THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN THE FASHION INDUSTRY WHILE LIVING THE FAST FASHION ERA

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INTRODUCTION

When discussing fashion, the initial association is often made with haute couture fashion shows in London, Paris, New York, Milan, or Madrid. However, fashion extends beyond these grand showcases to encompass local entrepreneurs crafting their own designs and imitations of pieces featured in these shows.

The impact of fashion frequently results in high-end design concepts trickling down to become affordable, wearable pieces for consumers. For example, a fashionable color or style presented on the runway can inspire budget-friendly brands to incorporate similar elements into their accessible clothing lines. Nevertheless, the advancement of technology has streamlined the replication and reproduction of garments, posing a threat to the originality and distinctiveness of a designer's work. Knock-off items closely mirroring existing designs can harm the original design's influence, uniqueness, and financial success.

The current fashion industry boasts a market value of approximately $1.2 trillion and employs around 4.2 million people globally. Given its enormity, the industry necessitates legal intervention, which may be completely different for a haute couture brand than for a fast fashion one. This essay will delve into how intellectual property rights generated in the fashion sector can be safeguarded while highlighting potential gaps in protection that could

give rise to cultural appropriation, counterfeiting, and infringement actions.

COPYRIGHT PROTECTION

Copyright law, a form of intellectual property law, protects original works of authorship and grants exclusive legal rights such as the right to reproduce or perform an original work. The types of works copyright law aims to protect include literary, dramatic, musical, and artistic works such as movies, songs, and novels. According to the Berne Convention for the Protection of Literary and Artistic Works, copyright protection extends for a minimum of fifty years after the creator's death with the possibility of extension depending on the country's regulations. As previously mentioned, not all fashion brands may seek protection beyond fifty years, especially in the fast-paced world of fashion where designs may not even be relevant for an entire season. Also, it is worth mentioning that copyright refers to a declarative right, so no registration is mandatory, though recommended.

The question of whether fashion designs may be protected by copyright law now arises. At first glance, the answer is no. While haute couture and high-concept fashion may be considered artistic expressions, copyright protection typically does not extend to the physical designs of everyday fashion or clothing. The Copyright Act in the United States of America includes a specific exception that precludes a claim for copyright infringement when the work is a "useful article." A useful article is an object with an intrinsic utilitarian function that is not merely used to portray the appearance of the article or to convey information, such as clothing.

Notwithstanding the aforementioned, the second article of the Berne Convention for the Protection of Literary and Artistic Works includes the wording "works of

applied art." This wording is also established in national legislation such as the Mexican Federal Copyright Law. A work of applied art refers to an artistic creation that has utilitarian functions or is integrated into a practical object, whether crafted by hand or produced industrially. These objects, often of aesthetic value, are designed for common use. In essence, the object itself is considered an artistic work, blurring the lines between functionality and artistic expression. This term allows an interpretation that could grant copyright protection for fashion designs or clothing. Specifically in Mexico, the registration of garments has been possible under the term "work of applied art," although it may not be easy to obtain.

When the United States courts began attempting to determine the copyrightability of designs on useful articles, they turned to the legislative history of the Copyright Act, in which the lawmakers referred to two different types of "separability." Historically, the courts used a so-called "separability analysis" to determine whether the feature could be separated from the utilitarian aspect of the item, before determining whether the feature qualified for protection as either physically or conceptually separated from the useful article. Physical separability implies that an element can be detached from the original garment and sold independently without affecting the functionality of the clothing. Conceptual separability means that the design evokes a concept distinct from the functionality of the garment, and its addition is not motivated by improving the utilitarian function of the clothing. Over the years, the courts started to deviate by developing numerous different tests to determine separability under copyright law which created uncertainty and a lack of uniformity.

Throughout this time, three distinct copyright bills were presented to Congress: The Design Piracy Prohibition Act (introduced in 2009), the Innovative Design Protection and Piracy Prevention Act (introduced in 2010), and the

Innovative Design Protection Act (introduced in 2012). Each bill aimed to amend the U.S. Copyright Act, seeking sui generis protection specifically for fashion designs. Notably, these bills aimed to eliminate the "separability" requirement, relieving designers of the necessity of deriving protection solely from individual creative elements within their garment designs. Unfortunately, none of these bills gained sufficient momentum in Congress, and as a result, they were not enacted.

It wasn't until the 2017 Supreme Court decision in *Star Athletica, LLC v. Varsity Brands, Inc.* that courts received the much-needed clarification regarding how to determine the copyrightability of aesthetic elements on useful articles. In this case, the Supreme Court decidedly abandoned the distinction between 'physical' and 'conceptual' separability. Instead, the Court provided a two-pronged test for evaluating this issue. The test is formulated as follows:

> [A]n artistic feature of the design of a useful article is eligible for copyright protection if the feature (1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work either on its own or in some other medium if imagined separately from the useful article.

This ruling effectively addressed the long-debated issue of "separability," which was central to previous legislative attempts. The Court's determination that aesthetic elements of useful articles, including clothing design, may be copyrighted has been applauded, as it is an overdue recognition of fashion as a creative industry deserving the same protections as other artistic fields. However, other critics remain unfulfilled, as they believe that the test may be too ambiguous and may lead to differing interpretations and versions of the test like before.

Regarding the European Union, it may be argued that there is a more flexible approach that allows for the protection of creations resulting from intellect and originality. Nevertheless, in the realm of fashion, achieving originality can pose a challenge. This is because fashion creations often follow current trends and draw inspiration from the work of other designers, whether they be from past eras or contemporary peers. Originality, in this context, implies that the design was independently created rather than borrowed from someone else and possesses at least a minimal level of creativity. We can find an example of this in the Kipling dispute.

In 1999, the Brussels Court of Appeals granted copyright protection to Kipling's "Basic" collection. It ruled that the combination of various non-original elements could be deemed original if such a combination demonstrated the intellectual effort of the creator. In essence, it was determined that Kipling's design was original due to the combination of the following features: The systematic use of thick stitching in a contrasting color with the bag's unique base color, large metal zippers with a black plastic disc featuring Kipling, and a large, centrally placed black Kipling logo.

Hence, while copyright might not be the most pragmatic means of safeguarding garments and designs in the fashion industry, there are specific instances where it can be pursued, leading to cumulative levels of protection when combined with other forms of intellectual property.

PATENTS

Even though patents are not the first thing that comes to our mind when thinking about the fashion industry, through a portfolio of patents, it is possible to demonstrate a company's technical superiority in inventing new fabrics that do not wrinkle, are softer, or are more

resistant to the elements. This makes it easier to attract the attention of investors or business partners.

An example of this is the Burberry brand, which patented its waterproof fabric called 'gabardine' in 1888. On the other hand, the DuPont company has been a pioneer in the invention and patents of materials such as nylon, neoprene, Teflon, and Lycra. Another significant invention was the hook and loop fastener, sometimes mistakenly called 'velcro,' patented in 1954 by George de Mestral.

INDUSTRIAL DESIGNS

Among the range of Intellectual Property instruments, the protection of industrial designs, accompanied by trademarks, has the closest relationship with the fashion industry. The registration of industrial designs empowers holders to prevent third parties from exploiting their aesthetic or ornamental aspects. These aspects can involve three-dimensional characteristics, such as the shape of a hat, or two-dimensional characteristics, such as the pattern of a fabric.

The fashion industry invests enormous sums into creating new and original designs each season. With the emergence of fast fashion, seasons have transitioned to mere weeks. Despite these investments, there is scant reliance on the corresponding national legislation or design registration to protect them. This is because, given the short seasons and the short product life cycle, fewer companies are focused on protecting their designs.

A response to the fast fashion era that provides suitable protection to fashion designers is the unregistered design, which proves to be particularly intriguing and beneficial for the fashion industry. It offers specific community protection against the unauthorized exploitation of design copies, lasting for three years from the date it was initially made accessible to the public within the European

Union. Unlike a registered industrial design, this protection is not contingent on formal registration but rather on the disclosure of the design, with its scope being more limited. This form of protection proves highly advantageous for designers or fashion industry companies with constrained budgets. It also holds value for those who wish to assess market reception for their new designs before committing to the formal registration process.

Outlined in Council Regulation (EC) No 6/2002 of December 12, 2001 on Community, Articles 4, 5, and 6 specify criteria for the protection of unregistered designs. This regulation clarifies that not all designs are eligible for this form of safeguard. The absence of a similar concept in the rest of the world underscores its significant importance in the European Union. There is a heightened awareness in the EU regarding industrial property rights and fashion, attributed in part to the European fashion markets predating those of the American continent.

TRADEMARK PROTECTION

A trademark is a blend of letters, expressions, sounds, symbols, or designs utilized to recognize and differentiate the goods or services of one company from those of another. Trademarks play a crucial role in establishing a brand, fostering recognition, and embodying the reputation of the owner. They come in various forms, and it is common for companies to officially register names, logos, and slogans to secure their distinctive elements. When talking about the protection of intellectual property rights in the fashion industry, trademarks may be the first that comes to mind. However, the protection of trademarks in the fashion industry not only refers to names, logos, and slogans. Intellectual property law has evolved to now include positional trademarks within the fashion industry as well.

Positional trademarks protect the specific location where the mark is placed on a product. When representing these marks, the position and size of the mark in relation to the product must be clearly determined. To achieve this, the product's shape should be represented in dashed or dotted lines to distinguish it from the brand, as these product elements are not claimed as objects of protection. A clear example is the red sole trademark of Louboutin, which, in its application to the European Union, is described as follows: "The mark consists of the color red (Pantone No. 18.1663TP) applied to the sole of a shoe as shown in the representation (the outline of the shoe is not part of the mark but is intended only to show the placement of the mark)."

Maud Thiry, *La suela roja de Louboutin es una marca protegida*, https://mbabogados.eu/la-suela-roja-de-louboutin-es-una-marca-protegida/#.

Another example is Adidas' trademark of the three stripes located on footwear. The mark is described in the application filed with the European Union as follows: "The mark consists of three parallel equally-spaced stripes applied to footwear, the stripes positioned on the footwear upper in the area between the laces and the sole."

D Young & Co, *Position Marks: Adidas Keeps Its Stripes*, https://www.dyoung.com/en/knowledgebank/articles/position-marks-adidas.

This distinctive mark has been the subject of litigation since 1997, lasting almost 25 years. The litigation started with Adidas taking legal action against H&M regarding the sale of sportswear items in blue, marigold, and rust colors, featuring two parallel vertical stripes on the sleeves of shirts and the sides of shorts in the Netherlands. The defendant ultimately emerged victorious. Adidas argued in its lawsuit that H&M infringed on its three-stripe trademark registrations, as the use of stripes on clothing would likely confuse consumers about the origin of non-Adidas products. In response, H&M claimed that the stripes on its clothing were not intended to serve as a trademark by indicating the origin of the clothing in the same way that a brand name or a traditional logo does. Instead, it asserted that the use of stripes was purely decorative and, therefore, protected against liability for infringement because stripe patterns should be available for anyone to use decoratively.

After years of litigation, in January of 2021, the Court of Appeals in The Hague held that H&M did not infringe on Adidas' three-stripe trademark. Moreover, the court stated that the results of market research reports produced in connection with the case "are not [a] sufficient reason to assume that there is a likelihood of confusion" among consumers regarding the source of H&M's striped clothing. One report, provided by H&M (and disputed by Adidas), revealed that only 10% of surveyed consumers named Adidas after seeing the striped clothing from H&M's Work Out collection. With this lack of consumer confusion, and considering that "there must be a real likelihood of confusion on the part of the average informed, circumspect and observant ordinary consumer of the goods or services in question, in this case, now that it concerns (sports) clothing, the general public," the Court of Appeals

in The Hague sided with H&M. Adidas was ordered to pay 80,745 euros to cover the retailer's legal costs for part of the proceedings.

This type of litigation underscores the importance of correctly protecting each element in the fashion industry and the complexity of determining the scope of protection afforded by a trademark or other intellectual property instruments.

CULTURAL HERITAGE IN THE FASHION INDUSTRY

> Cultural heritage includes artefacts, monuments, a group of buildings and sites, museums that have a diversity of values including symbolic, historic, artistic, aesthetic, ethnological or anthropological, scientific and social significance. It includes tangible heritage (movable, immobile and underwater), intangible cultural heritage (ICH) embedded into cultural, and natural heritage artefacts, sites or monuments. The definition excludes ICH related to other cultural domains such as festivals, celebration etc. It covers industrial heritage and cave paintings.

In the fashion industry, cultural heritage undeniably plays a significant role. The attire of indigenous people, as well as the processes involved in their creation, are integral parts of each country's history and warrant protection. The ongoing debate revolves around the proper means of safeguarding the intellectual property rights arising from cultural heritage. It is crucial to note that the protection of these rights is not suggested through copyright, as it would confine them to a specific timeframe. Instead of confinement, the goal of cultural heritage is preservation.

Some existing intellectual property laws exclude the protection of traditional cultural expressions, relegating them to the public domain. This vulnerability exposes them to appropriation and undermines the customary rights and norms governing access and usage in a traditional

context. The 2018 World Intellectual Property Organization ("WIPO") document, "The Protection of Traditional Cultural Expressions: Updated Draft Gap Analysis," provides a detailed examination of the shortcomings of intellectual property law, particularly copyright law, in effectively preventing the appropriation of traditional cultural expressions.

The lack of clarity in protecting this cultural heritage, particularly in the fast fashion industry where copying is increasingly common, has given rise to a global issue. From large to small brands, there is widespread confusion between appreciation and cultural appropriation. The definition of "cultural appropriation" refers to the act in which someone from a relatively dominant culture uses a traditional cultural expression and incorporates it into a different context without permission. Further, the expression is used without acknowledging its origin or providing compensation, causing harm to the original owners of that traditional cultural expression. The first issue posed by this concept is determining who truly holds the intellectual property rights to a traditional cultural expression. The second issue is determining when these rights are afforded protection.

In 2019, Mexico's Ministry of Culture accused Carolina Herrera, the fashion designer, and Wes Gordon, the creative director, of cultural appropriation. This accusation stemmed from the inclusion of embroideries from the Tenango de Doria community in Hidalgo, the Istmo de Tehuantepec, and the traditional "Sarape de Saltillo" in their "Resort 2020" collection. Mexico's Ministry of Culture demanded that Herrera "publicly explain on what basis it decided to make use of these cultural elements, whose origins are documented, and how this benefits the (Mexican) communities." This dispute did not progress because the Sarape de Saltillo holds an intellectual property registration, protecting the rights to the

fine Sarape-making process. However, the dress accused of incorporating embroideries from the Tenango de Doria community is seen as inspiration rather than a direct copy.

Designers sometimes take traditional cultural expressions and reuse them out of context, disregarding their cultural significance or misinterpreting them, causing significant harm to the owners of those expressions. For instance, in 2013, Nike, an American sportswear company, printed patterns of the traditional Samoan male tattoo called "pe'a" on women's training leggings. Following public protests against the disrespectful and offensive use of pe'a, Nike halted production of the leggings and issued an official apology.

Much of traditional clothing is not just functional or ornamental but carries dimensions of meaning and serves as an identifiable element for Indigenous communities. Therefore, copying designs without considering the underlying cultural component can erode the identity of an entire community. Additionally, cultural appropriation often has an incidental relationship with colonization, contributing to widening existing divisions and perpetuating historical patterns of exploitation and oppression. Furthermore, for many indigenous people and local communities, the creation of traditional clothing is a source of income. Cultural appropriation can deal a significant economic blow, undermining the ability of these communities to make a living by displacing the sale of authentic products.

Given the lack of respect, recognition, and distortion of cultural significance evident in cultural appropriation, extending moral rights to traditional cultural expressions is one area where WIPO members should concentrate their efforts. One country that has begun to focus on this global issue is Mexico. Mexico has implemented the Federal Law for the Protection of Cultural Heritage of Indigenous and Afro-Mexican Peoples and

Communities, with its latest amendment made on November 29, 2023. According to the third article of this law, misappropriation, also known as cultural appropriation, is the action of a natural or legal person, whether national or foreign, by which they appropriate for themselves or a third party, one or more elements of cultural heritage without the authorization of the Indigenous or Afro-Mexican people or community that should provide it in accordance with the provisions of this law. Likewise, when the corresponding authorization exists, the authorized party engages in acts as the owner of one or more elements of cultural heritage to the detriment of the dignity and integrity of the indigenous or Afro-Mexican people or community to which it belongs.

The Mexican law aims, first and foremost, to recognize and make visible that the holders of intellectual property rights to cultural heritage are exclusively Indigenous and Afro-Mexican People. It establishes that the only way to use these rights is through authorization from the leader of the respective indigenous or Afro-Mexican community. Even though this law is newly created, and there hasn't been a regulation published to formalize its proper implementation, its establishment serves as a significant precedent reaffirming the essential protection of cultural heritage. Regrettably, the proper implementation of this law has been lacking. The registration process for traditional cultural expressions, as outlined in the law, functions without clear operational guidelines. Further, claims regarding the unauthorized use of specific indigenous creations have been submitted as if the law did not exist. While the imposed sanctions under this law have effectively deterred potential violators, it is essential to address the evident necessity for a thorough and effective application of it. Its success should be measured not as a mere ornament but by its tangible impact and efficacy.

Although there have been multiple examples of misappropriation, there are some positive examples of designers who have taken measures to create works within the framework of the federal copyright law and the law to safeguard the knowledge, identity, and culture of Indigenous communities. For example, Louis Vuitton collaborated with master artisans of Zapotec painting in Oaxaca, which was introduced in 2020, and continued this collaboration by returning with other installments. Their installment titled "Power Animals" gives credit to the artisans and illustrates likenesses of the state's signature animal figurines on Louis Vuitton travel trunks. These animal figurines are often called Oaxacan *alebrijes*. Out of respect for the art and its creators, the client and the master artisan have an open dialogue about the creation process. Further, Louis Vuitton sold the trunks to its clients but ensured that they did not see any money from the artisan's work. Instead, the clients paid the artisans directly at the event.

COUNTERFEITING AND INFRINGEMENT ACTIONS

The presence of fake fashion products has technically spanned 150 years in various forms, but the contemporary counterfeit fashion industry has transformed into a nearly invincible force. This pervasive issue adversely impacts both genuine fashion brands and consumers globally. Counterfeit fashion items encompass both luxury and mid-market goods. These goods are being produced and misrepresented as authentic to mostly unsuspecting customers. In terms of scale, the global counterfeit industry is estimated to exceed $3 trillion annually.

Counterfeit fashion products are distributed through various channels ranging from e-commerce platforms and street vendors to some reputable physical stores. The

proliferation of online marketplaces and social media has exacerbated the issue, providing counterfeiters with a global platform to peddle their goods to a wider audience. In the past, distinguishing between fake and authentic products was simpler due to significant differences in quality. However, this contrast became more challenging to discern when goods started to be sold through online channels. Offenders have gone as far as acquiring domain names that closely resemble the originals, causing confusion among consumers.

This illicit industry not only results in billions of dollars in lost sales annually but also tarnishes brand reputation and perceived value. When customers unknowingly purchase counterfeit products, they mistakenly hold the original brand accountable for subpar quality. Moreover, when consumers knowingly opt for counterfeit luxury items, it diminishes the perceived value of the original brand, as a significant number of people possess these imitations. Furthermore, this illicit trade contributes to environmental and public health concerns and fuels organized crime and money laundering activities. Brands have struggled to combat the issue, as traditional anti-counterfeiting methods have proven ineffective in eradicating fake products from circulation.

The battle against counterfeiting, as commonly understood to mean when a trademark is used in connection with a fake product, can be waged through various procedures, and the approach often varies by country. The approaches used may involve methods such as addressing trade violations or filing complaints in criminal matters. Nevertheless, a new issue has emerged with the widely known *dupes* (abbreviation of duplicate), appearing to adopt a form of legal counterfeiting.

There is a fine line between dupes, imitations, and product counterfeiting, posing a risk to intellectual property rights holders. Dupes do not merely yield similar results or

are associated with other brands. Dupes teeter between drawing inspiration from designs of renowned brands and outright imitation. Some dupes even market themselves as designer dupe products, straddling between the commercially permissible and acts of unfair competition. By using a product marketed by a third party to mold and reproduce another, they encroach upon the designs of intellectual creators, thereby putting the rights of these creators in danger.

The challenge with dupes lies in the fact that morally, these products are not considered taboo as counterfeiting previously was. It is quite the opposite. Influencers on social media often endorse them, presenting them as a means to make fashion accessible to a diverse audience. TikTok's #bougieonabudget shares videos of affordable replicas as an alternative to luxury products. The hashtag has over 554 million views. Other dupe-related hashtags have even more views. The #dupes has over 2.1 billion views and #reps (for replicas) has 1.9 billion. Guides on how to find the best fake products are also available.

To fight dupes, some companies are now using smart labels. These clothing labels are equipped with a unique QR code. The code allows the product to be tracked. When the code is scanned, the item's origin is displayed, confirming whether it's an original or duplicate. Fashion houses, such as the UK's Burberry Group, are using image recognition software. By using a photograph, the software can tell whether a product is fake or not. It analyzes every detail of the product such as the weaving and texture. Any flaws are taken as a sign that the item isn't real.

Additionally, there are intellectual property tools, such as "Dupe Killer" developed by Deloitte, that use cutting-edge and patent-pending artificial intelligence technology. Dupe Killer is a copycat detection solution,

trained to recognize key features of your design, whether that be an entire product, part of it, or simply the color of your packaging. After the completion of its training, the system diligently scours the web, online marketplaces, and social media platforms to discern products that seek to exploit the diligent efforts and investment in crafting innovative designs. This tool is being used by Jimmy Choo. Enforcement skills of this nature might not be particularly striking for brands that center their business on the extensive production of imitations.

When talking about dupes, it is impossible not to mention the SHEIN app, which has surpassed Amazon in downloads in the United States, as well as major retailers like Zara and H&M. Shein is a significant example of the fast fashion industry. Their business model revolves around mass production through the imitation of designs from other fashion houses. Shein also has the notable backdrop of labor exploitation endured by their workers in workshops in developing countries. Their business model relies solely on their online platform, where customers can find a wide range of products, including women's, men's, children's, and plus-size clothing. They also sell beauty items, along with other products, such as pet accessories and a myriad of hygiene and home items. Most of these items are sold at affordable prices. Their app has gained its fame through the production of thousands of designs that are updated daily, offering imitations of seasonal garments at lower prices.

Recently, Giuliano Calza, an Italian fashion designer who is the founder and creative director of GCDS, stated the following on his Instagram profile:

> It hurts and is offensive. Not only are you killing the planet with dehumanizing policies that make these prices possible. But personally, I think the way that hurts the most is to steal ideas, steal sweat, love and months of dedication and steal the energy of bringing

> certain ideas to life. Because in the end it will just be a blatant and cheap copy of Instagram.

This statement was made after Shein copied GCDS' Morso heel, urging consumers not to buy the copies.

Another challenge in the protection of intellectual property rights in the fashion industry has been raised in the metaverse after digital artist, Mason Rothschild, acquired the domain name "metabirkins.com" and started commercializing NFTs with such names. Birkin, a Hermès design, is one of the most coveted and prestigious handbags in the world, known for its timeless design, exceptional craftsmanship, and exclusivity. The litigation dates back to December 2021, when the defendant began marketing a collection of NFTs in the metaverse that emulated Hermès' Birkin handbags under the name "Metabirkins." After unsuccessfully demanding the defendant to cease their activity, Hermès filed a lawsuit against them in January 2022. Hermès International claimed that Rothschild's use of METABIRKIN as a trademark for the virtual goods was an infringement of their BIRKIN trademarks. Likewise, the images Rothschild used violated its trade dress rights in their famous Birkin bag. This unauthorized use of their trademarks constituted an act of unfair competition that created confusion among consumers, who might mistakenly associate the NFTs sold by the defendant with the prestigious French fashion brand. Hermès International also argued that it diluted the distinctiveness of their trademarks.

In March 2022, the defendant filed a motion to dismiss in the New York court to request the dismissal of Hermès' lawsuit, claiming that the NFTs were art created as a metaphor for consumerism and as a critique of the use of fur in luxury items, symbolizing "enriched wealth and status." Therefore, they encouraged the consideration of First Amendment protection of Metabirkins. Moreover,

they stated that there was no risk of consumer confusion because the defendant marketed the Metabirkins under a notice on their website indicating that they were not Birkin bags and denied any association with Hermès. In May 2022, the Federal District Court of New York denied the motion to dismiss Hermès' lawsuit, considering that, notwithstanding certain aspects of artistic expression potentially attributable to the Metabirkins NFTs, they collided with the trademark rights held by Hermès.

After rejecting other motions from both parties, the case went to the jury, which in February 2023, finally issued the verdict anticipated at the beginning of this entry. It concluded that the First Amendment does not apply to the marketing of Metabirkins, and the defendant is guilty of trademark infringement and dilution (imposing a payment of $110,000), as well as cybersquatting (imposing $23,000). In total, the defendant was required to pay $133,000, as confirmed by the judge in the final first-instance judgment.

This case is the main precedent for infringement regarding misuse and the protective mechanisms available for intellectual property rights in the fashion industry. Undoubtedly, infringements and counterfeiting within the metaverse in the fashion industry will continue to pose a challenge in the coming years.

CONCLUSION

In conclusion, the fashion industry, with its vast market and global impact, demands comprehensive legal frameworks to protect intellectual property rights. The complex nature of fashion design requires a nuanced approach that should involve various forms of protection and their applicability. It is evident that intellectual property rights in the fashion industry must be protected. Therefore, one important task is to determine what would

be the correct and broadest protection for fashion designers. Further, there must be international awareness of the need for protecting intellectual property rights in fashion, creating international mechanisms that allow for global protection. Because the industry itself is global, bridging the protection gap between Europe and America has become a necessity.

The fashion industry must still balance the need for protection with the rapid pace of trends and the global nature of the market. Achieving a harmonious approach that respects cultural heritage, promotes innovation, and safeguards creators' rights remains a dynamic challenge. Finally, awareness must be spread among consumers regarding piracy and its new forms, such as dupes or infringements within the metaverse, to reduce future legal battles for the original creators within the fashion industry.

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