

In the scope of intellectual property, trade dress refers to the visual elements of a product’s packaging, such as colors, shapes, design, and layout. All these elements combined help to distinguish one product from another, aiming to prevent consumer confusion and unfair competition.

Recently, a notable case emerged involving allegations of trade dress breach. The Hershey’s group filed a lawsuit against Mondelez Brazil over the packaging of its “Lacta Intense” products, alleging a violation of the design characteristics of Hershey’s Special Dark chocolates’ packaging. Hershey’s seeks to prohibit the use of the similar packaging by Mondelez, arguing that the similarity could cause confusion at the time of purchase, leading consumers to believe that the products originate from the same company.

MONDELEZ PRODUCT



HERSHEY’S PRODUCT



However, the first instance judge decided that, although the products share similar elements, it would be premature to conclude that the visual identity similarities are

substantial enough to demonstrate a clear violation. The judge also noted that the “black and gold” color scheme might be part of a market trend.

The São Paulo Court of Justice, in a subsequent decision, affirmed the need for a more detailed analysis by a neutral professional to assess the potential for market confusion.

Conflicts involving trade dress have been increasingly intensified, showing to be an extremely important point in the context of competition. The example of these brands highlights significant issues of intellectual property and unfair competition, emphasizing the diligence required when developing packaging with visual elements that could cause confusion and/or improper association with third-party products, potentially leading to legal disputes.

For more information, please contact our [Intellectual Property and Contracts team](#).