

Fashion Designs



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In the UK, fashion designs can be protected as a design or copyright work. However, the designs must be:

- New, not an adaptation or derivative of a previous creation
- Not commonplace, everyday or ordinary

Design Protection

[Design Right](#) or **Unregistered Design** is automatic and lasts for 15 years from creation or 10 years from being made publicly available for sale. (EC Unregistered design lasts 3 years)

Unregistered Design Right will only protect 3D designs i.e. the structure, style, shape, not pattern or colour, therefore does not include textiles.

Registered Designs will last up to 25 years if the registration is renewed every 5 years. Registering a design can protect both 3D and 2D designs.

If your design has a unique function, it should be protected as a [Patent](#).

If you have created a logo design or name you wish to trade under, it can be protected by registering as a trademark.

For more information on Design protection and registering designs, Patents or Trademarks, go to the IPO website at:

<http://www.ipo.gov.uk/types/design.htm>

You can also search for registered designs, patents and trademarks via the IPO website.

Copyright

Protection in the UK is automatic and lasts for 70 years from the death of the artist or designer. If more than 50 items are made from the design by 'industrial process' the protection is 25 years from the date of manufacture.

Copyright infringement has mainly been ignored in the fashion industry because clothing is considered as utilitarian i.e. something we need and because of the fast changing nature of fashion and trends. Many designers use vintage garments or street fashion/trends as reference points or inspiration for their work, therefore already copying.

However in 1994 Yves Saint Laurent (YSL) successfully sued Ralph Lauren for copyright infringement, design infringement and unfair competition of a dress design. The Paris court awarded YSL damages of FFr 2 million [50% for copyright infringement and 50% for damages resulting from unfair competition].

Many recent cases that have come to court in the UK have been mainly between the big brand names and concern trademarks, colour ways, textile designs or specific design features e.g button placement, lace adornments etc. see cases (log into MyUnihub)

[Vivienne Westwood in Westwood v Knight \[2011\] F.S.R. 37](#)

[Karen Millen Ltd v Dunnes Stores Ltd \[2007\] IEHC 449](#)

[Lambretta Clothing Co Ltd v Teddy Smith \(UK\) Ltd \[2005\] R.P.C.6](#)

[Lambretta Clothing Co Ltd v Next Retail Plc \[2004\] EWCA Civ 886](#)

Piracy of well known brands is commonplace but discovery by the authorities usually leads to seizure and destruction of the goods.

The local Technical Supervision Bureau (TSB) in Beijing destroyed 50,000 Louis Vuitton bags, worth RMB5 million. LV's agent in China witnessed the destruction of the seized bags.

In 2004 the Guangdong AIC reported that infringing products, mainly sportswear labeled "NIKE," "Adidas," and other brands with an estimated total value of RMB11 million were seized. Some of the infringing shoes included "NIKE" designs that were scheduled to be launched in 2005.

Fast Fashion

Various infringement claims have been made against companies such as Primark, Zara and H&M for copying top end branded designers creations straight off the catwalk and making them available in to the high street stores in a matter of days.

In your opinion, is this infringement?

[Zara Man vs Balmain Homme: Zara Guilty! | Trendland: Fashion ...](#) 31 Aug 2010 By [Cyril Foiret](#)

Primark was sued by Superdry for copying and selling its bestselling leather jacket for a fraction of the price. Primark settled out of court for an undisclosed amount and promised to withdraw from sale and cease producing the jacket.

In the US many labels have been fighting against the 'fast fashion' chain Forever 21.
See : http://nymag.com/daily/fashion/2009/04/forever_21s_ability_to_copy_de.html

But the Forever 21 owners usually settle the huge claims out of court and continue their practices because, the income generated far outweighs the sums demanded.

US 'Fashion Bill'

The US have introduced a 'Fashion Bill' into Congress to protect fashion designs. When passed the "Innovative Design Protection and Piracy Prevention Act," H.R. 2511 ("IDPPPA would amend the Copyright Act to extend special protection, but not full copyright protection, to fashion designs. The design would need have a certain amount of originality in order to be eligible for copyright protection and S. 3728 states that it must "provide a unique, distinguishable non-trivial and non-utilitarian variation over prior designs for similar types of articles" (Section 2(a)(2)(B)(ii)).

For more information go to: <https://www.congress.gov/bill/112th-congress/senate-bill/3523>

You may find this presentation by Joanna Blakely entertaining.
http://www.ted.com/talks/johanna_blakley_lessons_from_fashion_s_free_culture.html

Articles:

'Protecting Fashion Designs' by Oliver Herzfeld 1st March 2013,
<http://www.forbes.com/sites/oliverherzfeld/2013/01/03/protecting-fashion-designs/>

'Copyright and Fashion: A UK perspective' by Iona Silverman, WIPO Newsletter, June 2014,
http://www.wipo.int/wipo_magazine/en/2014/03/article_0007.html

'Protecting Fashion: A Comparative Analysis of Fashion Design Protection in the U.S. and Europe' by Francesca Montalvo, Cardozo Arts and Entertainment Law Journal, 19th September 2014,
<http://www.cardozoaelj.com/2014/09/19/protecting-fashion-a-comparative-analysis-of-fashion-design-copyright-protection-in-the-u-s-and-europe/>

Stewarts Law: How intellectual property rights can protect fashion products in the UK: now and post-Brexit. 12th September 2018
<https://www.stewartslaw.com/news/intellectual-property-rights-can-protect-fashion-products-uk-now-post-brexit/>

For any specific queries or additional advice please email Copyright@mdx.ac.uk