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FREE RIDING IN AI –DRIVEN COMMERCIAL PRACTICES

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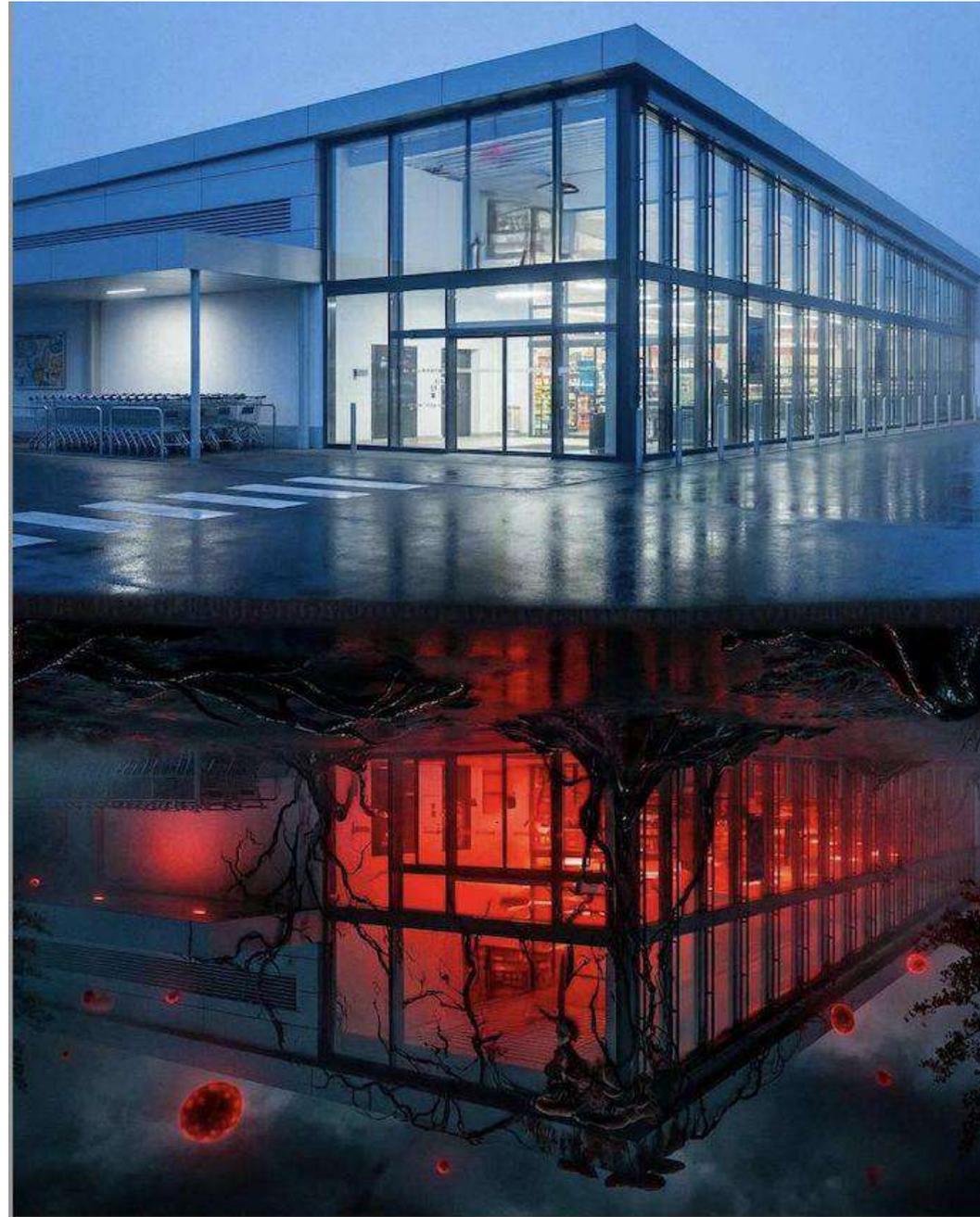
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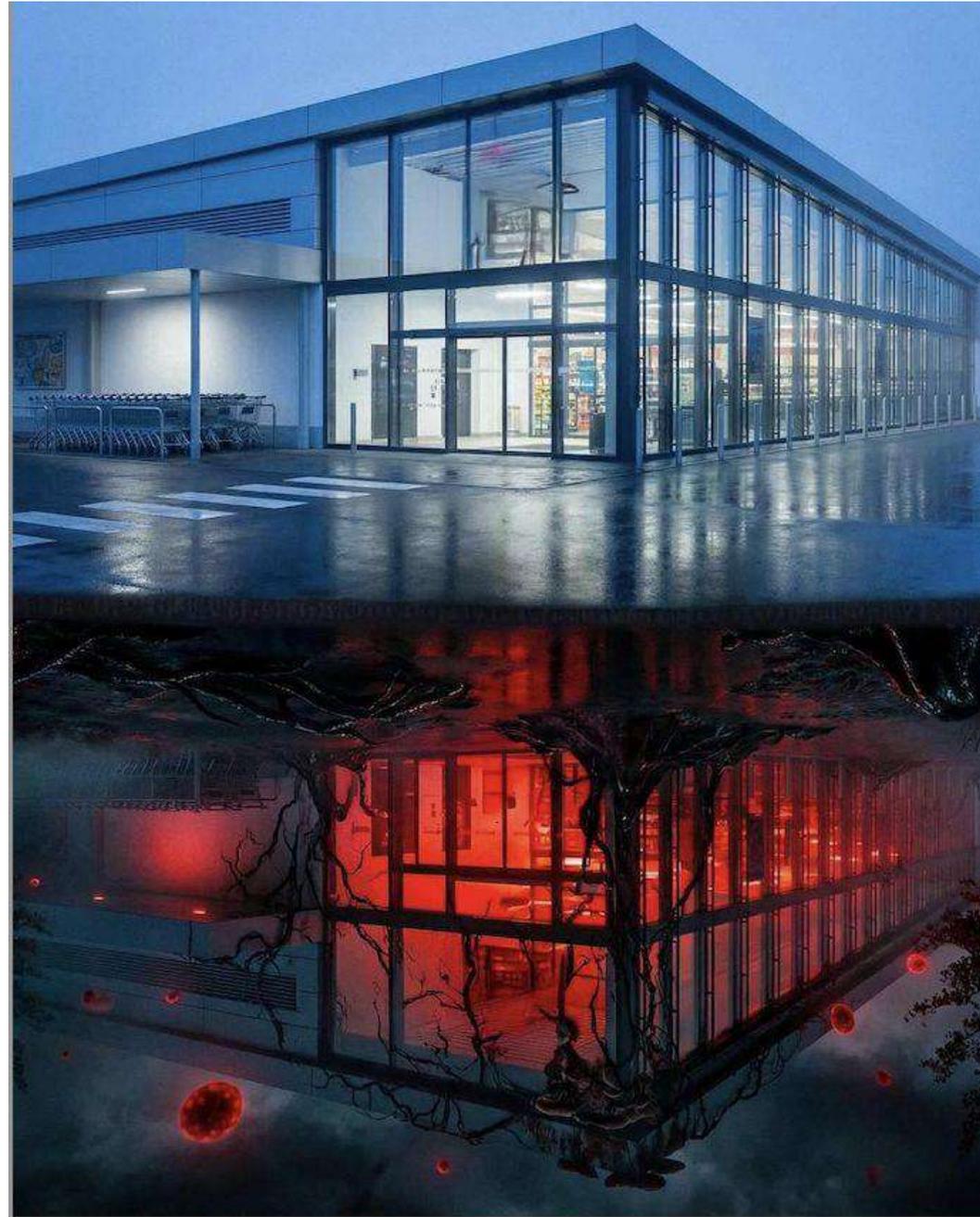




- <https://www.youtube.com/watch?v=e4XvO7Dltmc>



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Directive 2005/29 of the European Parliament and of the Council of 11 May 2005 concerning Unfair Business-To-Consumer Commercial Practices in the Internal Market

Article 5

Prohibition of unfair commercial practice

(2) A commercial practice shall be unfair if:

(a) it is contrary to the requirements of professional diligence, and

(b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.



Article 6 Misleading actions

A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:

- (a) the existence or nature of the product;
- (b) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;



- (c) the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product;
- (d) the price or the manner in which the price is calculated, or the existence of a specific price advantage;
- (e) the need for a service, part, replacement or repair;
- (f) the nature, attributes and rights of the trader or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;**
- (g) the consumer's rights, including the right to replacement or reimbursement under Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (8), or the risks he m



DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the enforcement of intellectual property rights

(13) It is necessary to define the scope of this Directive as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field and/or by the national law of the Member State concerned. Nevertheless, that requirement does not affect the possibility, on the part of those Member States which so wish, to extend, for internal purposes, the provisions of this Directive **to include acts involving unfair competition, including parasitic copies, or similar activities.**



Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, EUTMR

Article 8(5)

*Upon opposition by the proprietor of a registered earlier trade mark, the trade mark applied for shall not be registered where it is identical with, or similar to, an earlier trade mark, irrespective of whether the goods or services for which it is applied are identical with, similar to or not similar to those for which the earlier trade mark is registered, where, in the case of an earlier EU trade mark, the trade mark has a reputation in the Union or, in the case of an earlier national trade mark, the trade mark has a reputation in the Member State concerned, **and where the use without due cause of the trade mark applied for would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.***



- clear evidence of **unfair advantage**
- depends on factual and economic circumstances
- primarily shaped through CJEU case law



- courts tend to apply free-riding protection cautiously
- rarely claimed



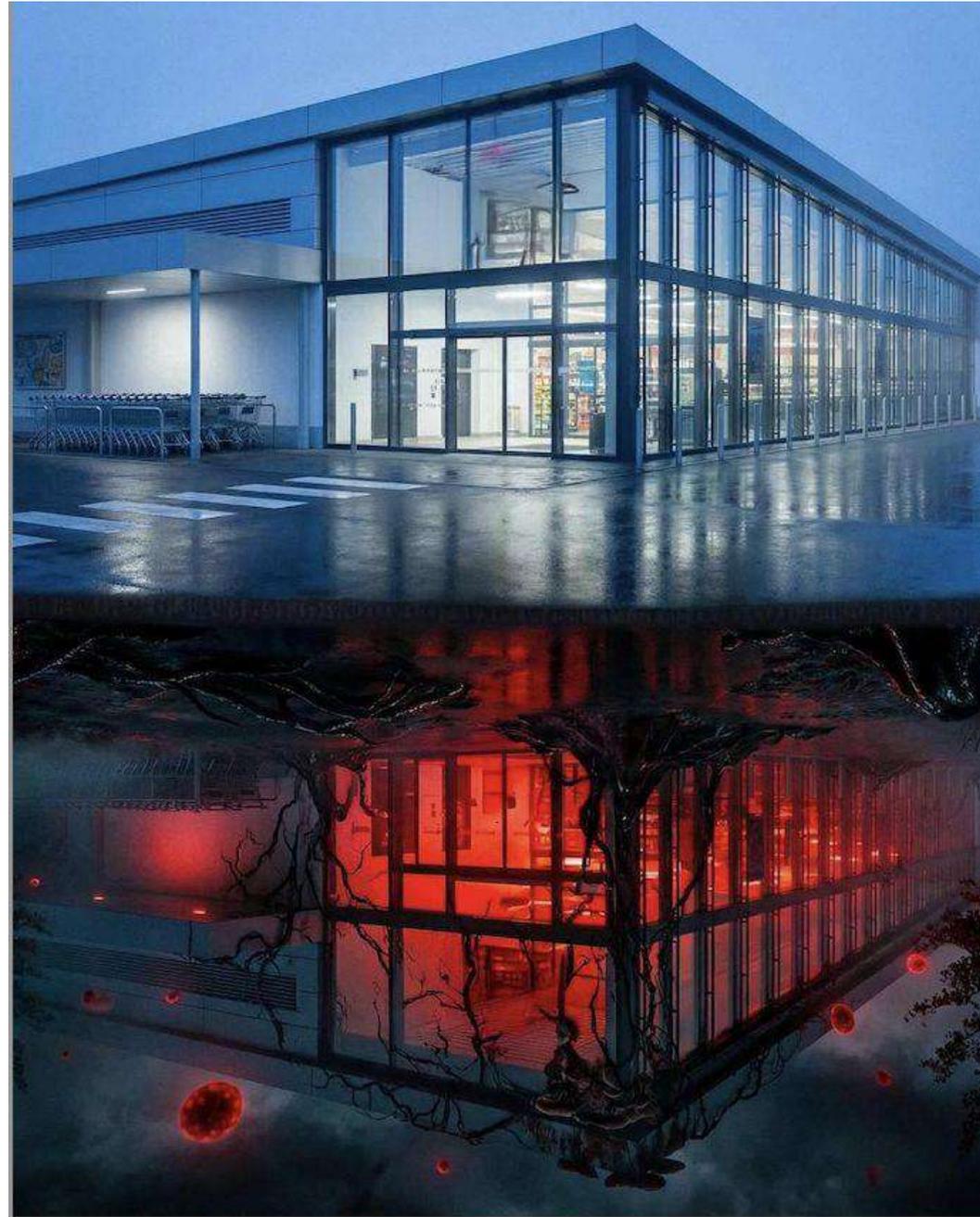
Unfair advantage occurs when a later user **derives benefit from the reputation without authorization** by:

- borrowing attractiveness
- exploiting prestige and reputation
- benefitting from marketing efforts of the original without contributing financially

The focus is on the advantage gained,
rather than the harm suffered by the trademark owner



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original



created by AI



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QUESTION: Please create the photo of the store in reversed reality

ANSWER: Creating images • **Inverted neon night shopping experience**





Question: Where did he get the idea for this kind of setup?

Answer:

The idea of this **“inverted reality” with neon lighting** does not originate from a single source, but rather from a **combination of several strong visual and cultural influences** commonly used to depict alternative realities.

.....

Parallel universe / “upside-down” aesthetics

Visual concepts of parallel worlds (such as the “Upside Down” in *Stranger Things*) often rely on:

- familiar locations,
- altered lighting,
- unnatural colors,

to communicate that the viewer is seeing the same place, but under different rules.



Conclusion: AI systems learn from massive datasets that often include copyrighted works.

Questions:

Is AI becoming an accelerator of free riding?

How should we monitor AI-generated content?

What would be the rules to prevent possible free riding?

Consideration: AI does not remove human responsibility.



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THANK YOU FOR YOUR ATTENTION!

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