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The Scoop on Lookalike Packaging: EDNY Serves Up a Trade Dress Reminder

August 4, 2026
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A recent decision from the Eastern District of New York offers a fresh take on a question that comes up often for consumer brands: when does similar packaging cross the line into infringement? In *Van Leeuwen Ice Cream LLC v. Rebel Creamery LLC*, the court found, after a bench trial, that Rebel Creamery infringed Van Leeuwen's trade dress because its ice cream pint packaging was likely to cause confusion. The court also separately found dilution by blurring under New York law. The result was no soft serve: the court entered a permanent injunction requiring Rebel to redesign its packaging and awarded Van

Leeuwen $23,785,000 in profits from sales of infringing pints.

What makes the case interesting is that while many trademark infringement cases look at one element, Van Leeuwen was claiming a combination of features used across its classic dairy pint line: cardboard monochromatic pints with matching monochromatic lids, a primarily pastel palette, black script lettering with an exaggerated capital letter and limited additional descriptive writing in black, and an overall minimalist design aesthetic. The court emphasized that trade dress protection can apply to a specifically articulated combination of packaging features that creates a consistent overall look, even if individual aspects of that look (such as color palette, typography, negative space) may be difficult to protect by themselves.

That point matters for consumer-facing brands, especially in crowded retail categories where packaging does a lot of work at the shelf.

The court found that Van Leeuwen had articulated its trade dress with enough specificity, used it with a consistent overall look across the relevant product line, and shown that it was nonfunctional. It also found the trade dress inherently distinctive because the design reflected arbitrary choices among many available packaging options. Separately, the court credited unsolicited media attention, advertising, and sales growth as evidence of marketplace strength.

The likelihood-of-confusion analysis was also grounded in real-world retail conditions. The products were sold in the same grocery channels and were sometimes placed near one another in freezer cases. The court credited evidence that the brands appealed to overlapping consumers and that the packaging could be difficult to distinguish in an ordinary shopping environment, where ice cream is often a relatively low-cost, impulse purchase. There was also evidence of actual confusion, including a consumer report, store-employee confusion, and survey evidence showing a 34.3% net confusion rate. In other words, the analysis was not frozen in the abstract; the court looked at how consumers actually encounter the products in the marketplace.

Intent and documentation played a major role, too. Because the decision followed a bench trial, the court made detailed factual and credibility findings, including a pointed finding that Rebel's founders' testimony about independently developing the packaging was not credible. The court focused in part on the striking overlap in design choices and the absence of saved design iterations or other contemporaneous development records. Those facts supported the court's bad-faith finding and its decision to award profits.

The bad-faith finding also helped defeat Rebel's good-faith remote-user defense, which failed for an additional reason as well: Rebel first sold the accused packaging in Los Angeles, where Van Leeuwen was already sold.

For brand owners, the decision is a reminder that packaging can become a valuable source-identifying asset when it is distinctive, consistently used, and reinforced in the marketplace. Companies that invest in packaging systems should think early about defining the visual elements that make the packaging recognizable, using those elements consistently across the relevant product line, and building evidence of marketplace recognition through advertising, sales, and media attention.

For companies developing new packaging, clearance should look beyond word marks and logos. A design that does not copy a competitor's name may still create risk if its overall commercial impression is too close — especially where the products move through the same channels, appeal to overlapping consumers, or are likely to sit side by side at retail. The decision also highlights the value of preserving design briefs, clearance materials, concepts, and iterations that can help demonstrate how the packaging was independently developed.

Finally, the decision shows the high stakes. The award was not based on Van Leeuwen's lost sales; it was a disgorgement of Rebel's profits from the infringing pints, reduced by 33% on equitable grounds to account for market factors, including evidence that keto and better-for-you demand helped drive some of Rebel's sales. That kind of remedy can change the risk calculus for lookalike packaging. If the accused product succeeds, the profits potentially at issue may grow right along with it.

Practical Takeaways

For brand owners protecting and enforcing their rights:

- **Develop a consistent, recognizable packaging system.** Van Leeuwen benefited from clearly defining its classic dairy line and showing that the line maintained a consistent overall look despite limited variations.
- **Build the record behind the brand.** Design materials helped show that the packaging reflected deliberate choices, while advertising, sales growth, and unsolicited media attention supported its marketplace strength.
- **Consider complementary protection for distinctive lettering.** Brands using distinctive lettering may wish to consider both standard-character and stylized-design filings to protect the look of their mark, and not just similar verbiage.

For companies developing packaging and seeking to avoid infringement:

- **Clear the overall package, not just the name or logo.** Consider the combined effect of color, typography, layout, materials, negative space, and other recurring features.

- **Preserve evidence of independent development.** The absence of preliminary designs or saved iterations contributed to the court's bad-faith finding against Rebel.
- **Assess the downside early.** A different brand name may not eliminate risk, and the consequences can include both a redesign and an award of profits, as the $23,785,000 award here illustrates.

Bottom line

The Van Leeuwen decision is a useful cautionary tale for both brand owners and challengers. Distinctive packaging can be a protectable brand asset when it is deliberately developed, used, reinforced in the marketplace, and supported by a record of its development. And for companies entering a market with established visual codes, taking inspiration from a competitor's look can put a brand on thin ice if the final packaging lands too close to the overall impression consumers already recognize.