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Copycat Culture on Trial: How the “Dupe” Economy Is Testing the Boundaries of Trade Dress Law

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ABSTRACT

This article examines the rapid rise of the dupe, from knockoff to legally sophisticated and affordable alternative celebrated by consumers at large. Dupe manufacturers now exploit legal grey areas by replicating products with the exact look and feel of luxury goods while intentionally omitting proprietary logos or word marks. This trend consequently tests the limits of trade dress protection to their utmost extent. To defend the infringement suits brought against them, dupe makers rely on clear brand labelling, functional necessity, and a substantial price difference coupled with a distinct target audience. Brand owners answer by invoking the more advanced doctrines of initial interest confusion and post-sale confusion, contending that dupe makers harm their reputation in the eyes of the public. While examining the landmark judgments, this article analyses how courts evaluate the likelihood of consumer confusion, visual distinctiveness, and packaging similarities. Ultimately, the article highlights the judicial balance between fostering healthy market competition and safeguarding a brand's visual identity in an era that increasingly normalises imitation.

Keywords: *Dupe Economy, Knockoff, Trade Dress Law, Luxury Brands, Cultural Shift*

I. INTRODUCTION: THE CULTURAL SHIFT FROM KNOCKOFF TO DUPE

Dupe culture has taken hold quickly, and it has altered both how consumers shop and how they assess the worth of a fashion object. Owning a copy of a designer item once carried a measure of embarrassment; it is now displayed as evidence of shopping acumen. What began as a niche practice has settled into an ordinary feature of retail life. A survey of United States adults conducted in October 2023 found that thirty one per cent had intentionally bought a dupe of a premium product, rising to forty nine per cent among Generation Z respondents,¹ and videos carrying the dupe hashtag on a single short video platform had attracted close to six billion

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¹ Ellyn Briggs, *Why Brands Can Benefit From 'Dupe' Culture*, MORNING CONSULT (Oct. 18, 2023) (survey of 2,216 United States adults fielded Oct. 2-5, 2023). The figure records respondents who had bought a dupe at some point, not within any stated period.

views by the end of that month.² Whether the practice has peaked is another matter: the same organisation recorded twenty seven per cent in March 2025.³

For most of the preceding decades, imitation luxury goods remained at the margins of the market. A fake Louis Vuitton bag or a counterfeit Rolex typically originated with an informal seller of doubtful legitimacy, and the object of the exercise was to affix a protected mark to inferior materials so that the goods could be produced and sold quickly. Trade of that kind is unlawful in the United States and in India alike,⁴ and it remains substantial: the OECD places the value of world trade in counterfeit and pirated goods at some 467 billion United States dollars in 2021, amounting to as much as 2.3 per cent of global trade.⁵

That picture no longer holds. Little stigma now attaches to buying an affordable substitute for a high end item, and purchasers display their finds to friends and followers rather than concealing them.

The feature that distinguishes the contemporary dupe from yesterday's knockoff is that nearly every element of the product is reproduced except the mark. Producers have become adept at recreating a product's appearance while steering carefully clear of a proprietor's registered mark. That single choice creates a zone of legal uncertainty which allows such goods to be sold openly without being classed as counterfeit, and it raises difficult questions of trade mark infringement, trade dress protection and dilution.

Because the dupe does not reproduce the original wholesale, but recreates its overall look and feel while omitting logo and word marks, it is genuinely difficult to say where the practice stops being lawful competition and becomes actionable trade dress infringement.

Trade dress law exists to answer questions of precisely this kind. It is the doctrine built to protect the visual identity of a product and to prevent consumers from being misled, and it is presently being tested at its outer limits as courts work through disputes over shape, pattern, branding and the likelihood that a buyer will be confused.

² *Gen Z, Millennials Are Shopping for Dupes the Most, Report Finds*, CNBC (Oct. 31, 2023) (reporting that videos carrying the dupe hashtag had drawn "nearly six billion views to date"). The platform has since withdrawn public hashtag view counts, so the figure stands only as reported on that date.

³ *Are Dupes Less Enticing Now?*, MORNING CONSULT (Mar. 17, 2025) (survey of 2,202 United States adults).

⁴ Lanham Act § 32, 15 U.S.C. § 1114(1); The Trade Marks Act, 1999, No. 47 of 1999, § 29(1) (India).

⁵ ORG. FOR ECON. CO-OPERATION & DEV., *MAPPING GLOBAL TRADE IN FAKES 2025: GLOBAL TRENDS AND ENFORCEMENT CHALLENGES* (2025). The figure rests on 2021 data and is an upper bound: it excludes counterfeits both produced and consumed domestically, and excludes online piracy. The share has fallen across the series, from 3.3 per cent to 2.5 per cent and now to 2.3 per cent, and is therefore not evidence that counterfeiting is growing as a proportion of world trade.

II. UNDERSTANDING TRADE DRESS: THE UNSPOKEN BRAND IDENTITY

It is commonly assumed that brand identity begins and ends with a logo or a word mark, but it reaches considerably further. It is the sum of everything that shapes how a brand is perceived: its history, its name and its overall visual presence, tangible and intangible alike.

Trade dress protects exactly this element of brand identity, namely the visual look and feel of a product, its packaging, or even the physical layout of a business, in so far as it tells a customer who stands behind the goods. In the American formulation it reaches the total image of a product or business, including features such as size, shape, colour or colour combinations, texture and graphics.⁶

A utility patent secures only twenty years of exclusivity over a functional invention.⁷ Trade dress protection, by contrast, may in principle run indefinitely, provided the design continues to perform its function of signalling the source of the goods. It is chiefly the functionality doctrine that prevents this potentially perpetual right from being turned into a monopoly over what the patent system has released into the public domain.⁸

In the United States trade dress falls under section 43(a) of the Lanham Act, which creates a civil claim against any person who uses a false designation of origin likely to cause confusion.⁹ That protection attaches to a product's trade dress even in the absence of registration with the United States Patent and Trademark Office, provided the trade dress is inherently distinctive.¹⁰

India's Trade Marks Act, 1999 takes a different route: it nowhere defines trade dress as a term. The concept is nonetheless built into the statute through three definitions read together. Section 2(1)(zb) defines a trade mark as a mark capable of being represented graphically and of distinguishing the goods or services of one person from those of others, and provides expressly that it may include the shape of goods, their packaging and combination of colours; section 2(1)(m) defines a mark to include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours; and section 2(1)(q) defines a package to cover cases, boxes, containers, coverings, folders, receptacles, vessels,

⁶ *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 764 n.1 (1992), quoting *Blue Bell Bio-Medical v. Cin-Bad, Inc.*, 864 F.2d 1253, 1256 (5th Cir. 1989), and *John H. Harland Co. v. Clarke Checks, Inc.*, 711 F.2d 966, 980 (11th Cir. 1983) (trade dress covers the total image of a product or business and may include features such as size, shape, colour or colour combinations, texture, graphics or even particular sales techniques). The formulation is taken from the courts of appeals, not framed by the Supreme Court.

⁷ 35 U.S.C. § 154(a)(2) (term of a utility patent runs twenty years from the date of filing).

⁸ *TrafFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23, 29 (2001) ("A utility patent is strong evidence that the features therein claimed are functional.").

⁹ Lanham Act § 43(a), 15 U.S.C. § 1125(a).

¹⁰ *Two Pesos* (n 6), at 776 (proof of secondary meaning is not required to prevail on a claim under section 43(a) where the trade dress at issue is inherently distinctive).

caskets, bottles, wrappers, labels, bands, tickets, reels, frames, capsules, caps, lids, stoppers and corks.¹¹ It is this trio, taken together, on which Indian courts rely when describing what trade dress means in practice.

The statutory hook is narrower than it first appears. Section 29 makes infringement of a registered mark actionable, and section 29(4) reaches dilution by use on dissimilar goods where the mark has a reputation in India, but the words trade dress and get up appear nowhere in that section, and packaging is mentioned only in section 29(7), which deals with the application of a registered mark to labelling or packaging material.¹² Trade dress in India is therefore litigated for the most part as passing off, a right of action expressly preserved by section 27(2).¹³ The fullest domestic statement of the concept is judicial rather than statutory. In *Colgate Palmolive Company v. Anchor Health and Beauty Care Pvt. Ltd.* the Delhi High Court described colour combination, get up, layout and size of container as a form of trade dress involving the overall image of the product's features, and treated it as the means by which goods are identified with their source and origin.¹⁴

Qualification for protection is not automatic. A proprietor must clear several hurdles first.

A. The Requirement of Distinctiveness

Trade dress must be capable of distinguishing one proprietor's goods or services from those of everyone else. It is distinctive only if it genuinely operates as an indicator of origin, and the stronger that signal, the stronger the case for protection. Jurisdictions have developed graded tests for measuring how distinctive a design actually is. In the United States the position now turns on a distinction drawn in *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*: product packaging may be inherently distinctive, but product design, like colour, never is, so that a claimant asserting design trade dress must prove secondary meaning.¹⁵ That rule matters a great deal to the dupe dispute, because what a dupe reproduces is almost always the design of the product rather than the box it arrives in.

¹¹ The Trade Marks Act, 1999, No. 47 of 1999, §§ 2(1)(m), 2(1)(q), 2(1)(zb) (India). The definitions are clauses of sub-section (1) of section 2; the abbreviated forms "section 2(m)" and "section 2(zb)" are common in the judgments, but the full form is used here.

¹² The Trade Marks Act, 1999, No. 47 of 1999, §§ 29(1), 29(4), 29(7) (India).

¹³ The Trade Marks Act, 1999, No. 47 of 1999, § 27(2) (India) ("Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person.").

¹⁴ *Colgate Palmolive Co. v. Anchor Health & Beauty Care Pvt. Ltd.*, 2003 (27) PTC 478 (Del) para. 54 (India), also reported at 108 (2003) DLT 51.

¹⁵ *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 212, 215-16 (2000) (product design, like colour, is not inherently distinctive; the trade dress in *Two Pesos* was product packaging or a *tertium quid* akin to it; and ambiguous trade dress should be classified as product design, so requiring secondary meaning).

B. The Requirement of Non-Functionality

Features that exist to perform a practical task, rather than to indicate where a product came from, cannot be appropriated as trade dress. A feature is functional if it is essential to the use or purpose of the article, or if it affects its cost or quality.¹⁶

The rule against protecting functional features prevents trade dress from being used as an indirect route to a monopoly over an invention or a useful design, whether the patent covering it has expired or was never applied for at all.¹⁷

C. The Requirement of Likelihood of Confusion

Trade dress claims usually turn on whether the claimant can show a likelihood of confusion between its product and the defendant's. American courts apply multi factor tests to determine whether an appreciable number of ordinary purchasers would probably be misled.¹⁸ Indian courts approach the question rather differently, comparing the broad and essential features of the two get ups rather than placing them side by side to hunt for differences in design, and asking whether the overall similarity would be likely to mislead a person usually dealing with one into accepting the other if it were offered to him.¹⁹ The Supreme Court has since applied the same approach at the level of packaging, directing attention to the overall impression created by the mark and the get up rather than to the points of difference a careful shopper might notice.²⁰ Strip away the machinery, however, and the question at the centre is a simple one: would an average buyer actually be mistaken about who made the product?

III. THE DUPE DEFENCE: WHY COPYCATS CLAIM THEY ARE NOT INFRINGING

Dupe manufacturers stop short of outright counterfeiting. They produce replicas that sit in a zone of legal uncertainty, and when a luxury proprietor sues they arrive with a deliberate defence built around the gaps in conventional intellectual property doctrine. Three arguments do most of the work.

¹⁶ *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 850 n.10 (1982); *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 165 (1995).

¹⁷ *TrafFix* (n 8), at 30 (where an expired utility patent claimed the features in question, one seeking trade dress protection "must carry the heavy burden of showing that the feature is not functional").

¹⁸ *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492 (2d Cir. 1961); *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341 (9th Cir. 1979).

¹⁹ *Parle Products (P) Ltd. v. J.P. & Co., Mysore*, (1972) 1 SCC 618 (India), also reported at AIR 1972 SC 1359.

²⁰ *Heinz Italia v. Dabur India Ltd.*, (2007) 6 SCC 1 (India).

A. The Clear Brand Labelling Shield

The dupe defence rests principally on clear brand labelling. A counterfeiter commits outright trade mark fraud by placing an unauthorised luxury mark on a fake product; a dupe manufacturer does not, and instead places its own registered brand name, logo and typography prominently on the packaging or the hangtag.²¹

That visible difference in branding doubles as a shield against infringement claims, since a clearly separate brand identifier is itself an answer to the suggestion that a purchaser was confused at the point of sale.

B. Aesthetic and Functional Grey Areas

A design feature built around a practical purpose cannot be monopolised through trade dress, and dupe manufacturers lean heavily on that rule. They characterise their designs as functional necessities rather than as proprietary brand signatures.

By dismantling a luxury product into its individual functional components, dupe makers argue that permitting one company to claim exclusive trade dress rights over the whole design would suppress competition that ought to be perfectly healthy. The argument tracks the rationale of the functionality doctrine itself, which exists to stop trade mark law from inhibiting legitimate competition by allowing a producer to control a useful product feature.²²

C. Price Point Disparity and Consumer Intent

Dupe disputes frequently turn on a stark disparity in price. A fast fashion producer selling a lookalike at a small fraction of the price of the designer original, four thousand rupees against two hundred thousand, will argue that its purchasers and its channels of trade have essentially nothing in common with those of the luxury proprietor. Price, the proximity of the goods and the marketing channels used are all recognised factors in the American multi factor tests.²³

Dupe sellers also point to how well informed the contemporary purchaser is. A consumer who searches specifically for a dupe of a luxury item already knows exactly what is being bought and is choosing the cheaper alternative deliberately. Because the buyer wanted the budget version from the outset, the argument runs, there is no deception and therefore no actionable harm.

²¹ *Gen Z, Millennials Are Shopping for Dupes the Most, Report Finds*, *supra* note 2 (contrasting the counterfeit, which carries an unauthorised mark, with the dupe, which reproduces features of the original without it).

²² *Qualitex* (n 16), at 164 (the functionality doctrine “prevents trademark law, which seeks to promote competition by protecting a firm’s reputation, from instead inhibiting legitimate competition by allowing a producer to control a useful product feature”).

²³ *Sleekcraft* (n 18) (proximity of the goods and the marketing channels used are among the enumerated factors bearing on likelihood of confusion).

IV. NEW FRONTIERS OF INFRINGEMENT: INITIAL INTEREST AND POST-SALE CONFUSION

The dupe defence can appear watertight at the checkout counter, but a trade dress claim does not necessarily stop there. To reach copyists sheltering behind distinct labelling and low prices, claimants increasingly invoke two further doctrines.

A. Initial Interest Confusion

The doctrine applies where a competitor uses another proprietor's protected trade dress to capture a shopper's initial attention, even though any confusion is dispelled well before the purchase is made.²⁴

A search for a luxury handbag or a comparable item ordinarily returns rows of thumbnails that look nearly identical and draw the shopper into clicking further.

Even where the shopper appreciates, on reaching the product page, that the item is a third party dupe, the copyist has already traded on the original's reputation, using its protected trade dress as a form of digital bait to attract traffic and sales. The doctrine has its limits. American courts have declined to find actionable confusion where search results are clearly labelled with the seller's own brand name and a reasonably prudent consumer would not be misled.²⁵

B. Post-Sale Confusion

Post-sale confusion may be the sharpest instrument available against the dupe economy. Here the court stops looking at the actual purchaser and asks instead how the wider public reads the product once it has been sold, a shift that has allowed proprietors of car designs and of handbags alike to succeed against replicas their own buyers were never deceived by.²⁶

The buyer who acquires a dupe knows perfectly well that it is an inexpensive replica. Once it is worn in public, or appears in a photograph online, observers seeing it at a distance often cannot distinguish it from the genuine article.

Two distinct kinds of harm may follow.

- Damage to reputation and perceived quality. If the inexpensive dupe scuffs, tears or falls apart quickly, observers who take it for the genuine article may conclude that the luxury proprietor's own quality has declined.

²⁴ *Brookfield Commc'ns, Inc. v. West Coast Entm't Corp.*, 174 F.3d 1036 (9th Cir. 1999).

²⁵ *Multi Time Mach., Inc. v. Amazon.com, Inc.*, 804 F.3d 930 (9th Cir. 2015).

²⁶ *Ferrari S.p.A. Esercizio Fabriche Automobili e Corse v. Roberts*, 944 F.2d 1235 (6th Cir. 1991); *Hermes Int'l v. Lederer de Paris Fifth Ave., Inc.*, 219 F.3d 104 (2d Cir. 2000).

- Erosion of exclusivity. Luxury brands depend on scarcity and prestige to hold their value. Once the market is saturated with lookalikes visually indistinguishable from the original, the design loses its status signalling power, and the proprietor's brand equity suffers directly.

That the contest has moved beyond the image of a shopper deceived inside a store is visible on the dockets. In June 2025 the proprietors of the Lululemon marks sued a warehouse retailer and others in the Central District of California, pleading registered and unregistered trade dress in three of their garment lines alongside design patent and unfair competition claims, and alleging in terms that one purpose of selling dupes is to confuse consumers at the point of sale, or observers after it, into believing that the goods are the plaintiffs' own. Those allegations were never tested: the action was dismissed on the parties' stipulation in August 2026 with no ruling on the merits.²⁷ What the pleading illustrates, whatever its outcome, is that the vocabulary of the dupe and the post-sale confusion theory have together entered the trade dress complaint itself. The question in such cases is no longer only whether a shopper was misled, but whether a brand's visual identity can retain its value in a culture in which imitation has become another form of commerce.

V. LANDMARK JUDGMENTS

In *Parle Products (P) Ltd. v. J.P. & Co., Mysore* the appellant sought an injunction restraining the respondent from infringing the registered mark on its biscuit wrappers. The trial court and the High Court had both dismissed the suit. On appeal by special leave the Supreme Court found that the two packets were nearly identical in size, that their colour schemes closely matched, and that although the designs were not exact copies the overall resemblance was close enough that an unwary purchaser could readily mistake one for the other. The Court held that the respondent had infringed the appellant's registered trade mark, decreed the suit, granted an injunction restraining the sale of biscuits in similar wrappers, and awarded costs throughout.²⁸ The reasoning transfers directly to the dupe, because the comparison is of broad and essential features and not of the label a careful shopper might pause to examine.

In *Colgate Palmolive Company v. Anchor Health and Beauty Care Pvt. Ltd.* the Delhi High Court observed that the degree of deception or confusion varies from product to product and

²⁷ Complaint paras. 4-7, *lululemon athletica canada inc. v. Costco Wholesale Corp.*, No. 2:25-cv-05864-FLA-AJR (C.D. Cal. filed June 27, 2025) (pleading registered trade dress under 15 U.S.C. § 1114 and unregistered trade dress under § 1125(a) in the Define, Scuba and ABC lines, together with design patent and state law claims, and using the term "dupe" throughout). The action was dismissed on the parties' stipulation in August 2026 with no ruling on the merits, so nothing pleaded was ever adjudicated.

²⁸ *Parle Products* (n 19).

from purchaser to purchaser. Answering the argument that the court should decline to intervene at all, it pointed out that the case concerned two distinct products, tooth powder and toothpaste, sold in different packaging and containers. On the contention that red and white was merely a common trade colour scheme, the Court found that no other manufacturer in fact used that particular combination, or anything close to it, for tooth powder.²⁹

In *Cadbury India Ltd. v. Neeraj Food Products* the Delhi High Court dealt with a defendant that had launched a chocolate product called James Bond using a colour scheme, layout and design arrangement almost identical to the plaintiff's registered Cadbury Gems mark. The defendant did not dispute selling chocolates in that packaging, and its own search report on record confirmed that the packaging used the same illustrations and colours as the plaintiff's product. The Court held that the packaging infringed the plaintiff's rights in the mark, along with the copyright in the products sold under it.³⁰

In *Gorbatschow Wodka KG v. John Distilleries Ltd.* the Bombay High Court restrained the defendant from marketing vodka in a bottle whose bulbous shape reproduced the plaintiff's. The Court held that the shape in which goods are marketed, their packaging and their combination of colours together form what is described as the trade dress, and that the plaintiff's shape bore no functional relationship to the product but was capricious and original.³¹ The reasoning maps onto the dupe dispute, since it separates the arbitrary from the functional in exactly the way the dupe defence resists.

The Indian position on a single colour, by contrast, remains unsettled. In *Christian Louboutin SAS v. Pawan Kumar* the Delhi High Court declared the red sole a well known trade mark on the strength of continuous use since 1992 and a reputation extending across some sixty countries.³² A differently constituted single judge later held, in *Christian Louboutin SAS v. Abubaker*, that a combination of colours is a sine qua non under sections 2(1)(m) and 2(1)(zb), so that a single colour cannot be a mark at all.³³ That judgment was set aside on appeal, the Division Bench restoring the suit and expressly declining to express any opinion on the merits.³⁴ The question therefore remains open, and it matters to the dupe economy, because

²⁹ *Colgate Palmolive* (n 14).

³⁰ *Cadbury India Ltd. v. Neeraj Food Products*, 142 (2007) DLT 724 (India), also reported at 2007 (35) PTC 95 (Del).

³¹ *Gorbatschow Wodka KG v. John Distilleries Ltd.*, 2011 (47) PTC 100 (Bom) (India).

³² *Christian Louboutin SAS v. Pawan Kumar*, CS(COMM) 714/2016 (Del. High Ct. Dec. 12, 2017) (India).

³³ *Christian Louboutin SAS v. Abubaker*, CS(COMM) 890/2018 (Del. High Ct. May 25, 2018) (India).

³⁴ *Christian Louboutin SAS v. Abubaker*, RFA(OS)(COMM) 13/2018 (Del. High Ct. Apr. 11, 2019) (India) (setting aside the judgment of 25 May 2018, restoring the suit to the file of the single judge and expressing no opinion on the merits).

much of what a dupe reproduces is a signature colour or a signature placement of colour rather than a mark in the conventional sense.

VI. CONCLUSION

What emerges is a dupe economy that has changed shape considerably and is pushing trade dress doctrine up against its practical limits as luxury proprietors attempt to hold their ground. The line between counterfeiting and legitimate replication is thin, but it is real: a counterfeiter commits fraud by placing a luxury brand's name on a cheap lookalike, whereas a dupe manufacturer builds the same appearance under a name entirely its own. The two also serve genuinely different purchasers, since dupe manufacturers work with cheaper materials to make lower quality versions accessible to shoppers who cannot stretch to luxury prices. Even so, luxury proprietors still feel the effect, because dupes generate widespread post-sale confusion, whether through social media or through everyday use in public.

The doctrinal difficulty is that the two requirements most obviously engaged pull against the claimant at the very point where the copying is most complete. *Wal-Mart* demands secondary meaning for product design, and *TrafFix* strips out whatever is functional, so the evidentiary burden is heaviest precisely where the dupe is closest to the original.³⁵ Post-sale confusion offers a way through, but it asks a court to protect exclusivity itself rather than to prevent deception, and that is a wider claim than trade mark law has traditionally been willing to underwrite.

³⁵ *Wal-Mart* (n 15), at 212; *TrafFix* (n 8), at 29.