Fashion Copycats and Copyright Law

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Fashion itself is art; it combines design, culture, and movement all in one to create an embodiment of style suited to one’s personality. Every year, fashion week takes place in fashion capital cities like Paris, New York, and London where high-end designers stage runway shows to showcase their intricately crafted garments. These shows include a wide range of designs, from haute couture to ready-to-wear pieces, and its purpose is to boost the designer’s profile in the industry, and to inspire other designers to create a more commercially viable and affordable fashion line.

With the fast-paced environment that runs “heavily on the creativity of its designers,” there is a lot of pressure and very limited time to create not just new designs, but ones that are unique. The constant struggle to keep up with trends and deliver new collections is proof of the designer’s passion; therefore, it is only right to acknowledge their hard work by respecting their designs. Unfortunately, not everyone sees it this way. Fast-fashion retailers use these one-of-a-kind designs as an opportunity to mass-produce similar, if not identical, designs. So how is this legal?

In the United States, protection for fashion designs in their entirety is limited due to its utilitarian factors. Since garments are used to cover our bodies, and handbags are used to carry our belongings, they are deemed as functional items rather than creative ones. With the limited rights designers hold in obtaining protection for their designs, this renders them “virtually powerless against the mounting number of knockoffs threatening the industry.”

As such, fast-fashion brands like H&M and Zara are able to perfectly replicate the design of an expensive garment and selling it at a more wallet-friendly price without infringing upon the law.

Based on the profit data by McKinsey Global Fashion Index, Zara is on average 2-3 times more profitable than other retailers. Rather than developing its own designs, Zara jumps straight into making identical copies of designs debuted in fashion shows because “fast-fashion retailers’ success largely depends on speedy reflection of ever-changing customers’ taste for fashion and bringing the latest styles that meet their needs and wants.”

Zara saves time skipping the creativity process and is able to get its products out on the market much sooner, all while simultaneously ensuring that they can sell high-trending items at a faster pace to bring in more profit to the company.

Coco Chanel once said that “imitation is the highest form of flattery,” but at whose expense?
However, if a design includes a distinctive logo or print, then those creative elements can be protected as long as they “can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” For instance, trademark law protects a designer’s name or logo and can be useful in establishing the brand’s image. Trade dress protection, on the other hand, could be more helpful when it comes to the actual design of a product; it helps consumers identify the source of the product through its physical appearance and how it is marketed. This typically applies to well-established brands such as the Louboutin shoes’ red sole. Although color by itself cannot be protected, Louboutin’s red sole has become an iconic feature that customers associate the brand with.

Some may argue that as long as the original designs and the knockoffs target different markets, designers will not have to worry about losing customers, but this is not always the case. Many designers or brands on the same fashion pyramid level can take the design of another and make one fairly similar to the original. An example of this is when Louboutin filed a trademark infringement lawsuit against YSL in April 2011 asserting YSL was liable for claims of trademark infringement. Trademark infringement “occurs when a company uses the mark of another in a manner that confuses consumers about which company actually manufactured the offering.” In essence, Louboutin was claiming YSL was falsifying the origin of their shoes by making people believe the shoes were Louboutin due to the red sole.

Small, independent creatives have also fallen victim to fast-fashion copycats. While this matter is unfortunate for both high-fashion and small brands, it is slightly more unfair to the latter as “luxury brands probably do not notice a dent in profits, but small brands and independent creatives whose creativity is their only means to push business are left defenseless against big retailers.” Susceptibility to financial setbacks can happen between any level of the fashion pyramid; it can arise at any time and in any event. The democratization of fashion proves that creativity does not only arise from haute couture houses, but also from unknown or aspiring creatives.

The fashion industry’s fast-paced environment and dynamics are part of the reasons why fashion is one of the few creative industries that is not fully protected by copyright laws. Given the lack of tools, designers have to depend on current protection laws; however, these laws are rather irresolute and can be expensive, cumbersome, and time-consuming to attain. Intellectual property laws are failing in the industry, and it needs to be addressed. Although clothing
itself is indeed a useful item, Congress can still take legislative measures and improve copyright laws that will better cater to both independent and established creatives. Since fashion is art form, these creatives deserve at least proper protection for their hard work.

Nevertheless, copycats should not be deprecated or exiled from the fashion industry. As frustrating as it is to see someone rip-off a design created through passion for the art form, copycats do spread awareness of current trends; they help increase the fashion industry’s economic growth by appealing to the financially middle- and lower-class consumers. Both classes make up more of the world’s population than the upper-class do, meaning that without these fast-fashion copycat retailers, the fashion industry would, per se, be left a small and powerless industry. With fashion copycats dominating the shopping outlets, nearly everyone wears some kind of derivative of a high-fashion piece daily. Perhaps Coco Chanel was right when she said, “every day is a fashion show and the world is your runway.”

Notes


