THE JURISPRUDENCE OF STYLE: AN ANALYTICAL FRAMEWORK FOR FASHION LAW AND INTELLECTUAL PROPERTY INTEGRATION

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ABSTRACT

Fashion covering the millions of goods, services and professionals involved draws its shine from an industry at the same time providers of hype and artists of the unique. Own-sized and diverse, it is also a trillion-dollar global juggernaut supporting more than 300 million people worldwide; the changing face of apparel exemplifies how law's intersections and intersections with technology business cultures and communities are rife with complexity and contest and So, opportunity. The regulation ranging from intellectual property rights (IPR) to commercial rules to sustainability goals is, in fact, an amorphous body of law, what we might call fashion law, that takes proposed solutions to be investigated considering how well traditional intellectual property centers are addressed by apparel's long short mass and idiosyncratic cycles.

Keywords: Fashion Law, Intellectual Property Rights, Environment, Trademark Philosophical Underpinnings and the Utility-Art Divide.

Any scholarly treatment of fashion and IPR must, because of this, start with the question of the ontological classification of the object of fashion. The industry has suffered for the last many decades under an 'artisan stigma' - the brand, the craft, the artistry; for decades, fashion has been deemed to be the work of craftsmen rather than of 'great masters, ' thereby depriving it of the generous protection extended to great artists or great masters[1]. This categorization leads to a harsh dichotomy in the law: while a work of art (a Picasso painting) will be given the extensive protection of a copyright automatically, a 'useful article' (the shape or form of a garment) is classed as an 'article of utility' and because of this, cannot have copyright in its shape or silhouette. Fashion-centric justifications for IPR tend to oscillate from Lockean labor theory to economic theorizing.[2]

The Lockean approach brings an "explicitness to an artist's labor" that is grounded in the designer's intellectual work and physical labor in fashioning a new pattern, textile or silhouette to establish property and rights in the creation. Most legal minds tend to agree that the threshold in fashion for "creativity" seems to be "less" than in other creative endeavors; that is, a couple of notches of a hemline or an extra leg of a pant may be viewed as "small modifications" rather than "original creation". Conversely, defenders of utilitarianism perceive this lack of protection as the result of an "imported systemic design flaw", not a fluke of the system. This is known as the "piracy paradox".[3]

The Doctrinal Heart of Fashion: Copyright and the Separability Test

In the U.S the most prevalent dispositive doctrine in fashion law analysis is "the useful article". The copyright act of 1976 denies copyright protection to any article having an intrinsically utilitarian function unless such art can be identified separately from such articles' utilitarian aspects. The separability requirement has been the most contentious and rigorously argued issue in the doctrine of fashion law for fifty years.[4]

[1] Céline Barrère & Stéphanie Delabruyère, Intellectual Property Rights on Creativity and Heritage: The Case of the Fashion Industry, 32 Eur. J.L. & Econ. 305 (2011).

[2] N. E. Mills, *Intellectual Property Protection for Fashion Design: An Overview of Existing Law and a Look Toward Proposed Legislative Changes*, 5 SHIDLER J. L. COM. & TECH. 24 (2009).

[3] Cassandra Elrod Indiana Journal of Global Legal Studies Vol. 24, No. 2 (Summer 2017), pp. 575-596 (22 pages)

[4] Carl Mazurek is a J.D. candidate, 2017, at NYU School of Law.

The Landmark Shift: Star Athletica v. Varsity Brands

The Supreme Court decision in Star Athletica, L.L.C. v. Varsity Brands,[5] Inc. in 2017 dramatically re-set the fields of fashion copyright in the US. The question of the case is the copyrightability of graphic elements on cheerleading uniforms, numbered stripes, chevrons, and zig zag lines. The defendant Star Athletica contended thatthe graphics in design were intrinsic to the functional nature of the costume, which identified the gown as a cheerleading uniform and made it more saleable. The Supreme Court rejected this functional-marketability argument: the court established a simplified two-part test for separability. Features of a useful article are copyrightable if they can be perceived as two- or three-dimensional separable pictorial, graphic, or sculptural features incorporated into a useful article or as features that would qualify as separately copyrightable pictorial, graphic or sculptural features if imagined apart from a useful article. Yet, the 'extracted' feature need not leave the article in fully functional conditionthe imaginative extraction of a pattern from a dress is good enough even if the 'remaining' white dress turns out to be a copy of the original.

Comparative Jurisprudence: The EU and Indian Models

A legitimate fashion IPR analysis should consider the "separability" model of the US, rather than the more guarded regimes of the EU and Indian jurisdictions. In the EU a double-tiered protection is available through the Community Design Regulation, which offers for Registered Community Designs (RCD) and Unregistered Community Designs (UCD).[6] This is the latter regime that is of interest for the fashion industry, as UCD are created immediately upon their publication and are available to protect "the appearance of the whole or a part of a product resulting from the features of the lines contours colors shape texture".[7]

India has a sui generis system in the Designs Act 2000 which protects the aesthetic features of an article; Even so, most important point of legal analysis in Indian law arises from Section 15 of the Copyright Act, which covers the coherence between "artistic works" and "industrial designs." Section 15(2) prescribes that copyright in any design that can be registered under the Designs Act shall be deemed to have ended, once the design is applied to an article and

[5] Star Athletica, LLC v. Varsity Brands, Inc., 580 U.S. 405 (2017).
[6] Adrija Ghose, Fashion Forward, Legally Protected: Analysing IPR Laws in India and the West, 2(2) NLUA J. Intell. Prop. Rts. 111 (2023).
[7] John Zarocostas, “The Role of IP Rights in the Fashion Business: A US Perspective” (3 August 2018)

reproduced not more than fifty times through industrial processes. This 50-copy rule, or what could be called "the legal boundary," takes the designer out of long-term copyright (life + 60 years) and into short-term design protection (15 years) once reaching scale.[8]

Trademarks, Trade Dress, and the Valuation of Prestige

In an industry which is driven more by the intangible power of a brand than the material goods involved, the law of trademarks is the "backbone" of IPR practice. While copyright will rights strip the expression of a work from the work itself, trademark will rights strip the source-identifying function away from the trademark: its brand name, logo or configuration.

Trade Dress and the Acquisition of Secondary Meaning

Trademark discussions in fashion are not entirely limited to logos, Still, and may delve into the realm of trade dress the total image and overall appearance of an item. To claim trade dress, the feature must be shown to be non-functional and to have "secondary meaning" in the mind of the consumer, a term signifying that the design was adopted by the manufacturer so that consumers associated it with the seller alone.

The "counterfeit" dispute between YSL[9] and Louboutin[10] over red-lacquered soles famously hinged on whether the red sole "cost nothing and do nothing, " and so failed the test of functional utility, or whether Louboutin's use of the color on the bottom of shoes afforded it secondary meaning. The Second Circuit found that, although a single color may not be trademarked in the abstract, Louboutin had created a protected and distinctive design that merited a trademark, to the dismay of many who feared a monopoly over the color red.

The Informed User and the Individual Character Test

Design infringement in the EU is often determined by reference to the "informed user". In the leading case of Karen Millen Fashions Ltd v. Dunnes Stores[10], the Court of Justice of the European Union (the CJEU) was asked to decide what level of "individual character" is required of unregistered designs. In this case, the defendant, Dunnes Stores, pointed out that

[8] Hogan Lovells, Intellectual Property for Fashion Goods in USA

[9] Yves Saint Laurent v. Brompton Lifestyle Brands Private Limited & Anr., CS(COMM) 789/2022 (2022)

[10] *Christian Louboutin SAS v. Nakul Bajaj & Ors.*, CS(COMM) 344/2018.

[10] Karen Millen Fashions Ltd. v. Dunnes Stores, Case C-345/13, ECLI:EU:C:2014:2013 (C.J.E.U. Sept. 19, 2014).

theKaren Millen designs were an "amalgam" of existing design features.

The CJEU provided a designer-friendly judgment, determining that "individual character" of a design was to be determined by reference to the existing designs alone, using individual existing designs rather than a combination of differing features from existing designs. It also defined the "informed user" as someone who was fashionable rather than an "average consumer", or an expert. This generous provision of individual character brings designers with a strong shield against fast fashion copyists who merely varied the small features of a visual "overall impression".

Fast Fashion and the Crisis of the Piracy Paradox

The accelerated growth of the "fast fashion" and "ultra-fast fashion" business models have shattered the socio-economics laws that underpinned the piracy paradox. Previously, authors like Raustiala and Sprigman believed that copying could be the most productive driver of innovation, but when it comes to brands such as Shein and Zara, who can bring a trend from the catwalk to an online shop in 15 days or less, may do just that.

The Erosion of the First-Mover Advantage

This "first-mover advantage", based on a time-limited period when they could patent the "costly" premium of the market places before imitators came in, has been eroded by increased online globalized, Amazon-enabled, AI-optimized supply chains enough that it is now marginal, if at all, in cases such as Sonia Edwards v. Boohoo Group, [11]simply because smaller designers are unable to establish the 'access' required to impugn when the massmarket reproduces the unregistered design virtually preemptively. This sectoral analysis suggests that the 'piracy paradox' may develop further still into a 'piracy tragedy', This way explaining the injury to growers currently leaving much of the sector uninvaded and unprotected because a 'race to the blinkered bottom' has occurred.

The Digital Frontier: NFTs, the Metaverse, and Virtual Wearables

The integration of fashion with blockchain technology has created a new theater for IPR disputes. The analysis of digital fashion requires a shift from physical "useful articles" to

[11] Edwards v Boohoo.com UK Ltd & Ors [2025] EWHC 805 (IPEC)

"virtual commodities" that serve as markers of social status in digital environments.

Analysis of Hermès v. Rothschild (MetaBirkins)

The Herms International v. Rothschild[12] case was the first full legal examination of trademark rights in the world of NFT. Artist Mason Rothschild authored 100 MetaBirkins, digital representations of fake-fur-covered Herms Birkin bags. He claimed the work was an "artistic experiment" and Because of this still protected free speech. The case focused on whether the Gillian v. Rogers test, which protects artistic works unless use of a trade mark is "no artistic relevance" or "explicitly misleading" was invoked. Per real consumer confusion, evidence was introduced showing articles attributing the project to Herms and a consumer survey that found 18.7% of consumers surveyed were confused as to the source of the product. The jury's finding against Rothschild confirmed that within the digital world, the title of "artist" does not give an author license to make commercial use of popular trademarks while leaving the consumer confused as to the product's actual source. This case relevant as brands may now bring claims to apply their physical trademarks to virtual objects now that luxury houses are about to commercialize their own authorized products in the Metaverse.

Technological Paradigm Shifts: AI and 3D Printing

As the industry embraces the Fourth Industrial Revolution, Artificial Intelligence (AI) and 3D printing are forcing a reassessment of foundational IPR concepts, particularly regarding authorship and ownership.

Generative AI and the Authorship Requirement

AI's impact on fashion design includes predictive analytics, fabric pattern generation, and the use of synthetic models. According to the application, AI may qualify for copyright protection. Under the U. S. and E. U. copyright laws, copyright relies on "human authorship.

"In the U. S. the Copyright Office has refused copyright registration for works solely authored by AI, leading to a "public domain explosion" many unprotectable, AI-generated works. Legal professionals will then inquire as to at what level of "human creative control" the design is still protectable. For example, protecting a design where the human art is just a tool such as a

[12] Hermès Int'l v. Rothschild*, No. 22-CV-384 (JSR), 2023 WL 1458126 (S.D.N.Y. Feb. 2, 2023).*

paintbrush that would realize the human vision would be more likely to still be protected, while an AI computer making the silhouette and pattern would put it in the public domain. This introduces a risk factor that conversely could turn individuals toward user experience, trademark, and trade dress as forms of protections that are more about brand recognition and do not require a human author.

3D Printing and Decentralized Piracy

Additive manufacturing/3D printing offers another challenge; Power to the individual (consumer). It can disintermediate any supply chain and borders and thereby threaten the "demise of IP" in tangible products. Copyright of Digital Files: An extended discussion has started about whether the files for 3D printable objects (computer-aided-design blueprints) should be treated as "software".[13][14]

This would mean that the designers could sue those who distribute the blueprints rather than waiting until the items are printed. Patent Infringement and Hobbyists. Almost all patent laws contain exceptions for "private, non-commercial use." But, the sheer number of hourly printing hobbyists that would be printing individual patented spare parts or accessories at home would be ruinous to the economic interests of the patent owner.[15]

Product Liability & Safety: 3D printing makes it more difficult to establish liability. For example, if a consumer were to print a shoe based on a 3D template, which then caused injury, liability could be ascribed to the template designer, the printer manufacturer or even the raw material supplier.

Regulatory Evolution: The Hardening of Sustainability and ESG Laws

Perhaps the most significant emerging area in fashion law is the transition from voluntary corporate social responsibility to mandatory legal accountability regarding environmental impact and labor practices.

[13] Ben Depoorter, Intellectual Property Infringements & 3D Printing: Decentralized Piracy, 65 Hastings L.J.
[14] (2014).
[15] International Journal Of Law Management & Humanities [ISSN 2581-5369] Volume 8 | Issue 3 2025

The Crackdown on Greenwashing

"Greenwashing" disingenuous and unsubstantiated environmental claims is the main focus for regulators in the EU/UK/US currently. The UK's Competition and Markets Authority (CMA) has obtained undertakings from a number of brands such as ASOS and Boohoo that their environmental claims will be honest, fair and substantiated. Under the Digital Markets, Competition and Consumers Act 2024, the CMA has the power to fine up to 10% of worldwide turnover. In the US, green washing is most commonly analyzed in consumer class action litigation.

For example, in Lizama v. H&M [16]the court upheld the brand, holding that H&M's 'Conscious Choice' label was carefully qualified and did not mean the garments were 'sustainable' in any absolute sense. Still, the Federal Trade Commission (FTC) is preparing to amend its Green Guides to provide more strict definitions of 'recyclable' and 'carbon neutral, ' among other terms. Mandatory Due Diligence and the Circular Economy

The European Union's Strategy for Sustainable and Circular Textiles represents the most ambitious legislative overhaul in the industry's history. The Ecodesign for Sustainable Products Regulation (ESPR) will introduce mandatory requirements for product durability, reparability, and recyclability, alongside a ban on the destruction of unsold apparel starting in 2026.

In New York, the proposed Fashion Sustainability and Social Accountability Act (Fashion Act) would require fashion sellers with over $100 million in global revenue to map their supply chains, set science-based carbon reduction targets, and remediate adverse human rights impacts. This shift from IPR as a tool for "protection" to regulation as a tool for "accountability" marks a new era in fashion law, where a brand's legal health is determined as much by its carbon footprint as by its trademark portfolio.

Conclusion

The expert examination of fashion law exposes a discipline incrementally transforming from the exclusive universe of the narrower sub-set of intellectual property, to an emergent and more complex multi-disciplinary area of global governance. The fundamental nexus between fashion

[16] Lizama v. H&M Hennes & Mauritz LP, No. 4:22-cv-01170 (E.D. Mo. Nov. 3, 2022).

& IPR is Though still characterized by a divergence between aesthetics and use; even as the US navigates the refinements of 'conceptual separability, the EU has a more advocate friendly design system which is more appropriate to the current fashion cycle.

The three trends of the future in the area will be: (1) the 'primacy of the brand, ' which will keep the law ruling trademark/trade dress over copyrights, Mostly in an AI old/new way of thinking that muddies the waters of authorship. (2) the 'digital-physical convergence, ' which will see the development of an integrated IP approach to protect the brand's virtual and tangible identities.

And (3), the 'regulatory hardening' of sustainability mandates that will make more pure an play until 'traditional' IP law. Designers and brand owners working in this landscape need a strategic, multi-jurisdictional approach to protection. An exclusive reliance on any one kind of IPR protection will be ineffective.