on the state of development of the law in those countries. An example is Huntley & Palmers which had registered its trademark featuring its buckle and garter design in Germany and in 1899, and was confronted with several court cases by German rivals trying to remove the label from the trademark register. Eventually the German Imperial Trademark

⁵⁰ In 1899 Thomas Barratt was honoured by newspapers around the world for his work in advertising. Unilever, “A Brief History”, Pears Collection, Unilever Archives; Wilson, *Unilever*: 72.

⁵¹ For example in 1885 Barratt 250000 French centimes (accepted as pennies in UK at the time) and stamped pears on them. 1887 famous Bubbles advert, 1886 painting by Sir John Everett Millais; Pears purchased for £2200. 1887 Pears Shilling Encyclopaedia – 600,000 copies sold within weeks, sold at ‘less than absolute cost’. 1889 Gold Medal at Paris Exhibition. Moved on to glamour advertisements with Lillie Langtry actress. Pears Collection, AFP 12/5/1, Unilever Archives.

office ruled in favour of Huntley & Palmers.⁵² Until then Huntley & Palmer had not been very proactive at protecting its trademarks. Apart from having to deal with these problems in Germany, the firm had not registered the names of its biscuits in France, discovering soon after that another company was using the brand name of one of its biscuits. Meanwhile the company became aware that it was not keeping systematic records of its global registrations and commissioned a register of such marks.⁵³ This led, in the German case, the Board of Huntley & Palmers to appoint an individual to oversee the case and authorised legal counsel to be appointed on his authority; and also following the trial, in February 1900, Huntley & Palmers to seek to register its labels in a large number of foreign markets where its biscuits were being sold.⁵⁴

Other formal counter-imitation strategies and tactics involved the use of legal action to stop the infringer. An illustration is the case of Bass vs. Wendell a Boston bottler which in 1894 was selling another ale under Bass labels. In the impossibility of reaching an agreement with the offender, litigation was the chosen method of resolution. The Boston bottler was accused of selling ale under forged Bass labels. Bass's agents in the US employed detectives to monitor Wendell, who purchased stocks of the offending product and even went as far as renting office space in his building to spy on his activities.⁵⁵ This was considered to be a far reaching investigation of dangerous fraud, a view clearly shared by the trial judge, as Abraham Wendell received five years imprisonment with hard labour as a result of this.⁵⁶ Despite winning this and a couple more cases, wholesale infringement of the label, and even forgery of Guinness's name still abounded. The company felt inhibited from co-operating with their most active bottler E & J Burke, as even he, as previously mentioned, had been the source of some antagonism in relation to labels, when using

⁵² Minute Books 1, 5 December 1899, 24 January 1900, and 19 February 1900, Huntley & Palmers Archives.

⁵³ Minute Books, 5 December 1899, 20 January 1900, 13 February 1900, and 26 November 1901, Huntley & Palmers Archives.

⁵⁴ These markets were Holland, the Dutch East Indies, Hong Kong, Cape of Good Hope and Natal, France and Australia, and China. Minute Books, 19 February 1900, and 24 January 1900, Huntley & Palmers Archives.

⁵⁵ "Henry T. Nichols to Bass", 16 February 1894; "Jim Stewart to Bass", 18 September 1894, both in Label Book, Bass Archives.

⁵⁶ "Price & Stewart to Henry T. Nicholas", 31 July 1894; "Price & Stewart to Bass", 6 December 1894, both in Label Book, Bass Archives.

labels with his and Guinness's name, which implied the beverage was produced by him.

As a way of overcoming this problem in the US market, Guinness hired a permanent representative, and set up an office in the United States. The hired representative had a very important role at providing information to the headquarters of Guinness about the evolution of the US market, the problems associated with having a high retail price for imported beer, the target markets of Guinness (at that time Guinness was sold as a medicine), the estimated sales in the United States, the percentage of beer sold as Guinness which was in fact forgery (estimated to be around 10 per cent in 1900), and the need and advantages of advertising the brand. Soon after the appointment of this representative, US sales increased at a steady state and the proportion of the American market rose from under 30 percent of total foreign sales in 1900 to over 40 per cent in 1914.⁵⁷

Some companies used more passive strategies and tactics, which implied taking no legal action against the imitators. They drew on alternative approaches such as the writing of letters, or using the services of consultants, or travellers/agents, or even the services of law firms, to contact the producers of imitations, the distributors of imitations or other agents that dealt with those goods. They often confiscated and destroyed the imitations. Sometimes, the number of cases of imitation firms had to deal with across different markets justified hiring lawyers to work permanently for the firm. When informal approaches did not work firms often moved on to sue the imitator legally. However, in markets where there was no trademark protection, firms found it hard to deal with their lack of protection and assure survival in those markets.

In some cases the lack of institutional protection of trademarks implied that firms, in order to avoid exiting a particular market, had to change their mode of entry. This is what happened to Pears soap, soon after its acquisition by Lever Brothers. Lever changed the strategies and tactics of Pears in foreign markets in a radical way.⁵⁸ In key markets they moved from using agents to having direct representations, and there was an increase of court cases where the reputation and leadership of the brand

⁵⁷ A.T. Shand had been a former traveler for Allsops in the American market. Dennison and McDonagh, *Guinness*: Chapter 5.

⁵⁸ "Imitations and Infringements", AFP/04/3, AFP/04/4, AFP/04/5, AFP/04/6, AFP/04/7, AFP/04/8, AFP/04/9, Pears Collection, Unilever Archives. See for example "Letter from Payne to Pears", 16 August 1916; "Letter to Rishton at Lever Brothers from the Secretary of Pears", 12 October 1916.

was being threatened by imitators. For example in 1916 in India they sued distributors that were selling imitations of Pears such as ‘Erasmic soap’ and also ‘Pare Po Soap’ produced in Japan. In the first case the soap used very similar wrapping and labelling, and also font letters as Pears. In the second case the name of the soap was intended to be similar to Pears and to deceive the illiterate natives, and also displayed a similar design, oval shape and packaging as Pears.⁵⁹ An important problem Lever had in India was that the protection of the brand through registration was not the same as in other parts of the world.⁶⁰ The lack of protection in these markets restricted Pears’ assertion of ownership.⁶¹ Despite having successfully prosecuted many infringers, the absence of formal registration and poor protection against infringement did not appear to stem the flow of counterfeits, for in the early 1930s Pears was still finding it necessary to prosecute traders (successfully) in India for marketing imitation soap.⁶²

Under Lever’s ownership Pears also got imitation stocks to be confiscated and injunctions obtained against firms importing further supplies of imitations. This was done either by communicating directly with the importers, or through legal action if direct contact proved inefficient.⁶³ But while Pears secured injunctions against the importers of such articles, it often found it harder to stem the source of counterfeit goods. The company would respond to infringement in one market to find that product was itself manufactured in another country, going through a chain of dealers and retailers once in the country of destination.

Around the same time, other counterfeit soaps from Germany and Austria were found in India, Japanese soaps were also found to be for sale in Australia, and

⁵⁹ The names of the Japanese manufacturers were respectively Harumoto Soap Factory and Kinjiyau Tohoku Sa-Toru, respectively. “Suit No.1151 of 1916 in the High Court of Judicature at Fort William in Begal”, AFP/4/7/1-36. About infringement of the label see for example “Letter from Payne & Co – Solicitors to A & F Pears Limited”, 28 Feb. 1916 and 11 March 1916, “Imitations and Infringements”, Pears Collection, Unilever Archives.

⁶⁰ “Letter from Payne in India to Pears”, 19 August 1916, and “Letter to Rishton Lever Brothers from the Secretary of Pears”, 12 October 1916., AFT/04/3, “Imitations and Infringements”, Pears Collection, Unilever Archives.

⁶¹ “Letter to Rishton, Lever Brothers from the Secretary of Pears”, 12 October 1916; “Letter from Payne to Pears”, 19 August 1916, “Imitations and Infringements”, Pears Collection, Unilever Archives.

⁶² *Times of India*, 4 March 1929, and 20 February 1933.

⁶³ “Letter from Pears to Gollin & Co”, 2 April 1917, “Imitations and Infringements”, Pears Collection, Unilever Archives.

American-made soaps in South Africa.⁶⁴ In South Africa, for instance, with the ‘Unscented Colonial transparent soap’ case in 1916, the infringement was related with the substantial similarities in the pressing and the wrapping of the soap, as well the shape (with a depression at the top and bottom of the cake – soap), the use of the word ‘colonial’, and general typographical character of the wrapper (including colour and outline scheme).⁶⁵

In Japan the law that protected trademarks was quite different from the British Trademark law. By a protocol attached to the Anglo-Japanese Treaty of 1894, the Japanese Government had joined the International Convention for the Protection of Industrial property and Copyright, and in light of this the Japanese government revised its trademark law in 1899. Under the revised law, if an existing foreign trademark had been registered by a local Japanese firm before the arrival of the foreign firm in Japan, once that firm entered the Japanese market with its own trademark, it would be liable to a criminal prosecution for infringing a trademark which, according to Japanese law, belonged to a Japanese entity. Many well known foreign trademarks were registered under these circumstances, and in many cases the registrants had no intention or ability to apply the trademark in industry or production.⁶⁶

An illustration is James Buchanan and Co Scotch whisky owner of Black and White trademark. In 1905 Buchanan had given power of attorney for registration of Black & White in Japan. However, the trademark had already been registered and an imitation was being produced by a wine and spirits company in Osaka, name Nishikawa. The bottles contained a mixture very different from the actual Black & White whisky, but the labels were almost identical to their own. Buchanan tried to charge legally Nishikawa for fraudulent imitation, but the case was dismissed by the

⁶⁴ 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, in particular of their well known unscented soap label in Melbourne, 7 February 1917, 12 February 1917, 2 April 1917, AFP/04/8 and AFP/04/9, “Imitations and Infringements”, Pears Collection, Unilever Archives.

⁶⁵ “Letter from Armour & Company (Chicago, Illinois)”, 8 August 1916, “Imitations and Infringements”, Pears Collection, Unilever Archives.

⁶⁶ The law was changed in 1907 but, even then, cases where the trademark had been infringed before the change of the law, were dismissed. That is what happened to Buchanan in 1907, when it took the Nishikawa case to the Court of Appeal. “Imitations of Trademarks in Japan”, *The Economist*, 14 December 1907: 1-2

Court, on the grounds that the label was not absolutely identical. Buchanan took the case to the court of Appeal which also dismissed the charge.⁶⁷

Like in Japan, there were other countries where the legal systems protected domestic firms who registered trademarks in the country first, even if those trademarks had originally been created and registered earlier by foreign firms in their home markets. This was particularly true, during this period, in Latin American countries such as Argentina and Mexico, countries also important international producers of imitations.⁶⁸ The first user of a trademark was entitled to its exclusive use, which meant that any local manufacturer by registering an existing foreign trademark could actually exclude the innovator who had created that trademark from that market.⁶⁹ This situation created huge opportunities for unscrupulous business men, who could register well known trademarks, acquiring the legal right to use the mark, and thereby preventing imports of those good to South America. The original owners of the mark, when entering those markets could therefore be prosecuted or would have to pay large amounts of money for the right to own their own trademarks in those markets.⁷⁰ In some countries companies were able to obtain some local help and protection for their trademarks by becoming members of associations such as *Sociedade União Industrial contra a Contrefacção* (Industrial Union Society Against Counterfeiting) in Brazil. An illustration of that is Apollinaris which in the turn of the century was exporting to that market and finding multiple counterfeits of the brand were being sold in that market. By becoming member of this association it was able to re-establish its trade mark rights in that market more effectively.⁷¹

Counter-imitation strategies also had other roles. Some firms used the law as a way of enhancing their reputation in the eyes of consumers and as a form of

⁶⁷ "Imitation of Trademarks in Japan", *The Economist*; "Power of Attorney for the purpose of Registration of the Words Black and White in Japan", James Buchanan, 4 April 1905, Minute Books 1, Diageo Archives.

⁶⁸ "Trademark Piracy in Mexico", *New York Times*, 10 August 1919; Lluch, "Marketing Strategies and Trademark Protection".

⁶⁹ Several attempts were made to break down that situation, through the United States Trade Mark Association and the Pan-American Union, through a convention of the American governments among other initiatives. See for example "Trade Mark Forgeries", *Grocery*, July 1906.

⁷⁰ "Urge Trademark Reform – Latin American Laws Held to Open Avenue for Extortion", *New York Times*, 15 April 1915: 14.

⁷¹ *Grocers Journal*, 11 February 1905.

advertising. Firms saw value in the publicity of potential action against infringement, even if such action did not proceed into litigation. Guinness saw the importance of publicising their pursuit of infringers, and on occasion such publicity negated any actual action.⁷² For instance, in 1908, the company's American representative reported on the sale of bogus stout under the company's trademark label. This case followed increased efforts by Guinness to protect their brand in America. The previous year the firm had approved the registration of the word 'Stout' in the United States.⁷³

Similar strategy was used by firms such as Bass, and the bottled water firm Apollinaris. The outcome of the previously mentioned case between Bass vs Wendell attracted quite a lot of press attention. This was heightened by the publication of notices by Bass in numerous newspapers of the outcome. These advertisements publicised the sentence handed down to Wendell to warn against future infringement to Bass label.⁷⁴ Apollinaris a British based firm which explored and bottled water from a German spring of water had sued Fisher & Co, for infringement. They eventually reached an agreement and Apollinaris withdrew the court case in exchange for a written and signed apology by Fisher. This apology was subsequently published more than once by Apollinaris as a means of advertising.⁷⁵

Conclusion

This article introduces a new and necessary angle in studies on the evolution of multinational business. It shows that in marketing-based industries, it is as important to understand and discuss global competition through imitation, as it is through

⁷² Guinness preferred to prosecute individual firms rather than prosecute a number together, as the 'odium attaching to an individual is greater than when the practice he is accused of is shown to the public and the consumer to be common to a number of cases'. Trade (Dublin & Vicinity) *Annual Report 1898*, Guinness Archives.

⁷³ The legal agents in New York, Messrs Masten & Nicholls, failed to learn where these traders procured the bogus stout, 1907 Secretary's Report, Guinness Archives.

⁷⁴ "Agreement between Bass with Wielmans-Ceuppens", June 1921, Label Book, Bass Archives.

⁷⁵ This continue advertising of the apology led Fisher (the imitator), to begin legal procedures against Apollinaris to stop them from publishing the apology repeatedly. "Police Court: Apollinaris Water", *Times*, 19 October 1874: 14; and 28 November 1874: 11; "Fisher & Co (Ltd) vs Apollinaris Company Ltd.", *Times*, 24 March 1875: 12.

innovation. Focusing on consumer goods, where brands and trademarks are key sources of competitive advantage of firms, it argues that protection of these intangible assets is key for long-term growth and global survival. Trademarks are the aspects of a brand that can gain legal protection through registration. They are different from other forms of intellectual property 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.

Despite the perception that imitation is a phenomenon associated with the recent globalisation wave where countries such as China play a key role, this article shows that during the 'First Global Economy' it was already a competitive threat for firms and that significant resources and strategic as well as tactical thinking have been invested in it and some, indeed, before the First Global Economy. During this period imitators were mainly from Germany, Japan, Austria and also Britain. It is these countries, where large numbers of imitators developed, which during the twentieth century became leading economic powers, signalling an apparent connection between learning by imitating and economic growth.

This article also shows that there are clear trends in terms of the most common types of imitators. They tend to market products using the same trademark as the innovators, or use a different trademark, but close enough to confuse consumers. The goods produced or distributed tend to be of lower quality, even though there are cases of products of similar or identical quality, in particular when the imitator is acting as a distributor to the innovator, but using his own label to make consumers think that the product is his own innovation. The agents involved in the value chain of imitations also differ, depending on the market and the product being imitated. Infringement can be caused by direct competitors, which produce the imitations, marketed by the same distributors as the innovators, or sold through the same retail shops as the innovators trademarks. Other agents often involved in cases of imitation of trademarks can be labellers, bottlers and wrappers. In countries such as India or Japan, where protection of trademarks was different during the 'First Global Economy', firms had to find alternative ways to protect their brands.

In conventional international business literature the argument is that firms internationalise with the aim of achieving product improvements, or to prevent other improvers (using the same idea, or technology but a different brand) from expanding. Topics such as the need to prevent imitators from copying ideas, technologies or

brands are analysed as part of counter-improver strategies, as they are not considered to explain an additional strategic dimension that firms need to take into account when going abroad.

There are several questions relating to brand protection strategies that need to be added in studies on the evolution of multinational business. They include questions such as: what happens if a firm does not create and register its own trademark in a foreign market that it intends to enter; how should the firm deal with imitators; what are the advantages of using the legal system to prosecute imitators; should the firm use informal approaches such as letters, hired consultants or lawyers to stop imitations; or instead should it use formal mechanisms such the use of the legal system and the court to enforce its exclusive rights to previously registered trademarks; and should these measures be taken individually or with other firms facing similar problems. Most brand protection strategies involve individual action. These can be formal actions involving the law – such as formal registration of the trademark, or the use of the court to prosecute infringers. Alternatively they can be informal, either because the firm is avoiding using the law, and hopes to stop the infringement in an amicable way, or because the actual legal system of the host country does not protect foreign trademarks. Apart from protection against infringement, it has been shown that counter-imitation strategies also serve as means of creating barriers to new entrants in the industry and as advertising and marketing tools.

Brand protection strategies also influence modes of entry in foreign markets and therefore have the capacity to change the boundaries of firms. They answer questions such as: why a particular firm chose to use agents, or travellers; why given sudden changes in market conditions the firm chose to hire a salaried a manager instead; or why it opted eventually to set up its own distribution office in a foreign market.

The study of brand protection in marketing-based, fast-moving consumer goods industries can be extended to other industries, both marketing based and technology-based industries, such as computers and automotive industries. The generalisations suggested here shed new light on the evolution of multinational business, particularly during periods of rapid growth driven by product innovation, when imitators tend to develop most.

Appendix

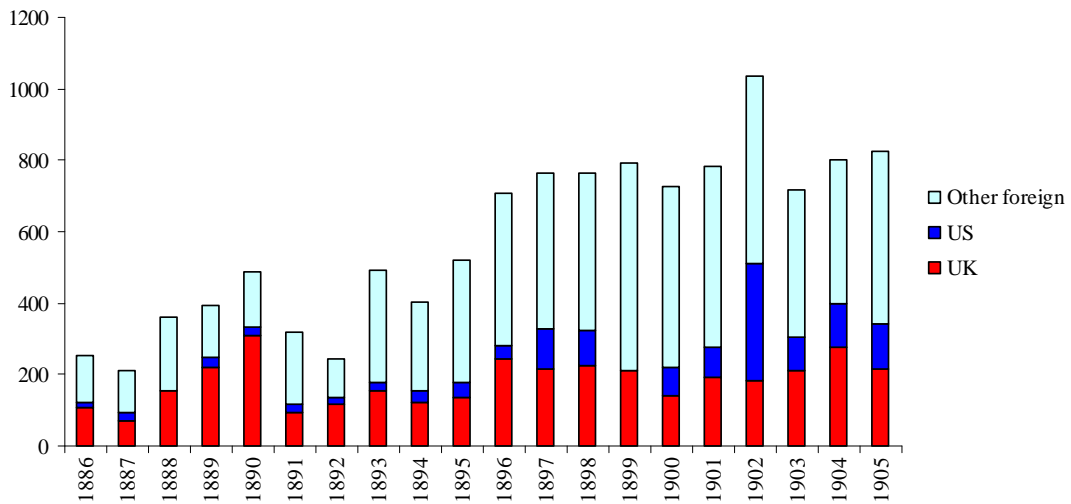
Table 1 – Sample of Brands and Firms

Trademark	Firm	Foundation of the firm owner of the trademark	Country of origin	UK Registration	US Registration	French Registration	Product category
Apollinaris	Apollinaris	1873	UK	1876	1877/1878*	1878	Other drinks (water)
Bass	Bass	1777	UK	1876	1874	1872	Alcohol (beer)
Black & White	James Buchanan	1884	UK	1904	Not found	Not found	Alcohol (whisky)
Colman	Colman	1814	UK	1876	1896	1897	Food (mustard)
Elect	Rowntree	1862	UK	1906	Not found	Not found	Food (cocoa)
Guinness	Guinness	1759	UK	1876	1888	1900	Alcohol (stout)
Hennessy	Hennessy	1765	France	1876	1872	1862	Alcohol (champagne)
Huntley & Palmer	Huntley & Palmer	1822	UK	1876	1887	1893	Food (biscuits)
Pears	Lever Brothers	1885	UK	1878	1882	1895	Toiletries (soap)
Rowntree	Rowntree	1862	UK	1889	1907	Not found	Food (pastilles, gum drops)

* 1877 - German Company; 1878 – British Company.

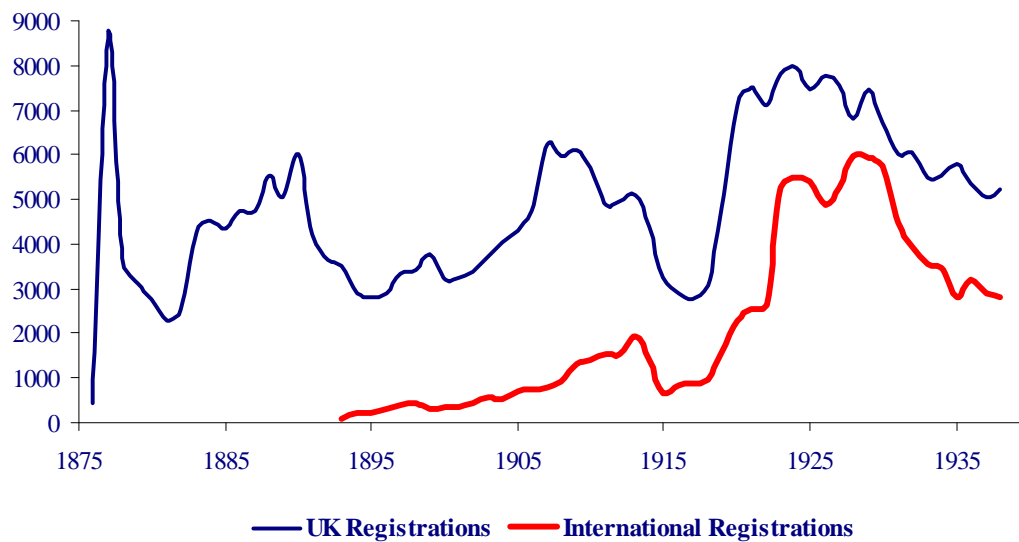
Source: foundation of the firm – companies’ private archives or companies’ biographies; UK, US; and French registration and product category – trademark registrations published near trademark agencies.

Table 1 – Foreign Trademark Registrations in France, 1886-1905
 (Number of registrations per year)



Source: based on trademark registrations, INPI, France.

Table 2 – UK and International Trademarks Registrations (1875-1936)
 (total number of registrations per year)



Source: WIPO, Madrid Union Concerning International Registration of Marks