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Integrative Seminar II Bridge 4 Final
Knockout Knockoffs

As the fashion industry evolves, it is critical to preserve one of the fundamental objectives of fashion: individuality. Close copying or fashion plagiarism includes designs that are made identical to or discernibly resemble another pre-existing design with minimal uniqueness. Using “inspiration, adaptation, homage, referencing, or remixing”¹ in fashion is as dated as fashion itself; however, these practices often cross into plagiarism. The lack of legal protection for smaller American fashion designers from fast fashion copyists, well-known brands, and other designers results in decreased profitability of originals, therefore reducing the incentive for design innovation. Upcoming designers unprotected by the law should seek methods to protect their designs while understanding effective techniques to avoid close-copying other designers.

In the fashion industry today, exclusivity and uniqueness compete against consumer demands of affordability and accessibility. Modern consumer interests have substantially shifted to a desire to resemble Instagram influencers to an extent past simply pulling inspiration from outfits, but rather, purchasing items endorsed by their idols. Social media provides a lucrative platform for influencers to promote e-commerce based fast-fashion boutique shops. Similar to how confection fashion “made haute couture styles accessible to more bourgeois consumers”² in the 19th century, online boutiques and brands, most notoriously Forever 21, respond to consumer demands of affordability by close copying high-end looks at a large scale and low cost instantly after they debut on runways, inevitably discrediting the original designer. Rapid copying gives copycat brands “the

¹ Scott Hemphill C. and Jeannie Suk, “The Law, Culture, and Economics of Fashion,” *Stanford Law Review* 61, no. 5 (2009): 1153, www.jstor.org/stable/40379706.

² Mary Lynn Stewart, “Copying and Copyrighting Haute Couture: Democratizing Fashion, 1900-1930s,” *French Historical Studies* 28, no. 1 (Winter 2005): 107, doi:10.1215/00161071-28-1-103.

ability to wait and see which designs succeed, and copy only those”³ by choosing targets after observing consumer and retailer buying decisions, allowing for market reach before the dissolution of a trend.

Forever 21 has faced 53 copyright or trademark lawsuits between 2003 and 2008. Other fast fashion companies, such as Zara and H&M, avoid close copying in their strategy- instead, in-house designers adapt “on-trend product[s],”⁴ resulting in only two lawsuits for H&M and none for Zara during the same period. While fast-fashion copyists can stimulate trend adoption through accessibility, fast-fashion designers can offer affordability while “also supply differentiating details.”⁵ Nonetheless, both methods perpetuate the unsustainable demand for fast fashion, and the original designer’s creative process goes unacknowledged in the public eye.

Fast-fashion copyists tend to affect smaller designers and brands profoundly. Intellectual property laws will protect luxury goods designers- “the most salient status-signaling items in fashion, those adorned with logos of high-end brands”⁶ are already protected by trademark and trade dress. Luxury goods are also advantageously difficult for fast-fashion companies to copy due to the cost of production. Brand image and authenticity feed into desire of status, serving as protection against copying by making “a copyist uncertain whether an item’s appeal comes from its design, or instead from the inimitable purchase experience.”⁷ Upcoming designers face substantial limitations in the fashion industry and are typically the victims in infringement cases.

³ Hemphill C. and Suk, “The Law, Culture, and Economics of Fashion,” 1171.

⁴ Hemphill C. and Suk, “The Law, Culture, and Economics of Fashion,” 1174.

⁵ Hemphill C. and Suk, “The Law, Culture, and Economics of Fashion,” 1174.

⁶ Hemphill C. and Suk, “The Law, Culture, and Economics of Fashion,” 1170.

⁷ Hemphill C. and Suk, “The Law, Culture, and Economics of Fashion,” 1178.

Of course, there is also a significant amount of plagiarism committed by luxury goods designers. Named “the biggest copy designer in the world”⁸ by Roberto Cavalli, Michael Kors is amongst the countless luxury goods designers and brands, including Yves Saint Laurent, Olivier Rousteing, and Dolce & Gabbana, whose designs have received criticism for copying a pre-existent design. The fashion industry recognizes the benefits of fashion plagiarism, believing that copying may help “to kill popular designs and birth new ones”⁹ and that “copying gives meaning to the original rather than the other way round.”¹⁰ However, such beliefs seem to only apply to well-established brands and further steers the direction of innovation towards luxury fashion. Designers protected by trademark and trade dress innovate freely, while smaller, newer designers are inadequately legally protected from plagiarism by fast fashion companies, well-established brands, or other designers. The lack of innovation and emergence of new designers in the industry drives creators to devote creative resources to high-end luxury goods, demonstrating a need to implement an effective intellectual property protection system that can directly protect new designers.

Upcoming designers typically cannot afford the constant legal support large brands have to monitor activity and battle intellectual property rights issues. Thus, they should seek to apply practical methods to prevent close copying and protect rights to creations should infringement occur.¹¹ NJORD Lawfirm recommends implementing practices such as

⁸ Jelizaveta Rastorgujeva, “NJORD Estonia: Is plagiarism and copying inevitable in the fashion industry?” NJORD Law Firm, January 11, 2018,

<https://www.njordlaw.com/njord-estonia-is-plagiarism-and-copying-inevitable-in-the-fashion-industry/>

⁹ Rastorgujeva, “NJORD Estonia: Is plagiarism and copying inevitable in the fashion industry?”

¹⁰ Okechukwu Nwafor, “Of Mutuality and Copying: Fashioning Aso Ebi through Fashion Magazines in Lagos,” *Fashion Theory: The Journal of Dress, Body & Culture* 16 (2012): 512, doi:10.2752/175174112X13427906403840.

¹¹ Rastorgujeva, “NJORD Estonia: Is plagiarism and copying inevitable in the fashion industry?”

recording dates of creating designs, saving sketches, drafts, and notes in the case of infringement or accusation of infringement and including confidentiality agreements with third parties such as employees, manufacturers, and business partners when showing ideas or sketches. Additionally, designers should ensure that third parties adequately waive their intellectual property rights to the original designer during collaboration. They should seek to eventually register a trademark to solidify the origin of products to consumers, which enforces a sharper brand image and reduces fast fashion copying to fast fashion designing and trendsetting.¹² Fashion plagiarism stems from the materialistic demand to access otherwise unattainable pieces. By supporting the close copy industry, consumer actions further incentivize companies to continue producing unethical and stolen designs. Consumer ignorance is often caused by a lack of awareness of the origins of the design.

Designers must develop a unique brand and explore how inspirational elements from other designs can be used without infringing copyright or creating knockoffs. By integrating unique styles with recognizable, pre-existing graphics and designs, designers can avoid close copying while developing a unique brand to grow visual identity, reputation, and image. Modifying prints typically means making at least five changes, or there must be at least a 20 percent difference in the adapted design.¹³ Controversial designer Dapper Dan has been prosecuted numerous times for using the fabrics and prints of well-established, trademarked luxury brands such as Louis Vuitton and Gucci in successful attempts to allow “ his new-money clients to festoon themselves in old-money symbols.”¹⁴ Many of Dapper Dan’s designs border on plagiarism and may partially appear

¹² Rastorgujeva, “NJORD Estonia: Is plagiarism and copying inevitable in the fashion industry?”

¹³ The Haute Team, “Fashion Plagiarism: Time to Knock it Off!” *Something Haute*, November, 2019, <https://www.somethinghaute.com/fashion-plagiarism-in-pakistan/>.

¹⁴ Kalefa Sanneh, “Harlem Chic. How a Hip-hop legend re-mixed name-brand fashion,” *The New Yorker*, March 25, 2013, <https://www.newyorker.com/magazine/2013/03/25/harlem-chic>.

unethical; however, he was able to transform recognized fabrics into new and unique forms. His crafty methodologies named him as the bridge between luxury fashion and hip-hop fashion, inspiring generations of upcoming designers. A well-respected designer who, perhaps, more so successfully optimizes methods of integration is Kim Jones, current menswear creative director of Dior. Designing for a well-known fashion house means Jones must adhere to techniques such as collaboration to pursue “the process of cloning a brand's DNA into something more relevant, exciting, and shoppable than ever before”¹⁵ and avoid legal trouble. Jones’ collections always incorporate other artists and designers- his collaborative intentions allow him to integrate signature elements from pre-existing designs into his work, a prime example being the Dior Saddle bag refurbished with Matthew Williams’s trademark Alyx buckle. Upcoming designers should use such strategies to avoid copying. Fashion plagiarism not only reflects a lack of originality and talent but often leads to opportunities to profit off another designer’s intellectual property.

Amidst the Covid-19 global pandemic, fashion houses such as Chanel, Dior, Gucci, Maxmara, and Prada have postponed or cancelled upcoming shows¹⁶, consequently leaving online boutique based shops with minimal novelty designs to copy combined with a reduced rate of production. While fast-fashion copyists struggle to produce new garments, many designers may utilise this time to focus energies on creating new, original ideas and designs that are temporarily protected from copying. Renowned marketing and brand recognition professor Stephen King has stated, “A product can be copied by a competitor; a

¹⁵ Thom Bettridge, “Monsieur Jones.” *GQ*, September 2019, <https://www.gq.com/story/kim-jones-dior-men-profile>

¹⁶ Jessica Davis, “How the Coronavirus Has Impacted the Fashion Schedule,” *Harper’s Bazaar*, March 18, 2020, <https://www.harpersbazaar.com/uk/fashion/shows-trends/g31222160/fashion-shows-cancelled-coronavirus/?slide=1>.

brand is unique. A product can be quickly outdated; a successful brand is timeless.”¹⁷ The most effective method of expanding a brand is not relying on the next runway show to close-copy, but to develop image and authenticity through original content.

¹⁷ Rastorgujeva, “NJORD Estonia: Is plagiarism and copying inevitable in the fashion industry?”

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