How Store Brand Evolution May Influence IP Cases

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Recently filed lawsuits have drawn renewed attention to the evolving boundaries between competition and potentially unlawful imitation in grocery retailing. Take, for example, J.M. Smucker Co.'s Oct. 13 complaint against Trader Joe's Co., and Mondelez International Inc.'s May 27 complaint against Aldi Inc.

In these lawsuits, filed in the U.S. District Court for the Northern District of Ohio and the U.S. District Court for the Northern District of Illinois, respectively, national brand manufacturers allege that private-label products of Aldi and Trader Joe's unlawfully mimic the trade dress of well-known branded goods such as the Smucker's Uncrustables product and several Nabisco cookie and cracker products.

These lawsuits come amid a broader grocery retail shift, as private-label products capture growing consumer attention and loyalty. Grocery retailers have historically positioned private labels as lower-cost alternatives to branded products. Pandemic-driven shortages, lower prices and differentiated product offerings have led to an expansion of private-label brands across store formats.

In the first half of 2025, store brands reached record U.S. market shares, accounting for more than 20% of dollar sales and growing four times faster than national brands.[1]

Retailers with limited-assortment formats, such as Aldi and Trader Joe's, are especially known for their brand-as-a-brand strategies, in which their private-label product assortments tie closely to the store brand and comprise a majority of sales.[2]

Against this backdrop, these recent cases will require courts to assess allegedly look-alike packaging and, in Smucker, even product design within ecosystems where the retailer itself may function as the primary brand.

These cases are rooted in trademark and trade-dress claims under the Lanham Act — which protects the trademark owner against use of similar marks if such usage is likely to result in consumer confusion — and turn on whether a product's appearance is likely to cause such confusion as to source, sponsorship or affiliation.

Courts traditionally weigh factors such as the strength of the mark, similarity of appearance, competitive proximity, evidence of actual confusion and degree of care that a typical purchaser exercises when purchasing the product. However, applying those factors can be particularly complex in the private-label context, in which product offerings from retailers like Aldi and Trader Joe's may blur the line between manufacturer and merchant.

In the remainder of this article, we explore how the growing importance of private-label products and the evolving grocery retailing context may influence the analysis of consumer confusion for branded and private-label products.

Growing Brand Equity and Importance of Private-Label Products

Today, grocery retailers offer thousands of individual private-label products under tiered portfolios of store brands. These private-label assortments include national-brand equivalents like the products at issue in Smucker and Mondelez, as well as additional lineups of store brands positioned to different consumer price points (e.g, budget-value or premium) and dietary behaviors (e.g., natural-organic or gluten-free) or within specialty or ancillary grocery categories (e.g., pet, baby or beauty).

Increasingly, these private-label products are seen as more than cheaper substitutes for brand name products. According to NielsenIQ's 2025 Private Label and Branded Products report, over 50% of surveyed consumers believe that grocery private labels are of equal quality to or higher quality than name brands.[3]

As a result, private-label brands can be a major driver of consumer brand equity for grocery retailers. Consumers benefit from lower prices and an assortment of increasingly differentiated store-branded products across grocery categories. A 2023 survey by the Food Industry Association found that nearly 90% of shoppers considered private labels at least somewhat important in choosing a store, with over half saying private labels were very or extremely important.[4]

Additionally, grocery retailers typically earn higher profit margins on private-label products compared to national brands, and successful private-label portfolios can contribute to a retailer's positive brand equity and ability to win consumers' spending over its competitors.[5]

Accordingly, grocery retailers have invested heavily in private-label product development. In October 2025, Albertsons Cos. Inc, the second-largest traditional supermarket retailer in the U.S., announced a goal of increasing its private-label unit sales penetration from 25% to 30% across its over 2,200 stores.[6]

The Rise of Limited-Assortment Stores

Coinciding with the increasing importance and brand equity of private-label products, limited-assortment stores like Trader Joe's and Aldi have emerged as growing players. Grocery retailing is highly heterogenous, and differences in store format, product assortment, and the prominence of private-label offerings may influence how consumers understand the origins of the products they buy.

Grocery retailers operate in several distinct formats, including:

- Traditional supermarkets and supercenters, such as Kroger Co., Albertsons and Walmart Inc.;
- Warehouse club stores, such as Costco Wholesale Corp. and Walmart's Sam's Club;
- Natural food stores, such as Amazon.com Inc.'s Whole Foods Market Inc.; and
- Limited-assortment stores, such as Trader Joe's, Aldi and Lidl Stiftung & Co. KG.

Traditional supermarkets typically rely on providing shoppers with a broad assortment of goods and staffed counters that enable one-stop-shopping convenience. Warehouse club stores offer discounts to shoppers by charging membership fees and selling products in bulk.

Retailers operating in both models rely on a broad mix of name-brand and store-brand products. For example, private-label products made up about one-quarter of Walmart's and Kroger's unit sales and about one-third of Costco's and Sam's Club unit sales in the 12 months ending Sept. 30.[7]

In contrast, retailers like Trader Joe's and Aldi focus on offering a smaller assortment of almost exclusively private-label products. This allows limited-assortment retailers to offer consumers reduced prices due to simplified operations.[8] In Trader Joe's and Aldi stores, private-label products made up more than three-quarters of unit sales over the same period.[9] Aldi boasts that over 90% of its product assortment is from its own private-label brands.[10]

These limited-assortment stores with store-brand-driven assortments have proliferated into new local grocery markets in recent years. Aldi alone is set to operate 2,600 U.S. locations by the end of 2025,[11] more than any traditional supermarket operator except Kroger. Trader Joe's is similarly expanding, with new stores opening across the U.S.[12]

Implications for Assessing Brand Confusion

These changes in the grocery retailing environment invite the question of how the evolution of private-label products might influence cases of trade dress and trademark infringement.

For example, how might consumers' awareness of or preference for a retailer's store brands influence their likelihood of confusion? If the private-label product's quality or packaging leads to beliefs of an association or sponsorship with a well-known national brand, might consumer confusion be more likely?

To explore these questions, we consider how grounding an analysis of consumer behavior within an accused product's specific grocery retailing context may affect our understanding of how consumers form perceptions of the source and origin of such products.

Competitive Proximity

National-brand products and national-brand-equivalent private-label products compete to fulfill the same consumer needs, but differences in retail context determine the extent of overlap in their sales channels.

Both types of products frequently appear on the same shelf at traditional supermarkets and supercenters, warehouse club stores, and natural food stores. Such proximity could facilitate visual comparison, making the "similarity of trade dress" factor more salient when analyzing consumer confusion, and may indicate that the products directly compete. However, in limited-assortment stores, the branded competitor product may not be present at all. The absence of branded alternatives in this context could influence how consumers interpret packaging.

Affiliation Versus Source Confusion

Differences in retail context may also shape how, or whether, confusion arises. When national brands and private labels appear side by side, similarities in trade dress could influence how consumers perceive affiliation or endorsement. In contrast, in limited-assortment settings where only store brands are sold, packaging may or may not signal a common source and could depend on individual knowledge and exposure to other brands.

Consumer perceptions of source may also raise the potential for confusion. Store brands may be manufactured by supermarket retailers using in-house manufacturing capabilities, such as Kroger; dedicated private-label product manufacturers; or manufacturers of national-brand products that can utilize excess manufacturing capacity to produce private-label products.[13]

In this instance, understanding the reasoning behind a particular belief may be relevant. Shoppers could believe that certain private-label products are produced by the national brands they resemble.

In some cases, this belief reflects marketplace reality: Many branded manufacturers conduct white-label or contract production runs for retailers, producing unbranded versions of their own or similar products to utilize excess capacity. This could arise when the retailer's product lines mirror those of well-known brands. In such circumstances, consumers could assume an underlying manufacturing relationship, even if none exists.

Brand-as-a-Brand Effects and Consumer Care

The retail context may influence the extent to which consumers affiliate the at-issue private-label products with the stores that sell them rather than with national brands.

Grocery retailers' investment in private-label product assortments serves as a source of differentiation, as these products are typically exclusive to the retailer. This association may be especially pronounced in limited-assortment formats where private-label offerings define the store's value proposition.

Consumers often choose these stores precisely because of their curated, store-branded assortments. Some products develop cult followings, with articles, blogs and social media posts reinforcing their visibility and consumer appeal.[14]

This may suggest a more deliberate form of purchaser care — one directed toward the retailer's reputation rather than toward evaluating the source of individual products. Accordingly, analyzing potential consumer confusion in these contexts requires careful consideration of how store format and brand equity may influence consumer expectations.

Conclusion

These dynamics illustrate how the evolving grocery retailing landscape complicates traditional notions of consumer confusion for private-label products. Assessing consumer confusion in the private-label setting requires attention to how retail format, assortment strategy and consumer expectations interact.

In limited-assortment stores like Trader Joe's and Aldi, where private labels dominate, the question is not simply whether two packages look alike but how shoppers may interpret that similarity within the broader grocery retailing ecosystem. As private-label programs continue to expand across grocery retailing and threaten to cannibalize brand-name shelf space and product sales, similar disputes are likely to emerge across product categories and grocery retailing store formats.

As courts confront these evolving disputes, parties must be prepared to carefully analyze not only whether consumers are likely to be confused, but also how that confusion, if present, can arise within the modern grocery retailing context and affect consumer expectations and behavior.

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Endnotes

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