



INTERNATIONAL  
HELLENIC  
UNIVERSITY

**THE PROTECTION OF FASHION DESIGN UNDER INTELLECTUAL  
PROPERTY LAW**

**SOFIA PANIDOU**

**SCHOOL OF ECONOMICS, BUSINESS ADMINISTRATION & LEGAL STUDIES**

A thesis submitted for the degree of

***Master (MA) in Art, Law and Economy***

**January 2016**

**Thessaloniki-Greece**

Student Name: Sofia Panidou  
SID: 2202140016  
Supervisor: Prof. Irini Stamatoudi

I hereby declare that the work submitted is mine and that where I have made use of another's work, I have attributed the source(s) according to the Regulations set in the Student's Handbook.

January 2016

Thessaloniki-Greece

## **Abstract**

This dissertation was written as part of the MA in Art, Law and Economy at the International Hellenic University.

This thesis has as an objective, to project the problem of fashion designs' counterfeit, faced by the dominant EU fashion companies, and also, to propose the most effective solutions, provided under intellectual property law, in order to protect the fashion design and further the fashion designer.

The fashion industry, is one of the most competitive and consistently emanating industries globally. Today's economic crisis within European Union, has, without doubt, affected the brilliant fashion world in a way, however, fashion designers and fashion companies, can always find clever manners to attract, inspire and gain the admiration of the consumers. Unfortunately, this glamorous fashion world has, also, to confront the huge parallel merchandise of counterfeits, which causes tremendous losses for fashion businesses annually. This important problem, in combination with the permanent domination of the fashion industry in the Global Markets, has created the necessity of protection, both of the designer's name and the company's brand, but also of the products that they manufacture. This protection is afforded by the means of intellectual property law.

Special thanks to my supervisor Professor Mrs. Irini Stamatoudi, who supported me and provided guidance, in every stage of my research.

Keywords: Intellectual Property, Copyright, Fashion Design, Fashion Industries, Counterfeiting.

0

Sofia Panidou

January 2016

## Contents

<b>ABSTRACT .....</b>	<b>III</b>
<b>CONTENTS.....</b>	<b>IV</b>
<b>INTRODUCTION .....</b>	<b>1</b>
<b>THE FASHION INDUSTRY .....</b>	<b>2</b>
THE FASHION INDUSTRY'S SEGMENTATION.....	2
<b>THE PROBLEM OF "FAKES" IN THE FASHION INDUSTRY.....</b>	<b>6</b>
<b>INTELLECTUAL PROPERTY PROTECTION FOR FASHION DESIGNS.....</b>	<b>8</b>
COPYRIGHT PROTECTION FOR FASHION DESIGNS .....	9
<i>Copyright's general rules .....</i>	<i>9</i>
<i>The criterion of originality.....</i>	<i>11</i>
<i>The controversy concerning the fashion designs .....</i>	<i>14</i>
<i>The examples of France, Italy and the UK.....</i>	<i>17</i>
<i>So, what does copyright law protect in practice?.....</i>	<i>19</i>
PROTECTION UNDER INDUSTRIAL DESIGNS LAW.....	20
<i>Basic terms and principles.....</i>	<i>21</i>
<i>Registered designs (national and Community level).....</i>	<i>23</i>
<i>Unregistered designs (national and Community level).....</i>	<i>27</i>

<i>Case Law</i> .....	29
THE INTERACTION BETWEEN COPYRIGHT AND INDUSTRIAL DESIGNS LAW .....	36
<b>CONCLUSIONS</b> .....	<b>40</b>
<b>BIBLIOGRAPHY</b> .....	<b>44</b>
<b>APPENDIX</b> .....	<b>49</b>

## Introduction

*“The difference between a good designer and a real designer, is to be in tune to what is there in the moment and define it before anyone else.”<sup>1</sup>*

The fashion industry is a highly innovative and constantly emanating sector of business that possesses a really important place to the global commerce, attributing millions of Euros annually, but also a really attractive and bright world that captivates everyone’s enthusiasm.

The aim of this Dissertation is, to present the basic problems faced by fashion companies that concern fashion design, such as counterfeiting and knockoff, along with the protection given under intellectual property law within European Union.

Fashion designs may be protected in various manners, such as by copyright and related rights, trademarks, patents, utility models, registered and unregistered designs, domain names, trade secrets and know-how, and so on. Yet, for the needs of this Dissertation, we will only discuss those copyright Law and industrial designs law.

---

<sup>1</sup> Baron F., Loving and hating Marc Jacobs, *NY times*, November, 2007.

## The Fashion Industry

The fashion industry is characterized by innovation, creativity and imagination that constitute the basis of its function. These certain elements distinguish the special features of each Company, aiming to attract customer's attention. The fashion industry creates products, combining their utilitarian purpose with their psychosocial function. Fashion products are served to add prestige, glamour and luxury. For this reason, competition between fashion companies is really dependent on the level of innovation that each of them accomplishes to promote. For setting up a stable monopoly, the world's most famous Fashion Houses always try to respond fast and flexibly to the seasonal fashion trends.<sup>2</sup>

In order to examine under which regimes the fashion industry could be protected, we have to analyze first the fashion market's segmentation, in order to understand deeper the fashion industry's structure, and the sectors that need to be protected.

### ***The fashion industry's segmentation***

To begin with, price is the most common criterion to segment a market, in general. However, there are also many other elements that play important role for the configuration of the type of markets (i.e. creativity, quality or certain target groups). According to the above rules, we have five market segments within the fashion industry, depicted as a pyramid<sup>3</sup>:

- *Haute Couture*: It is the most expensive market, as it could be ten times higher than the average market price. Therefore, it targets only a specific group of people (i.e. celebrities, wearing haute couture clothes and accessories on the "Red Carpet" or international clients), using them on special occasions. Haute

---

<sup>2</sup> Wulf A., Thesis titled: *A Comparative Approach to the Protection of Fashion Innovations*, Paper 39, Berkeley Center for Law and Technology, 2007.

<sup>3</sup> Bocconi University, On-line Seminar Courses, *Management of Fashion and Luxury Companies*, 2015.

couture creations meet the maximum level of inspiration, creativity and craftsmanship and they are always “made-to measure”. The main characteristic of this segment is that haute couture creations are manufactured, after giving great attention to details and using the best quality of products. The haute couture products could be easily characterized as “pieces of art”. For this reason, the image of each brand is based on this segment of the company. It was Ralph Lauren who said: “*I do not design clothes. I design dreams*”, for an haute couture collection that he presented.

- *Ready-to-wear (“Prêt-à-Porter”)*: In this category, we meet a high level of creativity and industrialization and the prices are three to five times higher than the mass market. Designers always express themselves through the creation of ready-to-wear clothes and accessories, especially in fashion shows. On the contrary to haute couture creations, the ready-to-wear ones are more easy-to-wear and they can be used for a wider number of occasions and from several target groups.
- *Diffusion (“second young lines”)*: In this segmentation, we have also high prices than the average (2 or 3 times higher than mass market), but the products are quite affordable. Diffusion market has as a goal to expand the fashion companies, producing products with lower quality and lower price, in order to attract a wider group of buyers (i.e. *Marc* for Marc Jacobs, *Versus* for Versace, *DG* for Dolce and Gabbana etc.). The role of the designer is still important in this category, but the production is outsourced, in wider volumes, while the country of origin is not a key for the success. It is a mixture of retail and wholesale distribution. Here, we have a new target group: young people. Therefore, the main characteristic is the sportive style (t-shirts, sneakers etc.), which is more common and attractive for young audiences.
- *Bridge*: This category was born in USA. It connects high end to mass market. The prices of the products are 1,5 to 2 times higher than mass-market products, but they are very affordable (value for money principle). The production is much outsourced and there is a lack of craftsmanship. The products of this category are very easy-to-wear, so they cover a wider or even daily cycle of occasion. We meet here a mix of wholesale and retail distribution. It is very



important to notice that the element of locality is very important here, as it concerns local brands, attracting local people. Usually, the designers in this segment use fantasy names for the brands and not their own (i.e. *Diesel*, *Coach*, *Northface* etc.) but it is also common to use their name with some differentiations (i.e. *Max and co* for Max Mara, *Emporio Armani* for Giorgio Armani etc.).

- *Mass Market*: In this category the prices are generally very low, but there are different price ranges between the brands. (I.e. Inditex Group owns several brands such as *Zara*, *Massimo Dutti*, *Bershka*, *Pull and Bear* etc., each of one have different product quality and different prices, but they are all affordable). Mass markets have products that can be used on different occasions and aim to all groups, from teenagers to sophisticated woman. The core project of the segment is to create an entertaining shopping experience for everyone.<sup>4</sup>

Picture 1, as follows, depicts the Fashion market's segmentation, using the structure of pyramid. Value proposition offered to the customers includes three elements: *price, creativity and quality. These three elements are following an increasing way, from the bottom to the top of the pyramid.*<sup>5</sup>

---

<sup>4</sup> Bocconi University, On-line Seminar Courses, *Management of Fashion and Luxury Companies*, 2015.

<sup>5</sup> Bocconi University, On-line Seminar Courses, *Management of Fashion and Luxury Companies*, 2015.



Picture 1. *The fashion market segmentation pyramid (Source: Bocconi University)*

As we can see from the analysis of the fashion market's segmentation, each of these five categories meets special characteristics. Among these categories there are serious differentiations, concerning the price, the creativity and the products' quality.<sup>6</sup>As we will see at the following chapters, intellectual property protection, may refer to certain fashion market segments. For example, mass market's designs may not be protected by copyright, as they will not be, probably, original, but the brands that belong to this category, will be still protected under intellectual property law, as far as their trademark is concerned. What we need to point out is that every fashion market segment has to face similar problems. The most serious of them is the fashion designs' counterfeiting and the knockoff problem, which we are going to analyze extensively at the following chapters, along with the provided, by the Law, solutions.

---

<sup>6</sup> Bocconi University, On-line Seminar Courses, *Management of Fashion and Luxury Companies*, 2015.

## The problem of “fakes” in the fashion industry

Behind this fabulous and inspirational world, there are problems related to intellectual property rights that concern the majority of the fashion brands.

The most renowned fashion companies, have to confront the problem of counterfeiting. The European Union trade of clothes and accessories, had, in 2006, a huge deficit of 33.7 billion Euros. According to statistics and researches, the production volume of clothing within the EU, decreased by five percent each year, at the period between 1994 until 2006. There is around 1.5 million people working in the EU fashion industry, who are generating a value added of 22 billion Euros.<sup>7</sup> Due to this situation, European manufacturers, will be obliged to further reduce of their production volume for the next years, in favor of products with a limited consumer interest but with a high value added.

Before we go any further, we first need to define the difference between counterfeit and knockoff products.

A “*counterfeit*” is a product that consists an exact imitation of an original one. That means that the counterfeiter uses both the design and the trademark-logo of an original product. These products are, of course, illegal, as they clearly intent to cause confusion to consumers at the point of sale.<sup>8</sup>

On the other side, a “*knockoff*” is a broader category that includes products that have a confusingly similar overall appearance or design to a well-known to the public product, however they do not contain any identical logos or federally registered brand names. Those who sell knockoff products may still be sued by the trademark

---

<sup>7</sup> Fridolin F., Design law in the European fashion sector, *WIPO Magazine*, February 2008

<sup>8</sup> <http://intellectualpropertiesfirm.com/conterfiet-vs-knockof/>

owner, as these products can still cause consumers' confusion, despite the fact that they bear a totally different logo.<sup>9</sup>

The "knockoff" problem is very often related to the dominate fashion houses, which usually tend to copy designs from other competitive fashion houses, in order to gain their own customers, usually by enhancing the product or by adding something more attractive or by providing it in a lower price.<sup>10</sup>

A very well-known case of knocking off between two really important Fashion Houses is related to a long black tuxedo evening dress.<sup>11</sup> More specifically, in 1970 Yves Saint Laurent created a fabulous long black tuxedo evening dress which became an immediate worldwide success. Yves Saint Laurent released the dress both as part of its winter 1992 couture collection and in a shorter type, as part of YSL summer Diffusion collection. It was such an identical dress that it had been even characterized as YSL's landmark label.

In December 1992 Yves Saint Laurent found out, discovering a photograph of the 'jupe smoking' spotted in the December issue of *Jours de France Madame* magazine, that Polo Ralph Lauren was selling a remarkably similar dress. Yves Saint Laurent obtained a court order, according to which the counterfeiting dresses were immediately seized. After that, Yves Saint Laurent filed a lawsuit against Ralph Lauren for copyright infringement and unfair competition. Finally, YSL won the case thus Ralph Lauren was obliged to pay millions of French Francs for the damages.<sup>12</sup>

---

<sup>9</sup> <http://intellectualpropertiesfirm.com/conterfiet-vs-knockof/>

<sup>10</sup> <http://intellectualpropertiesfirm.com/conterfiet-vs-knockof/>

<sup>11</sup> *Societe Yves Saint Laurent Couture SA v Societe Louis Dreyfus Retail Management SA* [1994] E.C.C. 512, Trib. Comm. (Paris).

<sup>12</sup> Logeais E., France - fashion - copyright/unfair competition - heavy damages for plagiarism of YSL's tuxedo dress by Ralph Lauren, *European Intellectual Property Review*, 1994.

Both counterfeiting and knockoff merchandises are a huge problem for the fashion industry, as they constitute infringement of Intellectual Property rights (copyright, industrial design, trademarks and patents). However, there are some modern economic theories, according to which there is a strong interaction between innovation and imitation: innovation produces superior products, but imitation makes them available to a vaster number of consumers. That means that imitation promotes competition, in such an extent that, at last, the innovative companies are benefited crucially by this counterfeiting.<sup>13</sup>

Coco Chanel was the first one to believe that *“imitation reflects the highest form of flattery”*. After Chanel, there were many other popular fashion designers, who also supported this assertion, agreeing that counterfeit products support the demand for the original ones, as they bring to the public the fashion labels and the fashion trends.<sup>14</sup>

Whether we accept the theory that counterfeiting is a factor that effects negatively the fabrication of fashion products or the theory that counterfeiting promotes in a productive way the competition between fashion companies, there is one thing, in which we all conclude and we recognize as necessary: *the protection of creativity, under intellectual property law.*

## **Intellectual Property protection for fashion designs**

Intellectual property protection constitutes the priority of most European fashion companies. The fashion industry is driven by fast paced innovative ideas that are embodied in the creation of fashion designs. In this chapter, we are going to discuss

---

<sup>13</sup> Raustiala K., Sprigman C., The Piracy Paradox: Innovation and Intellectual Property in Fashion Design, *Virginia Law Review*, Vol. 92, No. 8 (Dec., 2006), pp. 1687-177.

<sup>14</sup> Fischer, Fr., Design law in the European fashion sector, *WIPO Magazine*, February 2008.

about the two Intellectual Property Rights (copyright and industrial design), which are the most relevant to the fashion design and the most efficient ones for the protection against counterfeiting.

### ***Copyright protection for fashion designs***

The basis of copyright law, as an instrument against the problem of design piracy of fashion creations can be found in the Berne Convention. It is required that *“each member state extends to nationals of other member states the same copyright protection that it provides its own nationals”*. The Berne Convention, as we will discuss later, imposes the minimal requirements for the national copyright laws of the Member States<sup>15</sup>.

The subject matter of protection under the doctrine of copyright law that also, consists the higher controversy within the fashion industry, is the fashion design, as an artistic work.

### Copyright's general rules

The fashion design defines the whole profile of each company. It is a continuously emanating sector that can be defined as *“the art of application of design and aesthetics to clothing and apparel as well as to accessories”*<sup>16</sup>. Fashion designing is, in fact, a combination of skills that are related different actions, ranging from market research and creativity to sketching and fabric selection. Fashion designers play an

---

<sup>15</sup> Berne Convention, supra note 66, art. 5, paras. 1-2.

1. Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin,, the rights which their respective laws now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

2. The enjoyment of the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

<sup>16</sup> <http://definitionoffashiondesign.blogspot.gr/>

initiative role to the fashion design game. The whole process begins with the inception of the idea and turns into the production of goods<sup>17</sup>. The fashion world is very colorful, inspirational, creative and extremely attractive. Every style or product begins with a thought. This inception is the one that differentiates the one company from another: The “zic-zac” design of Missoni, the influence of the Italian culture on Dolce and Gabbana clothes, the French elegance on Chanel bags are only few examples of the inspiration of fashion designers, which contributed to the reputation of the brand and to the impression of the consumers’ minds.

Copyright protection is offered by the national legal systems of each Member-State. Member States are responsible for imposing the prerequisites for this protection and the levels of it. That means that every Member State has its own conditions for the copyright protection (others stricter and others with lower standards) but still under the Harmonization of EU Directives on copyright law.

The aim of copyright, is the protection of creativity and the further establishment of the freedom of expression, no matter of the form used. The most important element of copyright law is, that it protects *the expression* of the idea, the materialization of it, and not the idea itself. More specifically, under copyright, the ideas cannot be protected, as that could cause the distraction of creativity and innovation.

Copyright protection comes automatically. That means that no formality is needed for the creator to be protected. It is deemed that the person who creates a work, becomes at the same time its author and also, gains the protection of the law, if his/her creation is original.

The initial holder of the above rights is the author of the work. An “*author*”, is the natural person who creates a work, which is his/her own original creation of the mind, expressed in any kind of form, literary, artistic, scientific, or any other form, touched by the human senses. In the fashion industry the designer is the author of the work.

---

<sup>17</sup> <http://work.chron.com/definition-fashion-designing-25262.html>

The rights included in “copyright”, that are absolute and exclusive, last for all the author’s lifetime and for seventy (70) years after his/her death, starting on January 1<sup>st</sup> of the death’s following year.

“Copyright”, includes two types of rights: a) *the economic rights* of the author of the work and b) *the moral rights* of the author of the work. More specifically, economic rights refer to the author’s exclusive right to make a profit from the exploitation of his/her work. Under this rule, the author has the right to authorize or prohibit: fixation and reproduction; translation; the making of new versions, adaptations, and other modifications; distribution; rental and public lending; public performance; broadcasting, rebroadcasting, and satellite or cable transmission; communicating to the public; the importing of copies produced abroad without consent.

As far as the moral rights is concerned, they refer to the protection of the personal interests of the author upon his work. The moral rights include divulga-tion/publication right, the paternity right, integrity right, the right of the author to access to his work and the right of repudiation.<sup>18</sup>

The criterion of originality

The only prerequisite for the copyright protection of every artwork within EU, is the work’s “*originality*”. This term is the most basic one for copyright law, despite the fact that there is no specific indication, of what originality consists of. Traditionally, for common law legal systems, for example, originality is related to “*any judgement, skill and labour that led to the creation of the work*”<sup>19</sup>, thus for civil law systems, ori-ginality is closely connected to the author’s personality.

This space, finally, fulfilled by the Court of Justice of the EU case law, which provided a diplomatic harmonization, concerning the originality criterion.

---

<sup>18</sup> Koumantos G. & Stamatoudi I., *Greek Copyright Law*, Sakkoulas Publications, Athens Thessaloniki, 2014, pp.71.

<sup>19</sup> Bainbridge D., *Intellectual Property*, Pearson-Longman Editions, 6th ed., pp.39.



The most important case concerning the criterion of originality within EU, is the *“Infopaq”* case.<sup>20</sup> The CJEU among other judgements on the specific case, indicated that *“only the original artworks, in the sense that they are their “author’s intellectual creation” are subject matter for copyright protection”*, underlining that this is the sole criterion, applied to all EU Member-States and for all types of works, irrespective of their form. That means that it provides a totally unified criterion for all EU Member-States, averting them from resorting to their national legal systems, in order to define originality.

So, only the “original” works, in the sense that they are their *“author’s own intellectual creation”*, reflecting his/her own personality and individuality, are the subject matter of the protection of copyright law, thus any other work -not original- might be protected by other laws, but not by copyright.

What we need to underline in this part, is that, in order to characterize a fashion design as an “original” one, and further, in order to protect it under copyright, it does not have to be new or innovative. That means that copyright law does not preserve the dictionary meaning of the word “original”, since the Courts tend to confront the term with its wider meaning. What is more, originality does not refer to the novelty of the theme of the design, nor to a theme that anyone has dealt with it before, but to the personal influence of the artist that appeals to the selection of the elements, the combination of the colors and the expression of the idea depicted on the creation. On the other hand, novelty is more connected to industrial property law, which settles it as the prerequisite of protection. Industrial property law requires new ideas and new solutions for rather technical problems. It is obvious that novelty refers to the idea itself, while originality refers to the expression of it.

---

<sup>20</sup> C-5/08, *Infopaq International A/S v Danske Dagblades Forening*, Judgment of 16 July 2009 [2009] ECR I-656.

EU Member-States Copyright Acts do not require originality of the ideas, but they do insist on the originality of the expression of these ideas or thoughts<sup>21</sup>, settling the individuality of this expression as a primary purpose.

One could say that originality, in the sense that the work is its' author's own intellectual creation", means that the design has to be created by its author-designer and it is not a copy of another design. But being-not-a-copy, does not ensure copyright protection, because the work still has to be statistically unique, reflecting the author's personality. Going a step further, it is very possible that Courts could recognize both an authentic and a copy work as originals, if the second one had alterations or extensions that would reflect the author's individuality and creativity, in such a manner, that it would be a new artwork and therefore an original one.

Greek Case Law, traditionally requires the visible individuality of the artist upon his/her creation, in order to characterize it as "statistically unique" and further as an original one. There is a variety of Greek Courts' decisions<sup>22</sup> that all insist to the fact that the artist's personality must be dominate on the artwork, in order to be assumed as original and further be protected under Greek Copyright Law. More specifically, the main judgement concerning originality at the majority of Greek decisions is that "*the artwork must be statistically unique, by the meaning that creator's personal influence on his/her creation is so significant that any other creator under similar circumstances and with the same purposes, could not be capable for creating a similar one or that the creation has an individual character or a minimum level of creativity, in the extend that these details make the creation different and special than other similar*".

However, as we have already discussed, the Court of Justice of the European Union has lately unified the originality criterion for all artworks within EU, requiring that

---

<sup>21</sup> Bainbridge D., *Intellectual Property*, Pearson-Longman Editions, 6th ed., pp. 37-39.

<sup>22</sup> Athens' Court of Appeals 1036/2011, Supreme Court 2330/2007, Supreme Court 152/2005, Supreme Court 257/95.

they constitute their *“author’s own intellectual creation”*. So, at this moment, only the European criterion of originality is required within EU, no matter what EU Member-States’ national legal systems provide.

Additionally, the Berne Convention uses the term “work” in order to describe *“any original intellectual literary, artistic or scientific creation, expressed in any form”*, which can be protected under copyright. More specifically, there are stated many categories of creations, in order to facilitate their classification. That means that the law, maintains separate and special provisions for each category of works. The list provided by each national law is not an exhaustive one and there are many other creations that could be estimated as works, if we assume that they are original (e.g. multimedia, websites or fashion designs).

The controversy concerning the fashion designs

The problem with the fashion design is that traditionally there is a dispute concerning its protection under copyright, because copyright law does not describe extensively fashion novelties as works of art.<sup>23</sup>

In that extend, there have been developed several opinions about the fashion design. Many of these opinions tended to be positive that, a fashion design consists a work of art, under the conditions that copyright law settles (originality, creation of mind expressed in any form etc.) for every work of art, while others argue that the fashion design cannot be estimated as a work of art.

But, what is a work of art? Who can give an absolute definition of this term? In my opinion, there will be hundreds of different answers for these questions. Art is a vast meaning that could be described on a different manner from each of us, as it is a personal inception that moves us individually. What is high art for someone, does not mean that everyone should perceive it with the same enthusiasm.

---

<sup>23</sup> Wulf A., Thesis titled: *A Comparative Approach to the Protection of Fashion Innovations*, Paper 39, Berkeley Center for Law and Technology, 2007.

National Courts have, in many occasions, tried to give a definition for the term “work of art”. The Federal High Court of Germany, for example, defined the work of art as *an individual’s own personal creation, determined preferably by the stimulation of aesthetic feeling by being looked at and whose aesthetic content has reached a level high, enough to speak of an artistry.* <sup>24</sup>

Except from that, exhibits in world renowned museums have proved that fashion products can be perfectly fitted among other artworks. <sup>25</sup>Very well-known collaborations between designers and museums have been written history to the artistic world’s route, both in EU and U.S.A.: The Guggenheim Museum of New York exhibited designs by Giorgio Armani, in order to display the designer’s evolution and contribution to fashion industry over the last 25 years. <sup>26</sup> In 2001, the Metropolitan Museum of Art (Met) in New York displayed the “*iconic fashion*” of Jacqueline Kennedy, presenting over 80 items of clothing and accessories. <sup>27</sup> What is more, the Metropolitan Museum preserves a permanent collection in its Costume Institute, which exhibits over 75,000 costumes and accessories from seven centuries and from all over the world. <sup>28</sup>

---

<sup>24</sup> Wulf A., Thesis titled: *A Comparative Approach to the Protection of Fashion Innovations*, Paper 39, Berkeley Center for Law and Technology, 2007.

<sup>25</sup> Tsai J., Fashioning Protection: A Note on the Protection of Fashion Designs in the United States, *Lewis & Clark Law Review*, pp. 447-461.

<sup>26</sup> GUGGENHEIM MUSEUM, GIORGIO ARMANI, at [http://guggenheim.org/exhibitions/past\\_exhibitions/armani/](http://guggenheim.org/exhibitions/past_exhibitions/armani/)

<sup>27</sup> THE METRO. MUSEUM OF ART, JACQUELINE KENNEDY: THE WHITE HOUSE YEARS— SELECTIONS FROM THE JOHN F. KENNEDY LIBRARY AND MUSEUM, at [http://www.metmuseum.org/special/se\\_event.asp?OccurrenceId={ACBF8E12-B196-11D4-93B6-00902786BF44}](http://www.metmuseum.org/special/se_event.asp?OccurrenceId={ACBF8E12-B196-11D4-93B6-00902786BF44})

<sup>28</sup> THE METRO. MUSEUM OF ART, THE COSTUME INSTITUTE, at <http://www.metmuseum.org/collections/department.asp?dep=8>

Lately, fashion products have not only inspired museums, in order to organize short-term exhibitions, but also they have motivated people to create museums, exclusively dedicated to fashion worldwide. London's first museum that was dedicated to the global fashion industry's history, launched in 2003.<sup>29</sup> Additionally, Kobe Fashion museum in Japan, is the first museum in Japan, exhibiting fashion creations.<sup>30</sup>

Also, high-end fashion houses have begun to retail their products in stores that resemble to museums. The Prada store in New York City, for example, is perfectly constructed more like a museum than a store.<sup>31</sup>

Artists themselves have supported designers with various collaborations, during the past years. The artist Takashi Murakami and the designer Marc Jacobs, for example, collaborated in the past for the creation of a series of luxury hand bags for Louis Vuitton.<sup>32</sup> These specially designed bags attracted the fashion addicts in unexpected levels, as sales generated over \$40 million, in only seventeen months.

Fashion designing is a form of art that requires originality, in order to grant copyright protection. Therefore, fashion designs and other forms of artworks should be protected under copyright law under the same terms and conditions. While artists and fashion designers continue to collaborate with each other on the creation of fashion

---

<sup>29</sup> *Fashion Museum Breaks New Ground*, CNN.COM, May 12, 2003 at <http://www.cnn.com/2003/WORLD/europe/05/12/design360.fashion.museum>.

<sup>30</sup> KOBE FASHION MUSEUM, at <http://www.city.kobe.jp/cityoffice/17/010/english/spot/fashion.html>

<sup>31</sup> Tsai J., *Fashioning Protection: A Note on the Protection of Fashion Designs in the United States*, *Lewis & Clark Law Review*, pp. 447-462.

<sup>32</sup> Tsai J., *Fashioning Protection: A Note on the Protection of Fashion Designs in the United States*, *Lewis & Clark Law Review*, pp. 447-462.

designs, there is hope that fashion designs will, at last, be estimated as works of art and, consequently, worthy of protection.<sup>33</sup>

Under these regimes, fashion design, in my opinion, should be perceived as an artistic work of mind, expressed as a sketch, which, at a second basis, it is transformed to a materialized product, full dimensioned. That means that the fashion design as an artistic work can be protected under copyright law, provided that it will be recognized as an original one.

The examples of France, Italy and the UK

Before we go any further, it is very interesting to see deeper, how the legal systems of the States with the most developed fashion production, define the protection under copyright.

As France is the country, where Haute Couture has born, is has a really protective system concerning fashion designs. French copyright Law protects «*original works of the mind, including those that reflect the personality of their author and expressly refers to "the creations of the seasonal industries of dress and articles of" as a protected work of the mind in Article L. 112-2*». For the French courts, the originality prerequisite for designs seems to be very important, therefore, it is very possible that they will deny copyright protection, as fashion designs tend to be seasonal and commonplace.

French copyright law, provides full protection for the designer-author of the work, as soon it is an original one, at the moment of the creation, without registration. As we already discussed, economic rights offer the author "*the exclusive rights to represent, reproduce, sell or otherwise exploit the copyrighted work of art and to derive a financial compensation therefrom.*" Under section L121-9 of the French Intellectual Property Code, the designer has four main categories of moral rights: a) *the droit de pa-*

---

<sup>33</sup> Tsai J., Fashioning Protection: A Note on the Protection of Fashion Designs in the United States, Lewis & Clark Law Review, pp. 447-462.

*ternité (the designer's right to be identified as the author of his work); b) the droit au respect de l'intégrité de l'œuvre (the right of integrity, which is the designer's right to prohibit the modification or destruction of his work); c) the droit de divulgation (the right of disclosure, which is the designer's right to choose if, when and how to publicize his work); and d) the droit de repentir ou de retrait (the right of withdrawal, which allows the designer to eliminate works that have been already publically disclosed).*<sup>34</sup>

In addition, Italy is a country with a long history within fashion industry. Gucci, Dolce and Gabbana, Bottega Veneta, Giorgio Armani and many other fashion houses have their origins in Italy, where the Sicilian element is dominant in the majority of the products. Like France, Italy, protects fashion designs under its national copyright law. The Italian copyright Law ("LDA") provides protection for "*works of the mind having a creative character and belonging to literature, music, figurative arts, architecture, theater or cinematography, whatever their mode or form of expression,*" indicating that "*particular, protection shall extend to industrial design works that have creative character or inherent artistic character.*" Copyright protection in Italy comes automatically with the creation of the work.<sup>35</sup>

Familiarly to the aforementioned legal systems, United Kingdom's copyright law, protects fashion designs that are original "artistic works". According to UK law, artistic works include "*graphic works, photographs, sculpture, or collage, irrespective of artistic quality and works of artistic craftsmanship.*" In order to be automatically protected by copyright law, "*the creative idea must be transmitted in a tangible form, be original, and the designer has to be a U.K. citizen or domiciled in the United Kingdom or a country that belongs to the Berne and Universal Copyright Conventions or to the*

---

<sup>34</sup> Montalvo Fr., Protecting fashion: a comparative analysis of fashion design protection in the U.S. and Europe, Sept 19, 2014, <http://www.cardozoaelj.com/2014/09/19/protecting-fashion-a-comparative-analysis-of-fashion-design-copyright-protection-in-the-u-s-and-europe>

<sup>35</sup> Montalvo Fr., Protecting fashion: a comparative analysis of fashion design protection in the U.S. and Europe, Sept 19, 2014, <http://www.cardozoaelj.com/2014/09/19/protecting-fashion-a-comparative-analysis-of-fashion-design-copyright-protection-in-the-u-s-and-europe>

*WIPO Copyright Treaty*". Except from copyright law, a designer can also be benefited by the "*Copyright, Designs, and Patents Act of 1988*" ("*CDPA*"), according to which a design must be "*original*" and "*recorded in a design document or an article has been made to the design.*"<sup>36</sup>

So, what does copyright law protect in practice?

As we can conclude from all the above, it is very possible to ask ourselves: "*Does copyright protect fashion designs in fact?*" The answer is yes, but under certain circumstances.

The main characteristic in EU Member-States' legal systems for providing copyright protection for fashion designs (key sketches, drawings, outlines, patterns, and the manufactured models based on them) is originality, provided that the fashion design can be characterized as a work of art. What we can clearly understand in practice is that copyright protection for fashion designs is available, not for the seasonal-commonplace creations, as they are possibly not original creations, but for the unusual, original designs of Haute Couture. As we discussed above, Haute Couture are very unique, one-piece creations that process a place between the works of arts, due to the spectacular combination of imagination, the special design and the excellent quality of the fabrics and other elements. Of course, that does not mean that any other ready-to-wear creation is excluded by copyright protection, meaning that, if it is an original one, protection could be recognised by the Courts. The decision of whether a creation can be protected under Copyright Law or not, must be taken, separately, for every single case, before the Courts of Law, with the help of an expert.

However, it is easy for everyone to understand that protecting only the Haute Cou-

---

<sup>36</sup> Montalvo Fr., Protecting fashion: a comparative analysis of fashion design protection in the U.S. and Europe, Sept 19, 2014, <http://www.cardozoelj.com/2014/09/19/protecting-fashion-a-comparative-analysis-of-fashion-design-copyright-protection-in-the-u-s-and-europe>



ture designs and those that will be estimated as “original”, in fact, does not help fashion designers to expand their imagination and creativity, exempted from the worries about the efficient protection of their work. A designer needs a full system of protection and not an “exclusive” one. For this reason, there is a sui generis right for designs within EU, under EU Regulation 6/2002 and EU Designs Protection Directive (98/71/EC), in order to secure the designs’ protection.

### ***Protection under industrial designs law***

*“In order to be irreplaceable, one must always be different”.*<sup>37</sup>

Against counterfeit, the law provides fashion designers with another system of protection under industrial designs law. Industrial designs protection is a sui generis right that, in most EU national legal systems, co-exists with copyright protection. Industrial designs protection, is very crucial, not only for fighting against counterfeit and knock-offs, but, also, for the healthy function of the fashion house, as a business.<sup>38</sup> Industrial design protection, adds value to the product and makes it attractive to the customers. What is more, it creates a connection between the product and the business’ name, in the extent that the customer recognizes the product, as a characteristic one (for example: the “zic-zac” lines of Missoni, consists the characteristic design of the brand). It is, also, very important for the strategy of the business, as it cultivates the thought of uniqueness, which is dominant within fashion industry.

On a personal perspective, registering an industrial design, provides the owner with the exclusive right of preventing his/her design from unauthorized copying. This has

---

<sup>37</sup> Coco Channel.

<sup>38</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

as result the promotion of fair competition between dominant companies and encourages the trade of fashion goods.<sup>39</sup>

#### Basic terms and principles

For intellectual property law, the term “*design*” describes “*the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colors, shape, texture and/or materials of the product itself and/or its ornamentation*”.<sup>40</sup> That means that intellectual property law protects as an industrial design only the appearance/aesthetic aspects of a product, no matter if they combine any functional or technical features, which could be possibly the subject matter of protection of patent law. Under this regime, there are plenty of fashion products that could be protected under industrial designs law, such as luxury items, watches, jewelry or patterns and fabrics under certain circumstances, as we will discuss above.

As a “product” is described “*any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces*”<sup>41</sup>. The EU design law protects not only the design itself, but also the communicative and the visual aspects of the design that indicate the product’s identity.

An industrial design may meet some features: 1) Three-dimensional features, such as the shape of the product, which could also function as a trademark, under specific circumstances or 2) two-dimensional features, such as patterns, ornamentation, col-

---

<sup>39</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>40</sup> Article 3(a) of EU Regulation 6/2002.

<sup>41</sup> Article 3(b) of EU Regulation 6/2002.

ors and lines of the product. Of course, a design may combine one or more of the above features.<sup>42 43</sup>

Just like copyright law, protection under industrial design law can be accomplished only for physical objects that incorporate the designer's idea. Non-materialized ideas cannot be protected.<sup>44</sup> Therefore, fashion styles like long-skirts or leathers in general and manufacturing processes, such as innovative techniques to sew or cut, which allow the manufacturing of a wide range of severe physical results, cannot be protected.

The substantial difference between copyright and industrial design protection is the need for registration. As we already discussed above, copyright protection comes automatically, without any formality. On the other hand, design law for most EU Member-States requires a registration, in order to protect a design, with the exception of the limited protection offered by the law for unregistered designs, as we will discuss.<sup>45</sup>

Generally, industrial designs are classified for ease of retrieval. Many countries use the classification of the *Locarno Agreement Establishing an International Classification for Industrial Designs* (please, see Appendix).<sup>46</sup>

---

<sup>42</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>43</sup> Baden-Powell E., Blaekley A. and Eneberi J., *Intellectual Property and Mass Media law compa-  
nion*, Montagu and Weston Legal Companions, 4th ed..

<sup>44</sup> Fridolin F., Design law in the European fashion sector, *WIPO Magazine*, February 2008

<sup>45</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>46</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

The basic principle of industrial design law, is the principle of territoriality. According to this, a design is protected only in the country, where it has been registered. That means that, if a company expands its activities in many countries, in order to be protected, it has to register its designs in each of them. However, under Regulation 6/2002, there is a provision for “*Community Designs*”, permitting the owner of the design to be protected in all EU Member-States, with a single registration.<sup>47</sup>

Registered designs (national and Community level)

As it is already mentioned, the majority of the EU national legal systems, requires a prior registration, in order to protect a fashion design. The process is very simple: the owner of the design files an application at the national intellectual property office, in the country, where he/she needs to be protected. That means that protection is provided only in the countries, where the design has been registered. Therefore, there is not an unauthorized use, if a third party imports, exports, sells, offers or generally distributes a product that incorporates a design, which has been registered to another country, but yet hasn't been registered in the certain country, where infringement takes place.<sup>48</sup>

A fashion design, in order to be registered, has to fulfill some prerequisites, depending on the national legal system of the country that the registration takes place. As a general rule, the design has to fulfill one or more of the following requirements:

- The design has to be “*new*”. That means that “*no other identical design has been made available to the public, before the day of applying/filing for registration*”. By the phrase “*making available to the public*”, we mean that the

---

<sup>47</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>48</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

design must not be used, published, exhibited or disclosed in any manner, before the date of application for registration<sup>49</sup>.

- The design must have an “*individual character*”. That means that “*the overall impression produced by a design on an informed user differs from the overall impression produced on such a user by any earlier design which has been made available to the public before the date of application for registration*”.<sup>50</sup> What is more, the designer’s degree of creativity and the depiction of this creativity on the design, are crucial for its’ individual character.<sup>51</sup>
- In some legal systems, the design has, also, to be an “*original*” one, meaning that it does not consist a copy of another one, but it is the owner’s individual creation.<sup>52</sup>

It is obvious from the above that it is very important to keep the design “safe” and confidential before registration, while in the opposite case, the design will be rejected and so, unprotected.

However, some legal systems recognize a “*grace period*” for registration (from six months up to one year, depending on the national legal system), from the moment that the design became available to the public. That system is very useful, when a design or articles of it, were displayed by the designer to a catalogue, a fashion show or an advertisement, before the application for registration. The problem with this

---

<sup>49</sup> Baden- Powell E., Blaekley A. and Eneberi J., *Intellectual Property and Mass Media law companion*, Montagu and Weston Legal Companions, 4th ed.

<sup>50</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>51</sup> Baden- Powell E., Blaekley A. and Eneberi J., *Intellectual Property and Mass Media law companion*, Montagu and Weston Legal Companions, 4th ed.

<sup>52</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

system is that during the grace period, the designer has any exclusive rights on his/her designs.<sup>53</sup>

The term of protection under national registration of designs, depends on the national legal system of the country of seeking for protection. The rule is that registered designs are protected for at least 10 years. In many countries there is a provision of renewing registration after 5 years.<sup>54</sup>

The Greek intellectual property office for designs' registration is "O.B.I".

In practice, though, fashion businesses expand their activities worldwide. That means that seeking for protection in every single country, would be not only economically devastating but also time-consuming. The fashion companies are driven by fast-moving paces that cannot allow slow procedures. For this reason, the majority of the fashion businesses prefers to register designs as "Community designs", in order to protect them within EU.

Community designs co-exist with the national legal systems. Under Regulation 6/2002, Community design registration provides a full system of protection for designs, within all EU Member-States with a single registration. "Office for harmonization in the internal market" ("O.H.I.M.") is responsible for registering Community designs.<sup>55</sup>

---

<sup>53</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>54</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>55</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

The prerequisites for Community design registration are the same as we discussed above, meaning that the design has to be “new” and have an “individual character”.<sup>56</sup>

Community designs registration offers the same protection against infringement and unauthorized copy, as the national registration systems. However, the term of protection may be higher than the one provided by many national legal systems, as it can reach the maximum period of 25 years, renewing the registration every 5 years from the filing date.<sup>57</sup> What is more, once registered, the Community design is enforceable to all EU countries, thus the national registration systems provides only a limited protection, within the country where the registration takes place.<sup>58</sup>

Of course, there is a possibility of registering a design internationally, applying to World Intellectual Property Organization (“W.I.P.O.”).

In fact, though, most of the designs registered by fashion designers are not for apparel, but for accessories and luxury items such as watches, belts, bags, sunglasses, etc., that fall under several different Locarno classes. Further, fashion products are basically seasonal and last only a few months. Therefore, the five-year minimum protection period offered by registration systems is not efficient for temporal fashion designs, while they need to invest on money and time for a very short period of needed protection.<sup>59</sup>

---

<sup>56</sup> Article 4(2) of EU Regulation 6/2002.

<sup>57</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>58</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>59</sup> Fischer Fr., Design law in the European fashion sector, *WIPO Magazine*, February 2008  
[http://www.wipo.int/wipo\\_magazine/en/2008/01/article\\_0006.html](http://www.wipo.int/wipo_magazine/en/2008/01/article_0006.html)

In 2007, WIPO registered only 29 international designs (2.5% of total registrations) under class 2 of the Locarno Classification (clothing and haberdashery), while OHIM registered 7'421 (9% of total).<sup>60</sup> As we can see from the statistics, only few fashion houses use the registration systems and only for specific products.

In order to protect those who need a short-term protection, the law provides the option of *“unregistered designs” protection*.

Unregistered designs (national and Community level)

The majority of the EU national legal systems, along with the registration system, also provide protection for unregistered designs, but for a shorter period of time. This period depends on the special provisions, given by the national laws of each country. The protection of unregistered designs is the same as the one provided for the registered designs.<sup>61</sup>

Regulation 6/2002 provides protection for unregistered Community designs, too. According to the aforementioned Regulation, protection is given for a period of three years, from the date on which the design was first made available to the public, within EU. This period is exclusive and cannot be extended. The Regulation uses the term *“disclosure”*, in order to describe the act of making the design available to the public, which is the core requirement for protecting an unregistered Community design.<sup>62</sup>

Protecting an unregistered Community design requires the same prerequisites as those needed for the registered ones. What is more, the protection in both registered and unregistered designs are the same. However, the difference between them is that the registered designs are protected against identical designs, even

---

<sup>60</sup> Fischer Fr., Design law in the European fashion sector, *WIPO Magazine*, February 2008 [http://www.wipo.int/wipo\\_magazine/en/2008/01/article\\_0006.html](http://www.wipo.int/wipo_magazine/en/2008/01/article_0006.html)

<sup>61</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>62</sup> <https://oami.europa.eu/ohimportal/en/designs-in-the-european-union>



when the infringement has taken place in good faith, thus the unregistered designs can be protected only if the infringing act took place in bad faith.<sup>63</sup>

The main characteristic of the unregistered designs is that there is no need of formalities. Protection comes automatically, at the time of the design's disclosure. That means that it is a procedure without any costs or effort, unlike registration system, which requires the deposit of a fee, in order to secure the design's protection.<sup>64</sup>

The unregistered design right seems to be more attractive to EU fashion designers as they have no expenses for this protection.<sup>65</sup> The high budgets needed for the production of fashion goods, is usually deterring for the investment of extra amounts. What is more, as we already mentioned, the fashion industry is based on seasonality and on fast rhythms of creation.<sup>66</sup> Under these circumstances, the registration system seems to be useless, as it provides a wider term of protection than the necessary one. On the contrary, the UCD's duration of protection is ideal for utilization in the fashion industry, because of the frequency with which style trends change.<sup>67</sup>

In my opinion, fashion designers cannot rely on the unregistered designs protection, as it is very difficult to prove the disclosure of their designs in the EU at a particular time. Except from that, it is not that easy to prove that the infringer was acting in

---

<sup>63</sup> <https://oami.europa.eu/ohimportal/en/designs-in-the-european-union>

<sup>64</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>65</sup> Darcy J., Under-regulated or under-enforced: intellectual property, the fashion industry and fake goods, *European Intellectual Property Review*, 2013. 35(2), pp. 82-92.

<sup>66</sup> Darcy J., Under-regulated or under-enforced: intellectual property, the fashion industry and fake goods, *European Intellectual Property Review*, 2013. 35(2), pp. 82-92.

<sup>67</sup> Darcy J., Under-regulated or under-enforced: intellectual property, the fashion industry and fake goods, *European Intellectual Property Review*, 2013, 35(2), pp.82-92.

bad faith and, further, that he/she intentionally copied the protected design.<sup>68</sup> Apparently, as the design consists the base of a creation, it is worthy to invest money on its protection through registration. Registration is a more secure route that provides the designer with clear rights of ownership, projected against any infringing act.

#### Case Law

EU Case law has already many examples of fashion designs' infringements and, also, many cases that concern conflicts between very well-known fashion companies, about their designs.

A very recent case that was brought before the General Court was the "*H&M Hennes & Mauritz BV & Co KG vs the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*" case.<sup>69</sup>

To begin with, in 2006, the Office for Harmonization in the Internal Market (OHIM) approved the registration of two Community designs of Yves Saint Laurent (YSL), which were intended to be incorporated to handbags.

Three years later, H&M Hennes & Mauritz (H&M) filed two applications with OHIM, asking to declare the designs registered by YSL as invalid, under the justification that they lacked of the imposed by the Regulation 6/2002 "individual character". In order to support their claims, H&M invoked that they had created a very similar design earlier than YSL did.

OHIM rejected these applications and H&M filed two notices of appeal with OHIM, which were also rejected. Examining the issue of the individual character of the YSL designs, OHIM argued that, although the YSL and the H&M designs have some

---

<sup>68</sup> <https://oami.europa.eu/ohimportal/en/designs-in-the-european-union>

<sup>69</sup> EU Focus, Case Comment: Court upholds registration of community designs for handbags, *EU Focus*, 2015, 336, pp.14-15.

features in common, the differences were still huge, concerning the shape, the structure and the surface finish. These characteristics are very for the overall impression produced by the certain bags, according to OHIM. Under these circumstances, OHIM stated that *“the degree of freedom of the designer was very high, but that, in that particular case, it did not, from the point of view of the informed user, cancel out the significant differences which differentiated the two bags at issue.”*

More specifically, OHIM said that *“the body of the YSL designs has a perceptibly rectangular shape, which gives the impression of a relatively angular object. By contrast, in the body of the H&M design, its silhouette is dominated by an impression of roundness.”* OHIM also argued that *“the body of the YSL designs looks as if it is made from a single piece of leather, whereas the front and back of the H&M design are divided into three sections by seams.”* Concluding, OHIM stated that *“the surface finish of the YSL designs is totally smooth (with the exception of two faint seams at the lower corners), whereas the surface of the H&M design is covered with pronounced and raised decorative motifs.”*

H&M, disappointed by OHIM decisions, brought the case before the General Court. The Court stated that the related to the freedom of the designer factor, does not determine on its own the assessment of the “individual character” of a design, but it has to be taken into consideration, as it makes it possible to moderate this assessment. The Court also held that the YSL bags differ from the H&M bag as to three certain features which play a significant role for the overall appearance of the products: the overall shape, the structure and the surface finish of the bag, confirming in this manner OHIM's assessment that the YSL designs produce an overall impression on the informed user, totally different from that produced by the H&M design. What is more, the Court stated that the differences between the designs are very important and that the similarities between them are minor in the overall impression that they produce: the YSL designs, create an impression characterized by classic lines and a formal simplicity, thus the H&M design, produce the impression of a more “worked” bag, characterized by curves and a surface adorned with ornamental motifs.

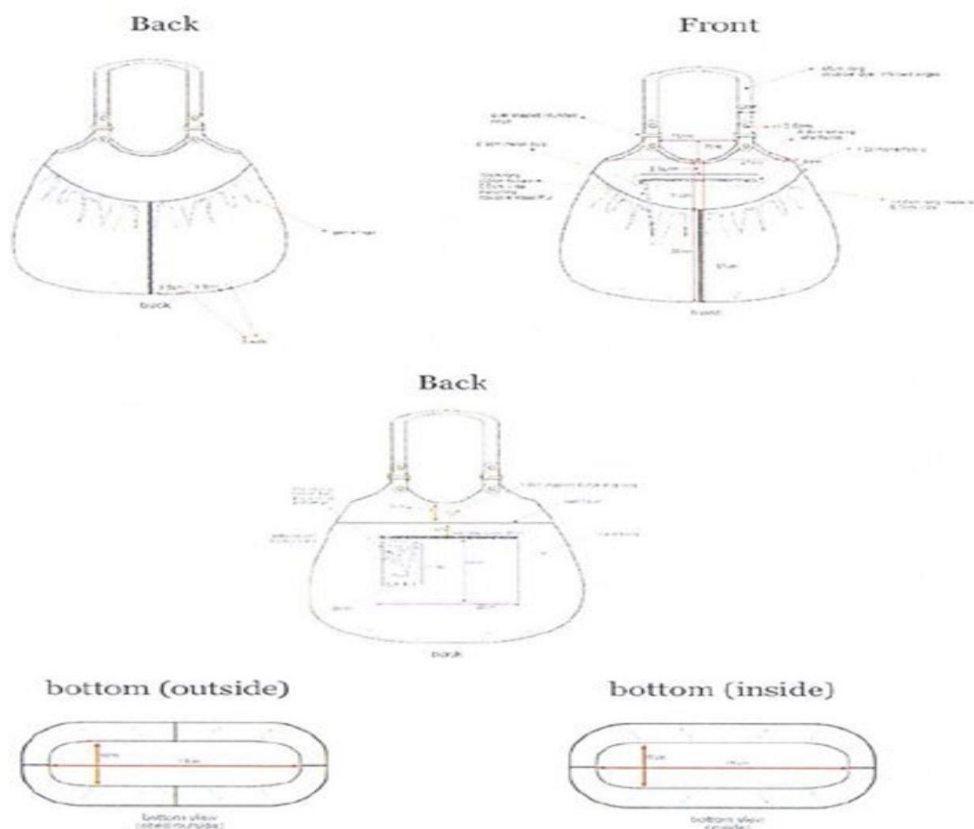
Finally, the Court dismissed H&M's claims and validated OHIM's decisions about the registration of YSL's designs.<sup>70</sup>

---

<sup>70</sup> H&M Hennes & Mauritz BV & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (T-525/13). Judgment of September 10, 2015. <http://curia.europa.eu/juris/document/document.jsf?text=&docid=167268&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1061026>



Picture 2. YSL registered design under Class 03-01 of the Locarno Agreement Establishing an International Classification for Industrial Designs of 8 October 1968, as amended. (Source: Curia.europa.eu).



Picture 3. H&M's designs of the bag (Source: Curia.europa.eu).

Another very interesting and very popular case is “Karen Millen Ltd v Dunnes Stores”.<sup>71 72</sup>

Karen Millen, is a well-known UK fashion chain. The company accused Dunnes

---

<sup>71</sup> *Karen Millen Ltd v Dunnes Stores* [2007] IEHC 449; [2008] E.C.D.R. 11.

<sup>72</sup> Darcy J., Under-regulated or under-enforced: intellectual property, the fashion industry and fake goods, *European Intellectual Property Review*, 2013. 35(2), pp. 82-92.

Stores, a famous Irish department store, that it had infringed Karen Millen's unregistered design rights by producing and offering to the public a black knit top, a blue shirt and a brown shirt similar to those designed by Karen Millen for the company's "Savida" series. The Irish Court, where the case was brought, asserted that:

*"Copying a design of another is not necessarily unlawful. It depends upon whether there exists a right to the first design protected by law which is infringed by copying and any use made of the copy."*<sup>73</sup>

The basic subject was whether Karen Millen had the right to be protected under unregistered designs law for the certain products. It was accepted that these products had been designed by a Karen Millen employee as part of her duties. The Court had also to come up with other issues. First of all, it was pointed out that the defendant would have the burden of proof, concerning the validity of the UCD. What is more, the Court had to deal with the term "informed user", as far as the garments was concerned, responding by concurring with Jacob L.J.'s assertion in *Procter & Gamble Co v Reckitt Benckiser (UK) Ltd*<sup>119</sup>, according to which "an informed user is an end-user of the products in question, observant of design issues but more informed than an average consumer would be." The Court also stated that *"The notional informed user for the designs at issue is a woman with a keen sense of fashion, a good knowledge of designs of women's tops and shirts previously available to the public, alert to design and with a basic understanding of any functional or technical limitations on designs for women's tops and shirts."*<sup>74</sup>

A third issue that arose, was whether Karen Millen had submitted proof from an "informed user" under the Court's definition. Dunnes Stores argued that:

*"The court should determine the issue on evidence from witnesses with attributes*

---

<sup>73</sup> *Karen Millen Ltd v Dunnes Stores* [2007] IEHC 449; [2008] E.C.D.R. 11.

<sup>74</sup> *Karen Millen Ltd v Dunnes Stores* [2007] IEHC 449; [2008] E.C.D.R. 11.

*similar to the characteristics of the relevant notional informed user for the designs in question of the overall impression produced by designs on them."*<sup>75</sup>

In addition, the defendants claimed that Karen Millen's informed user garments' designer and therefore, the criteria were not fulfilled, impeding Karen Millen's argument. The Court disagreed on this argument and stated that the court was the only responsible for determining the impression created on an informed user. Concluding, another issue discussed, was about the "individual character" of the garments. The Court held that the designs should be compared with existing designs and stated that Karen Millen designs were actually not identical to other garments and for this reason they had an individual character.

Finally, the Courts recognized the validity of Karen Millen's UCD, assessing further that these designs were copied by the defendants, infringing Karen Millen's design rights, awarding at the same time the following relief:

1) *"an order restraining the defendants their servants or agents or any person with notice of the making of the order from selling or otherwise disposing of the Savida series top, Savida blue shirt and Savida brown shirt.*

2) *an order for the delivery up to the plaintiff of the Savida tops, Savida blue shirts and Savida brown shirts remaining in the possession of the defendants, their servants or agents or any person with notice of the making of the order; and*

3) *An order for an account of the profits earned by the defendants (or any company associated with the first named defendant trading as Dunnes Stores) from the sales of the Savida top, the Savida blue shirt and the Savida brown shirt."*<sup>76</sup>

This national decision emphasizes on the possibilities of asserting a UCD right before a national court, along with the advantages arising from such a declaration.

---

<sup>75</sup> *Karen Millen Ltd v Dunnes Stores [2007] IEHC 449; [2008] E.C.D.R. 11.*

<sup>76</sup> *Karen Millen Ltd v Dunnes Stores [2007] IEHC 449; [2008] E.C.D.R. 11.*



This decision also indicates that copying the designs of a dominant fashion house, it may not initially have an economic impact to the business, but gradually might destroy the company's image and reputation, in such an extent that monetary difficulties will definitely appear in the future.<sup>77</sup>

### ***The interaction between copyright and industrial designs law***

As we discussed above, copyright protection comes automatically, from the very first time of the creation of the design, without any formalities and costs, provided that the design is estimated as an "original" one. The problem with this system, though, is that "originality" depends on the Court's judgement, while the designer bears the burden of proving that he/she is the author of the design. What is more, the designer has to detect on his/her own, if there is any infringing act against his/her designs. However, the term of copyright protection is very long, while it protects the designer during his/her lifetime and for seventy or fifty years (depending on the national legal system of the country, where protection is been asked) after his/her death. The most important thing, though, is that not all designs can be protected by copyright law, but only those that could be estimated as works of art.

On the other hand, industrial designs protection comes after registering to the country, where protection is needed, or to OHIM for protecting designs within EU or to WIPO for protecting designs worldwide. It covers a wider range of designs, as the prerequisites are more simple than those of copyright law (they must be new and have an individual character thus copyright law requires to be original). Industrial designs' protection lasts from ten, up to twenty five years, while limited protection is provided for Unregistered Community Designs (three years). Also, the right conferred

---

<sup>77</sup> Darcy J., Under-regulated or under-enforced: intellectual property, the fashion industry and fake goods, *European Intellectual Property Review*, 2013. 35(2), pp. 82-92.

by registration of an industrial design is an absolute right meaning that there is an infringement, no matter if the copying became on purpose or negligence.<sup>78</sup>

It is obvious from the above that copyright secures a longer protection, but designs law secures a monopoly protection, meaning that is a more stable system that guarantees a stronger protection, preventing competitors from unauthorized reproduction of the design. Of course, both systems have advantages and disadvantages and the selection between the two, must be taken in accordance to the specific occasion.

The problem, though, with fashion designs is that they usually follow a temporary trend, which lasts only for a certain period of time. That means that the protection provided must be adequate and immediate, from the first time that they appear to the public, since the last day of their release.

In order to avoid gaps, the law tried to implement a system of cumulative protection. More specifically, article 17 of the Directive 98/71 mentions that: *“A design protected by a design right registered in or in respect of a Member State in accordance with this Directive shall also be eligible for protection under the law of copyright of that State as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Member State.”*<sup>79</sup>

This provision is extremely meaningful for companies, which decide to proceed in registering their designs, because they also gain copyright protection. That means that the designs are secured in two dimensions: a) the long lasting protection pro-

---

<sup>78</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>79</sup> Cook T., *The Cumulative Protection of Designs in the European Union and the Role in such Protection of Copyright*, *Journal of Intellectual Property Rights*, Vol 18, January 2013, pp 83-87.

vided by copyright law and b) the monopoly protection provided by designs law. In this manner, designers are automatically protected at the moment of the design's creation, under the rules of copyright law, while later, after registering the design, they are simultaneously protected, under designs law.<sup>80</sup>

As we have already mentioned, the majority of the fashion designers prefer the Community Unregistered Designs system,<sup>81</sup> because they need a short-term protection for their designs, as they are linked to fast-passing trends, characterized by seasonality.<sup>82</sup> Usually, fashion designers prefer the Registration system, only for exclusive haute-couture, luxury goods that are strictly connected to the fashion house and the designer, constituting the well-known "*all time classics*" of the fashion house. These goods are very limited and they are identical for the whole attitude and the fashion houses' philosophy. Therefore, they are not seasonal but *timeless*. This is exactly the reason, why the fashion designers try to protect the certain products by the secure system of registration.

But, luxury items may last for decades. Let's take as an example the most famous handbag over the last sixty years; the classic leather Chanel bag, with the long chain strap (Picture 4, as follows).<sup>83</sup>

---

<sup>80</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>81</sup> Darcy J., Under-regulated or under-enforced: intellectual property, the fashion industry and fake goods, *European Intellectual Property Review*, 2013. 35(2), pp. 82-92.

<sup>82</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

<sup>83</sup> <http://www.vogue.com/866951/visual-history-50-years-of-the-chanel-bag-on-the-street/>



Picture 4. *The classic Chanel bag* (Source: [www.purseblog.com](http://www.purseblog.com)).

As we can imagine, Chanel could not be adequately protected, only by registering the bag's design, because the maximum term of protection under industrial designs law, is 25 years, while this bag is available to the market for the last 60 years.<sup>84</sup> That could mean that the bag would be unprotected, after the passing of the 25 years, and, so, everyone could reproduce the bag's design. The positive aspect, though, is that copyright law still protects the certain item, assuming that its design is an original one, providing a longer protection that exceeds the 25 years of protection given by designs law.

From all the above it is clear that copyright law and industrial designs law have a great interaction, as they fulfill each other, offering a wider and more secure protection for designers. The combination of the two is very important, in order to achieve an integrated protection, as the designer derives all the advantages provided by both laws. That means that, in case of an infringement, the designer can claim his/her rights that are stipulated by both laws, depending on what is worthy for the certain occasion.<sup>85</sup> For instance, in case of an infringement that took place without intention, the designer must promote the rights conferred by the design law, because

---

<sup>84</sup> <http://www.vogue.com/866951/visual-history-50-years-of-the-chanel-bag-on-the-street/>

<sup>85</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

copyright law is enforceable only if the designer proves that there is a direct or indirect reproduction of his/her design.<sup>86</sup>

To conclude, in order to decide, which is the most effective way of protecting his/her designs, the designer needs, first, to indicate, what he/she wants to protect, where he/she seeks for protection, for how long and under which circumstances (wasting money and time or not?). This dilemma, of course, has no substance, in countries that recognize the cumulative protection of both copyright and industrial designs law. On the other hand, it is also possible, that this dual protection may cause confusion to the Courts. It is not unthinkable, for example, to estimate a design as “original”, and therefore, protect it under copyright law, but not as a “new” one, and therefore, do not apply industrial designs’ law, or the opposite.

Consequently, fashion designers are strongly advised to proceed on registering their designs, at least those that consist part of the haute couture collection or those that are presented in catwalks. Usually the specific items are the company’s most precious products that symbolize its whole culture, so designers have to secure their protection, throughout a stronger and more accurate legal system. Before and after the granted protection of the registered designs, provided by the law, the designer can rely on the automatic protection of copyright law, in order to cover the time between the creation of the design and the application for registration and also, to exceed his/her designs’ protection for his/her whole lifetime and for seventy years after his/her death.

## **Conclusions**

This paper had as an aim to present the serious problems, concerning the designs’ piracy, faced by the EU fashion industry, but also, try to propose the most effective

---

<sup>86</sup> Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015).

solutions, given by intellectual property law, in order to protect the fashion designs and further the EU designers.

The fashion design is a form of expression, and for that reason should be entitled to protection, as other works of art. The EU, by protecting fashion designs, will be able to preserve competitive markets by encouraging creativity within its borders. Protection is also crucial, as it will settle the EU in a better position, capable to compete with international markets and thus, it will enhance the incomes, deriving from the fashion merchandise.<sup>87</sup> Protection is also vital, as it involves a combination of several principles such as the enactment of free competition, the promotion creativity, the definition of roles and limitations concerning intellectual property rights etc.

As we discussed in this paper, imitation seems inevitable, living in a globalized and commercialized community, where the exchange of ideas and images is the basic features, while the whole fashion industry meets great success by imitating and recycling ideas. Fashion designers always 'borrow' ideas and styles from their contemporaries, or from the past styles, moderating them and transforming them into a new version. The fashion industry stands out from other creative sectors because *it revolves around collaboration, derivation, recombination, imitation, the revival of old trends/styles and even outright knockoffs – for example, long lineages of couturiers from Balenciaga to Ungaro, Chanel to Lagerfeld, and Gucci to Tom Ford have shown that designers necessarily must learn, adopt, and adapt from those who have blazed previous trails.*<sup>88</sup> That practice does not seem illegal at all, as law does not protect ideas, in order to protect the freedom of thinking and expressing.

That must not be confused with the piracy of fashion designs, as it is an illegal act that causes millions of Euros loses for the EU fashion companies and, further, for the

---

<sup>87</sup> Tsai J., "Fashioning Protection: A Note on the Protection of Fashion Designs in the United States", *Lewis & Clark Law Review*, pp.447.

<sup>88</sup> Kaufman S., Trend Forecast: Imitation is a Legal Form of Flatter – *Louis Vuitton Malletier v. Dooney & Bourke, Inc.*, (2005), *Cardozo Arts & Ent. L.J.*, pp. 531.

EU economy. Fashion designers invest a lot of time, effort and money, in order to develop designs. Searching for effective measures of protection, the most famous fashion companies have come up with a lot of ideas to protect their designs from being victims of design piracy. Hèrmes, for example, has its lawyers searching for knockoffs of its scarves, handbags, and accessories on eBay as well as roaming the shops to keep those knockoffs off the street<sup>89</sup>. As it is easily perceived, however, this practice cannot be adequate for a long time, because it requires research all over the world.

As a result, the law has to ensure the designers' protection, by implementing an integrated system of protection.

In this essay, we analyzed the choices that intellectual property law gives to the designers: 1) to be protected by copyright law, 2) to be protected under industrial designs law and 3) to make advantage of the combination of the two. We discussed about the advantages and disadvantages of each system of protection, trying to discover, which of them provides the most effective solutions for protecting fashion designs.

After all this analysis, we have to point out, as a conclusion, that none of the two systems- copyright law and industrial designs law- can provide, separately, competent protection for fashion designs, because:

- a) Fashion designs might not be protected under copyright law, as it is upon the Court's judgement to treat them as works of art and so, protect them.
- b) Copyright law requires that the designer will prove that he/she is the author, in cause of an infringement.

---

<sup>89</sup> Tsai J., Fashioning Protection: A Note on the Protection of Fashion Designs in the United States, Lewis & Clark Law Review, pp. 447.

c) Industrial designs law protects registered designs for maximum 25 years. As we have already mentioned, this term might be too short, especially concerning luxury items that define the company's identity for decades.

d) Registration required under industrial designs law may cost too much, while protection given for unregistered community designs is very limited (3 years).

From all the above we can clearly understand that the only way to acquire a sufficient protection for fashion designs, is to leverage both systems, while the one fulfils the other. The combination of both laws, as analyzed above, is essential, in order to protect designs' from piracy and diminish the tremendous consequences that have already affected the whole European economy.



## Bibliography

### Books

1. Baden- Powell E., Blaekley A. and Eneberi J., *Intellectual Property and Mass Media law companion*, Montagu and Weston Legal Companions, 4th ed..
2. Bainbridge D., *Intellectual Property*, Pearson-Longman Editions, 6th ed..
3. Bently L., Sherman B., *Intellectual Property Law*, Oxford University Press, 4<sup>th</sup> ed..
4. Boldrin M. & Levine D., *Against Intellectual Monopoly*, Cambridge University Press, 2008.
5. Coombe R., *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law*, Duke University Press, 1998.
6. Cornish W., Lewelynn D. and Aplin T., *Intellectual Property: Patents, copyright, trademarks and allied rights*, Sweet and Maxwell, Thomson Reuters, 7th ed..
7. Correa C. and Yusuf A., *Intellectual Property and International Trade- The TRIPS Agreement*, Wolters Kluwer, 2nd ed..
8. Jimenez G. and Kolsun B., *Fashion Law: A Guide for Designers, Fashion Executives, and Attorneys*, Bloomsbury, 2<sup>nd</sup> ed..
9. Koumantos G. & Stamatoudi, I., *Greek Copyright Law*, Sakkoulas Publications, Athens Thessaloniki, 2014.
10. Rowley L., Vad U., *Using Design Protection in the Fashion and Textile Industry*, Chichester: Wiley, 1997.
11. Tryfonidou, A., *Free movement of goods*, University of Reading, UK, 2014.
12. Αντωνόπουλος Β., *Βιομηχανική Ιδιοκτησία*, Εκδόσεις Σάκκουλα Αθήνα-Θεσσαλονίκη, β' έκδοση, 2005.
13. Καλλινίκου Δ., *Πνευματική Ιδιοκτησία και συγγενή δικαιώματα*, Εκδόσεις Π. Ν. Σάκκουλα, 3η έκδοση, 2008.
14. Κοτσίρης Λ., *Δίκαιο πνευματικής Ιδιοκτησίας και κοινοτικό κεκτημένο*, 6η έκδοση, Εκδόσεις Σάκκουλα, 2011.

15. Ρόκας Ν., *Δίκαιο σημάτων. Ερμηνεία, Νομολογία, σχόλια κι ερμηνεία κατ' άρθρο του Ν.2239/1994*, Νομική Βιβλιοθήκη, 2008.
16. Σταματούδη Ε., *Κοινοτικό δίκαιο του Ανταγωνισμού και Διανοητική ιδιοκτησία- κατάχρηση δεσπόζουσας θέσης*, Νομική Βιβλιοθήκη, 2006.

## Articles

1. Adler M., Fashion Law: Protecting Brands and Designs, *Landslide*, Volume 5, Number 3, Jan/Feb 2013, American Bar Association.
2. Baron F., Loving and hating Marc Jacobs, *NY times*, November, 2007
3. Barrère C. and Delabruyère S., Intellectual property rights on creativity and heritage: the case of the fashion industry, *European Journal of Law and Economics*, Volume 32, Issue 3, pp 305-339, 2011
4. Bennett S. and Cook R., Battle of the red-soled shoes, *Intellectual Property Magazine*, 2011
5. Borukhovich B., Fashion Design: The Work Of Art that is still unrecognized in the United States, *Wake Forest Intellectual Property Law Journal*, 2009
6. Brizuela A., Protecting Fashion Designs with Intellectual Property Law, <https://www.linkedin.com/pulse/protecting-fashion-designs-intellectual-property-law-andrea-brizuela>
7. Casucci G., Through the looking glass, *Intellectual Property Magazine*, 2013
8. Cook T., The Cumulative Protection of Designs in the European Union and the Role in such Protection of Copyright, *Journal of Intellectual Property Rights*, Vol 18, January 2013, pp 83-87.
9. Cox C. and Jenkins J., Between the Seams, A Fertile Commons: An Overview of the Relationship Between Fashion and Intellectual Property, *Conference of USC Annenberg School for Communication*, 2005
10. Darcy J., Under-regulated or under-enforced: intellectual property, the fashion industry and fake goods, *European Intellectual Property Review*, 2013, 35(2), 82-92
11. Derclaye E., Are Fashion Designers Better Protected in Continental Europe than in the United Kingdom? A Comparative Analysis of the Recent Case Law

- in France, Italy and the United Kingdom, *The Journal of World Intellectual Property*, Volume 13, Issue 3, pp. 315–365, May 2010
12. Ellis S., Copyrighting Couture: An Examination of Fashion Design Protection and Why the DPPA and IDPPPA are a Step towards the Solution to Counterfeit Chic, *Tennessee Law Review*, Vol. 78, p. 163, 2010
  13. EU Focus, Case Comment: Court upholds registration of community designs for handbags, *EU Focus*, 2015, 336, 14-15
  14. Fridolin F., Design law in the European fashion sector, *WIPO Magazine*, February 2008
  15. Hemphill C. and Suk J., The Law, Culture, and Economics of Fashion, *Stanford Law Review*, Vol. 61, No. 5 (Mar., 2009), pp. 1147-1199.
  16. Herzfeld O., Protecting Fashion Designs, *Forbes magazine*, Jan3, 2013 <http://www.forbes.com/sites/oliverherzfeld/2013/01/03/protecting-fashion-designs/>
  17. Kaufman S., Trend Forecast: Imitation is a Legal Form of Flatter – Louis Vuitton Malletier v. Dooney & Bourke, Inc., (2005), *Cardozo Arts & Ent.*, L.J. 531.
  18. Logeais E., France - fashion - copyright/unfair competition - heavy damages for plagiarism of YSL's tuxedo dress by Ralph Lauren, *European Intellectual Property Review*, 1994.
  19. Marcelo C., Thesis titled: The Crimes of Fashion. The Effects of Trademark and Copyright Infringement in the Fashion Industry, 2011
  20. Mencken J., A Design for the Copyright of Fashion, *The Intellectual Property and Technology Forum at Boston College Law School*, 1997.
  21. Mills N., Intellectual Property Protection for Fashion Design: An Overview of Existing Law and A Look Toward Proposed Legislative Changes, *Washington Journal of Law, Technology & Arts*, 2009
  22. Oduok U., Riordan St., Rothschild F., Coleman Ch., Watkins V., Fashion Law Panel An Introductory Guide To Fashion Law, *UC Hastings Communications & Entertainment Law Journal in conjunction with Ebitu Law Group, P.C.*,
  23. Raustiala K., Sprigman C., The Piracy Paradox: Innovation and Intellectual Property in Fashion Design, *Virginia Law Review*, Vol. 92, No. 8 (Dec., 2006), pp. 1687-177

24. Scafidi S., Intellectual Property and Fashion Design, *Intellectual Property and Information Wealth, Vol. 1, No. 115, 2006*
25. Silverman I., Copyright and fashion: friends at last?, *European Intellectual Property Review, 2013*
26. The Devil Wears Trademark: How the Fashion Industry Has Expanded Trademark Doctrine to Its Detriment, *Harvard Law Review, Vol.127, No. 3 Jan 17, 2014* <http://harvardlawreview.org/2014/01/the-devil-wears-trademark-how-the-fashion-industry-has-expanded-trademark-doctrine-to-its-detriment>
27. Tsai J., Fashioning Protection: A Note on the Protection of Fashion Designs in the United States, *Lewis & Clark Law Review, pp. 447-461*
28. Tu K., Counterfeit Fashion: The Interplay between Copyright and Trademark Law in Original Fashion Designs and Designer Knockoffs, *Texas Intellectual Property Law Journal, Vol. 18, No. 3, pp. 419-50, 2010*
29. Van Keymeulen E. and Nash L., Fashionably late, *Intellectual Property Magazine, 2011/2012*
30. Wulf A., Thesis titled: A Comparative Approach to the Protection of Fashion Innovations, Paper 39, *Berkeley Center for Law and Technology, 2007*

### **Academic material**

1. Bocconi University, On-line Seminar Courses, *Management of Fashion and Luxury Companies, 2015.*
2. Stamatoudi I., *Legal Problems of Architecture Design, Photography and other Artifacts*, International Hellenic University (2014-2015)

### **Official Webpage sources**

1. <http://www.hg.org/fashion-law.html>
2. Tsiavos Pr., in <http://www.greeklawdigest.gr/component/k2/item/67-copyright-law>
3. <http://definitionoffashiondesign.blogspot.gr/>
4. <http://fashionlawwiki.pbworks.com/w/page/11611162/Copyright%20Protection%20of%20Design%20in%20the%20US%20v%20Europe>

5. <http://melwanichan.com/resources/fashion-law-protect-your-brand-and-stop-knock-off-designers-counterfeiters/>
6. <http://work.chron.com/definition-fashion-designing-25262.html>
7. <http://www.opi.gr/index.php/en/general-information-on-copyright>
8. [http://www.yppo.gr/1/e1540.jsp?obj\\_id=811](http://www.yppo.gr/1/e1540.jsp?obj_id=811)
9. <http://www.vogue.com/866951/visual-history-50-years-of-the-chanel-bag-on-the-street/>
10. Guggenheim Museum, Giorgio Armani, *at*:  
  
[http://guggenheim.org/exhibitions/past\\_exhibitions/armani/](http://guggenheim.org/exhibitions/past_exhibitions/armani/)
11. The Metropolitan Museum of art, Jacqueline Kennedy: The White House years, *at*  
  
[http://www.metmuseum.org/special/se\\_event.asp?OccurrenceId={ACBF8E12-B196-11D4-93B6-00902786BF44}](http://www.metmuseum.org/special/se_event.asp?OccurrenceId={ACBF8E12-B196-11D4-93B6-00902786BF44})
12. The Metropolitan Museum of art, The costume institute, *at*  
<http://www.metmuseum.org/collections/department.asp?dep=8>
13. *Fashion Museum Breaks New Ground*, CNN.COM, May 12, 2003 *at*  
<http://www.cnn.com/2003/WORLD/europe/05/12/design360.fashion.museum>
14. Montalvo Fr., Protecting fashion: a comparative analysis of fashion design protection in the U.S. and Europe, Sept 19, 2014,  
<http://www.cardozoelj.com/2014/09/19/protecting-fashion-a-comparative-analysis-of-fashion-design-copyright-protection-in-the-u-s-and-europe>
15. <http://intellectualpropertiesfirm.com/conterfiet-vs-knockof/>
16. Kobe fashion Museum, *at*  
  
<http://www.city.kobe.jp/cityoffice/17/010/english/spot/fashion.html>

## Case law

1. *Societe Yves Saint Laurent Couture SA v Societe Louis Dreyfus Retail Management SA* [1994] E.C.C. 512, Trib. Comm. (Paris).

2. Athens' Court of Appeals 1036/2011, NOMOS, Greek legal database.
3. Greek Supreme Court 2330/2007, NOMOS, Greek legal database.
4. Greek Supreme Court 152/2005, NOMOS, Greek legal database.
5. Greek Supreme Court 257/95, NOMOS, Greek legal database.
6. C-5/08, *Infopaq International A/S v Danske Dagblades Forening*, Judgment of 16 July 2009 [2009] ECR I-656
7. H&M Hennes & Mauritz BV & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (T-525/13). Judgment of September 10, 2015.  
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=167268&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1061026>
8. *Karen Millen Ltd v Dunnes Stores* [2007] IEHC 449; [2008] E.C.D.R. 11

## Appendix

*The "Locarno Agreement": International Classification for Industrial Designs of the Locarno Agreement.*

### LIST OF CLASSES

1. Foodstuffs
2. Articles of clothing and haberdashery
3. Travel goods, cases, parasols and personal belongings, not elsewhere specified
4. Brush ware
5. Textile piece goods, artificial and natural sheet material
6. Furnishing
7. Household goods, not elsewhere specified
8. Tools and Hardware
9. Packages and containers for the transport or handling of goods
10. Clocks and watches and other measuring instruments, checking and signaling instruments

11. Articles of adornment
12. Means of transport or hoisting
13. Equipment for production, distribution or transformation of electricity
14. Recording, communication or information retrieval equipment
15. Machines, not elsewhere specified
16. Photographic, cinematographic and optical apparatus
17. Musical instruments
18. Printing and office machinery
19. Stationery and office equipment, artists' and teaching materials
20. Sales and advertising equipment, signs
21. Games, toys, tents and sports goods
22. Arms, pyrotechnic articles, articles for hunting, fishing and pest killing
23. Fluid distribution equipment, sanitary, heating, ventilation and air-conditioning equipment, solid fuel
24. Medical and laboratory equipment
25. Building units and construction elements
26. Lighting apparatus
27. Tobacco and smokers' supplies
28. Pharmaceutical and cosmetic products, toilet articles and apparatus
29. Devices and equipment against fire hazards, for accident prevention and for rescue
30. Articles for the care and handling of animals
31. Machines and appliances for preparing food or drink not elsewhere specified 99  
Miscellaneous

