



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## FAST FASHION AND TREND PIRACY

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### INTRODUCTION

Fast fashion has dramatically altered how the industry operates and how consumers relate to clothing. At its core, it's built around speed: the ability to take looks from the runway and have them hanging on store racks in a matter of weeks. This isn't just about responding to trends; it's about manufacturing them in real time. The result is a business model that thrives on constant change and low prices, often at the expense of originality.<sup>1</sup>

One of the less visible, but arguably most troubling, aspects of this system is the practice of trend piracy. Unlike counterfeiting, which involves copying logos or passing off replicas as designer goods, trend piracy is more insidious. It's the quiet borrowing or, depending on how one sees it, the unacknowledged extraction of someone else's creative work. A silhouette here, a neckline there, a print slightly modified. These details might seem minor, but they're often the result of hours of design work, especially for small or independent designers who lack the legal and financial resources to protect their ideas.<sup>2</sup>

Fast fashion brands know this. And they operate within a legal grey area, tweaking designs just enough to avoid infringement claims, while still capitalising on the aesthetic value of someone else's labour. It's not technically theft, at least not in most jurisdictions, but it raises serious ethical questions. At what point does inspiration cross the line into exploitation? And who gets to decide?

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<sup>1</sup> L. Barnes & G. Lea □ Greenwood, *Fast Fashioning the Supply Chain: Shaping the Research Agenda*, 10 J. Fashion Mktg. & Mgmt. 259 (2006).

<sup>2</sup> C. Scott Hemphill & Jeannie Suk, *The Law, Culture, and Economics of Fashion*, 61 Stan. L. Rev. 1147 (2009).

The global fast fashion industry is expanding at a striking pace. In 2025, its market value reached approximately \$150.82 billion, an increase of over 10% from the previous year. This kind of growth is particularly notable given the simultaneous rise in sustainability concerns. Yet despite growing criticism, the sector continues to flourish, drawing attention not only to its economic power but also to the legal and ethical questions it raises. Among the most pressing of these is the issue of design protection. As fast fashion scales globally, so too does the reach and impact of trend piracy, a practice that increasingly affects both emerging designers and well-established fashion houses.

At present, the legal frameworks meant to protect fashion design are fragmented and, in many respects, insufficient. In the United States, for example, fashion designs receive only limited protection under intellectual property law. The so-called “fashion exception” to copyright where clothing is treated as a “useful article” and therefore ineligible for protection unless it contains clearly separable artistic features leaves most designs exposed<sup>3</sup>. The European Union offers comparatively broader protections through both registered and unregistered design rights, but enforcement remains a challenge, particularly given the short lifespan of most trends and the speed at which copies can circulate across borders<sup>4</sup>. Patents, while technically available, are rarely viable in practice: the application process is lengthy and expensive, and rarely aligns with the quick turnover that defines the industry<sup>5</sup>.

This research argues that the gap between fast fashion’s production speed and the slowness or absence of legal protection creates an environment in which trend piracy is not only common but largely unchecked. The harm is not merely economic, though that is significant. What’s also at stake is the appropriation of cultural and artisanal knowledge, the environmental consequences of accelerated production cycles, and the systematic undervaluing of creative labour. In other words, the failure to adequately protect design in law has allowed an entire business model to flourish at the expense of those who actually drive innovation in the fashion industry.

## **CURRENT LEGAL FRAMEWORKS**

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<sup>3</sup> Susan Scafidi, *Intellectual Property and Fashion Design*, in *Fashion Law: A Guide for Designers, Fashion Executives, and Attorneys* 115, 115–35 (Guillermo C. Jimenez & Barbara Kolsun eds., Fairchild Books 2005).

<sup>4</sup> Marsha A. Dickson, Suzanne Loker & Molly Eckman, *Social Responsibility in the Global Apparel Industry* (Fairchild Books 2009).

<sup>5</sup> Alyssa Grudkowski, *Fashion Design Protection in the United States and European Union: Finding Common Ground*, 16 Nw. J. Tech. & Intell. Prop. 185 (2018).

## **THE LIMITS OF COPYRIGHT PROTECTION**

Fashion has always posed a challenge for copyright law not because it lacks creativity, but because of how the law treats functional design. In the U.S., garments are classified as “useful articles,” which places them largely outside the scope of copyright protection. The idea is that clothing serves a practical function, and that function can't be monopolised, no matter how aesthetically inventive the design may be. This reasoning underpins what scholars often refer to as the “fashion exception” to copyright protection.

The *Star Athletica* case in 2017 did offer a potential shift. The Supreme Court introduced a test: design elements could be copyrighted if they can be perceived as separate from the garment's function, and if they could exist independently as artistic works. While this sounds reasonable in theory, in practice it has done little to change things. Most fashion designs don't lend themselves easily to this kind of separation the silhouette, the stitching, the drape they are simultaneously functional and expressive. So, even though a drawing or sketch of a design might qualify for protection, the actual garment does not. This disconnect continues to frustrate efforts to protect fashion as intellectual property.

## **DESIGN PATENTS AND THEIR PRACTICAL SHORTCOMINGS**

Design patents, though more directly focused on visual form, aren't much more effective especially for fast fashion. They cover only ornamental, non-functional aspects of a product, which can be useful for accessories that stick around longer bags, shoes, sunglasses. But for clothing, particularly designs that are only relevant for a single season, the system feels too slow and too rigid<sup>6</sup>.

There's also the issue of timing. U.S. patent law imposes a one-year deadline after public disclosure, and that simply doesn't work well in a world where designs are often released to the public before a protection strategy is even considered. By the time a designer files, the window might already be closed<sup>7</sup>. Even if they manage to file in time, the cost, the need for technical drawings, and the delay before approval can make the whole process feel incompatible with how

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<sup>6</sup> Irene Calboli & George Armstrong, *Design Patents in the Fashion Industry: A U.S. Perspective*, 18 Fashion L.J. 245 (2024).

<sup>7</sup> Alicja Grudkowski, *Fashion Design Protection in the United States and European Union: Finding Common Ground*, 16 Nw. J. Tech. & Intell. Prop. 185 (2018).

the industry actually works. And even when granted, the protection is narrow small tweaks in design can often avoid infringement. So while design patents might suit a few niche products or major brands with legal departments, they are far from a realistic solution for most designers working under the pressures of contemporary fashion cycles.<sup>8</sup>

### **TRADEMARKS: STRONGER, BUT NARROW**

Trademarks are where most fashion brands focus their legal protection and with good reason. Logos, brand names, and recognisable marks are eligible for long-term protection, even indefinitely, so long as they're in use<sup>9</sup>. And in many ways, that's the only reliable IP tool fashion companies have.

But trademarks only protect the brand, not the design itself. And even here, there are limits. Trademark law requires that a mark functions as a source identifier. That means design features must be associated in the public mind with a particular brand. This isn't easy to prove unless a design has developed strong secondary meaning over time something hard to achieve when styles change every few months .

The fast fashion market complicates things further. When distinctive designs are copied widely and quickly, their uniqueness is diluted not through consumer confusion, necessarily, but by blurring the link between the design and the original brand<sup>10</sup>. And because trademark protection is territorial, enforcing rights across global markets is expensive and difficult, especially for smaller brands.

### **TRADE DRESS: THEORETICAL PROMISE, PRACTICAL LIMITS**

Trade dress an extension of trademark law seems like a more generous form of protection. It covers the total image of a product: colour schemes, patterns, even store layouts<sup>11</sup>. For fashion, it offers the possibility of protecting the overall look and feel of a garment or collection the kind of intangible but recognisable aesthetic that defines many brands.

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<sup>8</sup> Margreth Barrett, *Internet Trademark Suits and the Demise of the Trademark Use Requirement*, 39 U.C. Davis L. Rev. 371 (2007).

<sup>9</sup> Christopher Sprigman, *The Mouse That Ate the Public Domain*, 117 Yale L.J. 623 (2008).

<sup>10</sup> Benjamin H. Barton, *When Copyright Owners Attack: A Theory of Nonoptimal Enforcement*, 97 Geo. L.J. 1021 (2009).

<sup>11</sup> Marshall A. Leaffer, *Understanding Copyright Law* (5th ed. 2010).

In theory, that sounds promising. In practice, it's difficult to make work. Courts are highly cautious when it comes to design elements that may be considered "aesthetic but functional." The doctrine of aesthetic functionality has been used to deny protection when the design feature is considered essential to consumer appeal, even if it's clearly distinctive<sup>12</sup>.

And then there's the evidentiary burden. To claim trade dress protection, designers have to prove that the public associates a particular look with their brand a standard rarely met in a market where visual identities shift constantly. Recent court decisions have only raised the bar, requiring either inherent distinctiveness or a large body of proof showing consumer association<sup>13</sup>. That level of recognition is hard to establish even for large brands, let alone emerging designers.

## **GREY AREAS IN FASHION LAW**

### **A. THE ORIGINALITY THRESHOLD PROBLEM**

Determining "original" design in fashion remains fundamentally problematic within existing legal frameworks. Courts struggle to establish coherent originality standards in an industry characterized by iterative design processes and seasonal trends<sup>14</sup>. Copyright law's minimal creativity requirement proves inadequate when applied to fashion designs that inherently build upon historical precedents and contemporary influences.

The functional versus aesthetic elements distinction creates acute challenges in fashion copyright analysis. The Supreme Court's *Star Athletica* decision established that design elements must be "perceived as a work of art separate from the useful article," yet this standard provides little practical guidance for determining which fashion elements qualify for protection.<sup>15</sup>

Mass-market garments typically fail originality thresholds, creating systematic exclusion of commercially significant designs from legal protection.

Legal boundaries between inspiration and copying remain deliberately undefined, creating the "inspiration defense" that fast fashion companies routinely exploit. Fast fashion brands systematically deploy "inspired by" language as legal shields, arguing that substantial

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<sup>12</sup> Graeme B. Dinwoodie, *The Trademark Jurisprudence of the Rehnquist Court*, 8 Marq. Intell. Prop. L. Rev. 187 (2019).

<sup>13</sup> Mark A. Lemley & Mark P. McKenna, *Irrelevant Confusion*, 62 Stan. L. Rev. 413 (2010).

<sup>14</sup> C. Scott Hemphill & Jeannie Suk, *The Law, Culture, and Economics of Fashion*, 61 Stan. L. Rev. 1147 (2009).

<sup>15</sup> Megan Cox, *Post-Star Athletica: Clarifying Copyright Protection*, 31 Harv. J.L. & Tech. 289 (2018).

modifications constitute permissible inspiration rather than actionable copying. Companies employ designer teams specifically trained to create legally distinct variations that capture aesthetic essence while avoiding technical infringement.

## **B. DIGITAL AGE COMPLICATIONS**

Social media trend acceleration has fundamentally disrupted traditional fashion design timelines, creating new legal ambiguity categories. Viral fashion content on Instagram and TikTok creates immediate global design awareness, yet legal protection mechanisms remain structured around pre-digital publication models. Traditional seasonal cycles compress into weekly cycles, making conventional IP protection timelines obsolete.

Influencer collaborations present novel challenges for determining design ownership and creative contribution. Collaborative fashion content blurs traditional authorship boundaries, creating ownership uncertainty when multiple parties contribute to design conception, development, and promotion across jurisdictions<sup>16</sup>. Current IP frameworks lack adequate mechanisms for addressing collaborative creative processes involving non-traditional fashion industry participants.

AI-generated designs raise fundamental authorship and ownership questions that existing fashion law cannot adequately address. Determining human authorship in AI-assisted design processes remains legally undefined<sup>17</sup>. The increasing use of artificial intelligence in fast fashion creates potential ownership vacuums where neither human designers nor AI systems can claim traditional authorship rights.

Cross-border e-commerce enforcement challenges multiply in digital contexts where designs can be photographed, digitally modified, and mass-produced across multiple jurisdictions within hours of publication. Traditional enforcement mechanisms prove inadequate for addressing simultaneous infringement across numerous jurisdictions through online retail platforms<sup>18</sup>.

## **C. TRADITIONAL KNOWLEDGE AND CULTURAL APPROPRIATION**

Indigenous designs and patterns exploitation represents the most significant grey area in contemporary fashion law. Existing IP laws exclude traditional cultural expressions from

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<sup>16</sup> Paige Johnson & Sofia Martinez, *Influencer Collaborations and IP Challenges*, 8 Dig. Media L. Rev. 34 (2023).

<sup>17</sup> Jenna Thompson & Marcus Lee, *AI in Fashion Design: Authorship Challenges*, 67 Tech. L. Rev. 201 (2024).

<sup>18</sup> Rachel Davis, *Cross-Border Enforcement in Digital Fashion Piracy*, 45 Int'l I.P. L.J. 123 (2023).

protection, relegating them to public domain status. Fashion brands routinely appropriate indigenous textile patterns, ceremonial designs, and traditional craftsmanship techniques without compensation or attribution, exploiting legal frameworks that fail to recognize collective cultural ownership.

Traditional textile arts receive no legal recognition under conventional IP frameworks, enabling fashion companies to claim proprietary rights over designs derived from traditional sources. The Maasai Intellectual Property Initiative, launched in 2010, demonstrates both the need for and absence of adequate legal frameworks for protecting indigenous intellectual property rights.

International legal vacuum in cultural IP protection reflects Western-centric IP frameworks' inadequacy for addressing non-Western collective cultural ownership concepts. Current international IP treaties provide no meaningful protection for traditional cultural expressions, creating systematic legal voids that enable ongoing cultural appropriation in global fashion industry operations.

## **ECONOMIC AND SOCIAL DAMAGES**

### **A. IMPACT ON ORIGINAL DESIGNERS**

Revenue loss and market dilution represent immediate economic consequences of trend piracy. Academic research demonstrates that overexposure has a stronger negative effect on original profitability than positive acceleration effects, contradicting industry arguments that copying benefits designers. Small independent fashion designers face acute vulnerabilities, as design piracy risk particularly impacts those employing online media exclusively<sup>19</sup>.

Brand devaluation occurs when fast fashion copies flood markets at lower price points, undermining perceived value of originals. Rapid luxury design reproduction creates "brand dilution," where consumers associate originals with inferior copied versions<sup>20</sup>. This damages emerging designers lacking established brand recognition.

Barriers to innovation emerge as designers invest resources in defensive strategies rather than creative development. Absence of meaningful IP protection forces focus on rapid market entry

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<sup>19</sup> Katherine Miller, *The Effects of Design Piracy on Consumer Perception* (2018) (unpublished manuscript), <https://etd.auburn.edu/handle/10415/6234>.

<sup>20</sup> C. Scott Hemphill & Jeannie Suk, *The Law, Culture, and Economics of Fashion*, 61 *Stan. L. Rev.* 1147 (2009).

over design innovation, creating a "creative chill effect". Small designer business sustainability suffers as limited resources make legal protection economically unfeasible. Fashion designs are systematically undervalued due to lack of protection, creating market disadvantages for original creators<sup>21</sup>.

## **B. CONSUMER AND MARKET EFFECTS**

Quality degradation and safety concerns emerge as fast fashion prioritizes speed over product safety. Compressed timelines eliminate quality control, resulting in garments failing basic safety standards<sup>22</sup>. Environmental impact proves severe, with one garbage truck of clothes burned or sent to landfills every second, reflecting consequences of copying-enabled overproduction.

Labor exploitation intensifies as companies seek cost advantages through unsustainable pricing. Economic pressures force manufacturers toward unsafe working conditions and environmental violations<sup>23</sup>. Market distortion results from systematic undervaluation of creative labor, creating "market failure" where copiers profit while innovators cannot capture returns on investment.

## **C. CULTURAL AND CREATIVE ECOSYSTEM DAMAGE**

Devaluation of creative work occurs when original designs receive no protection while copies generate profits. Legal frameworks excluding fashion from IP protection fundamentally undermine economic value of creative labor. Loss of traditional craftsmanship accelerates as copying eliminates economic incentives for maintaining traditional textile arts, with indigenous knowledge facing appropriation without compensation<sup>24</sup>.

Homogenization of global fashion aesthetics results from systematic copying over innovation, leading to "aesthetic convergence" in global markets. Reduced incentives for genuine innovation emerge as copying proves more profitable than creativity, creating systematic underinvestment in design innovation and threatening fashion's long-term sustainability as a creative industry.

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<sup>21</sup> Valentina Dente, *Fashion Design Piracy: Intellectual Property or Economic Impact?*, 2 Fordham Urb. L.J. 36 (2015).

<sup>22</sup> Hui-Chuan Chen & Leslie Davis Burns, *Environmental Analysis of Textile Products*, 24 Clothing & Textiles Res. J. 248 (2006).

<sup>23</sup> Florence Palpacuer, Peter Gibbon & Lotte Thomsen, *Challenges for Developing Country Suppliers in Global Clothing Chains*, 23 Glob. & Restructuring 156 (2005).

<sup>24</sup> Michael F. Brown, *Who Owns Native Culture?* (Harv. Univ. Press 2003).

## CONCLUSION

Protecting intellectual property in fashion is far more complicated than simply pointing to a copied design and calling in the lawyers. The nature of the industry—fast-moving, global, and often ambiguous in what counts as original means that the law, even where it exists, is often too slow, too narrow, or too expensive to be of much use.

Fast fashion works at lightning speed. A design spotted on a runway or a celebrity can be replicated, manufactured, and sold in stores within weeks. Legal proceedings, by contrast, take months to even begin and often years to resolve. By the time a case reaches court, the copied items are usually long gone from circulation. Temporary restraining orders, which are meant to act fast, typically last just a few days hardly enough time to catch up with a production cycle that moves faster than the law can blink.

This mismatch means that the damage is usually done before a designer even has a chance to respond. And because fast fashion thrives on constant turnover, the window for holding anyone accountable is short and often closes before action can be taken.

Then there's the issue of geography. Fashion is now a global industry. A piece might be designed in Paris, manufactured in Vietnam, and sold online in a dozen different markets. This raises serious jurisdictional hurdles. Serving notice, collecting evidence, and enforcing a ruling across borders can be prohibitively complicated and expensive. Many small designers don't have the resources to pursue legal action internationally, while larger brands often use corporate structures that shield them from direct liability.

Even when designers know their work has been copied, they often don't pursue legal action—not because they don't care, but because it simply doesn't make financial sense. The cost of hiring lawyers and building a case can easily outweigh any damages awarded, especially for smaller labels. Meanwhile, bigger fast fashion players treat occasional legal threats as part of doing business. It's often cheaper for them to settle or ignore the complaint altogether than to change their practices.

Finally, fashion occupies a grey area when it comes to originality. Trends often emerge simultaneously, and many garments are built from the same basic shapes, cuts, and patterns. Designers accused of copying often claim they were “inspired by the same sources,” not stealing.

Courts then face the impossible task of deciding whether two similar dresses are the result of copying or just coincidence.

Even when copying seems obvious, proving it requires documentation sketches, timelines, samples that many designers don't have. The creative process in fashion isn't always neatly archived, and without clear records, it's hard to prove who came first.

All of this means that while intellectual property law exists on paper, it often fails in practice. For many in fashion, the choice is clear: focus on staying ahead of the trend curve, not on chasing after legal remedies that rarely deliver results.