

The Role of Copyright Law in Protecting Fashion Design: A Legal and Strategic Analysis of “Fashion as Art”

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Introduction

Fashion is one of the most visible and economically significant industries in the contemporary creative world. The fashion industry generates approximately between \$1.7 and \$2.5 trillion annually, representing 2% of the global GDP. Beyond the economic magnitude, fashion plays a central role in shaping cultural expression, identity formation and social communication, not merely as an industrial sector producing garments, but as a system through which aesthetic values and symbolic meanings are created and circulated. At the same time, it is characterized by rapid cycles of production and consumption, high levels of competition and exceptional degree of imitation, occurring at a speed unmatched by any other industry. This combination of economic relevance and structural exposure to copying raises a fundamental question: if fashion design embodies creativity, why does it struggle to fit into the legal categories designed to protect creative works?

The importance of intellectual property rights in supporting creativity, innovation and fair competition in the fashion field has been emphasized by international organizations such as the World Intellectual Property Organization; despite the availability of tools such as design protection, trademarks and copyright, however, imitation is pervasive and often legally permissible in the context in which fashion operates. This paradox reveals a gap between the theoretical availability of protection and its practical effectiveness, where the assumption that creative outputs can be always identified and isolated and intellectual property law should grant exclusive rights over the reproduction and exploitation of the given outputs is deeply challenged. Unlike other creative fields, fashion designers rarely operate *ex nihilo*, but rather position their work within an ongoing dialogue that spans historical, cultural and commercial dimensions. As a result, the concept of originality becomes relative rather than absolute, making it hard to apply traditional legal tools not because of a simple gap in the system, but because of the structural misalignment of two different logics: the boundaries of law around creative works and the openness to circulation and reinterpretation on which fashion design thrives.

This thesis seeks to explore this tension in a systematic way: my aim is not to determine whether fashion should be protected under copyright law, but to examine the extent to which existing legal frameworks are capable of capturing the nature of this form of creativity. This question is addressed across three chapters. In the first one, the examination of the hybrid structure of fashion establishes the conceptual framework necessary to understand why traditional legal categories struggle to accommodate fashion design. It explores how fashion operates simultaneously as a functional product, a form of artistic expression and a system of social communication. The chapter then provides an overview of the main legal tools available, highlighting their respective scope and limitations.

Building on this foundation, the focus of the second chapter is on copyright law specifically. Its application to fashion design is analyzed through the examination of its core requirements as developed in the European jurisprudence and by the “useful article” doctrine in the United States. Through the comparative analysis of these two approaches, the advantages and critical issues associated with extending copyright protection to fashion are demonstrated.

The third chapter moves from theory to practice through the analysis of a concrete case study: the dispute between Stella McCartney and Steve Madden. This case provides a particularly effective lens through which to examine how intellectual property law operates in real-world fashion markets. By highlighting the reliance on indirect protection tools, such as trade dress and unfair competition, and illustrating the structural limitations of these tools when confronted with forms of imitation that do not involve exact replication of an aesthetic feature, this case study serves as a basis for a broader critical reflection on the role of imitation in the fashion industry. Drawing on the theory of the “piracy paradox”, the analysis considers the implications of copying and how the recent developments of the fast fashion system have altered the scale and impact of imitation.

Through the combined theoretical and empirical analysis, the thesis advances this main argument: the challenges associated with protecting fashion design are not contingent, but structural. As a result, the objective cannot be reduced to the simple expansion of existing protection, but a more nuanced approach is required, where the coexistence of creativity and imitation in the fashion industry is recognized as a defining feature that needs careful balance. In this sense, the study of fashion offers more than a sector-specific inquiry. It provides a broader perspective on the relationship between law and creativity in contemporary economies.

Chapter 1 – Fashion between Creativity, Industry and Imitation: A General Framework

1.1 Fashion as artistic expression and functional product

Fashion is one of the most immediate and visible forms of human expression. Unlike traditional works of art, fashion is inseparable from the body and from everyday life; unlike purely functional products, it carries symbolic and aesthetic significance that often transcends utility. It is, consequently, a hybrid phenomenon. On the one hand, clothes and accessories are generally considered as functional goods, produced to satisfy practical needs. However, designers use fashion as a mean to communicate ideas, values and aesthetic choices, which is why it also classifies as a creative and artistic form. The intrinsic dual nature of fashion therefore locates it between utility and creativity, challenging the traditional legal categories of protection that are often based on a distinction between mere functionality and pure art¹. This intrinsic duality is not merely descriptive, but structurally problematic for intellectual property law, which is traditionally built upon rigid distinctions between utility and artistic expression. Legal scholarship has not reached a uniform position on how this duality should be addressed, revealing a persistent tension between functional classification and artistic recognition.

In its earliest forms, the main purposes of fashion were strictly practical, such as protection from environmental conditions or physical survival. Garments were not intended to express artistic value, but rather to respond to basic human needs; clothing tended therefore to be standardized, with little to no variation in the design. Being necessary items for everyday life, clothes had nothing to do with individual or cultural expression. This early utilitarian conception of clothing partly explains why legal systems have traditionally struggled to recognize fashion as an object of artistic protection². It was with the Industrial Revolution that clothing began to undergo a significant transformation: industrialization introduced new production methods that allowed greater experimentation in the design of garments. A key figure in this process was who is considered to be the first tailor to transform his into that of a fashion designer: Charles Frederick Worth. In 1860 he founded his fashion house in Paris, where he started gaining fame for his creative vision that went way beyond simply responding to his clients requests, including prominent figures such as Empress Eugénie of France. The work of Worth illustrates how, with the rise of haute couture, originality and quality of the design became central elements of fashion, and how it began to be perceived as the result of individual creative authorship, a concept traditionally associated with artistic works rather than industrial products.

¹ B. Scruggs, Should Fashion Design Be Copyrightable?, Northwestern Journal of Technology and Intellectual Property, 2007

² A. Huttner, Overdressed and Underprotected, Cleveland State Law Review, 2022

From this point onward, fashion established itself as an artistic and commercial practice. The aesthetic decisions regarding shapes, colors and materials, often taking inspiration from personal experience or specific cultural influences, contributed to the development of different and recognizable styles that distinguished one fashion house from the other. Individuals gained the opportunity to position themselves within the society through the expression of individuality, conveying messages about their personal values, social status and personality with different clothing choices. By operating as a system of signs allowing individuals to signal affiliation with specific groups, fashion became a sociological phenomenon linked with identity formation and dynamics of inclusion and belonging.³

The rise of fashion as a cultural product identifies it as a phenomenon that both shapes and reflects society. Specific historical moments, as well as artistic movements and social values, began to be embodied by clothing, that is still today a valuable source to understand cultural changes. From this perspective, it is comparable to art and design and nowadays preserved and displayed as part of the cultural heritage. These practices recognize fashion not only as a commercial good, but also as a medium through which collective memory and cultural meaning are constructed. However, unlike traditional forms of art, fashion has a characteristic that complicates its status and raises further questions about its legal and conceptual classification as a complex and unique phenomenon: it is still closely tied to mass production and market circulation. It is precisely this coexistence of artistic value and industrial production that places fashion design in a legal grey area, challenging traditional distinctions between art and utility.

Unlike traditional art forms, the fashion industry relies on rapid production and circulation, a dynamic that is especially visible in today's context. As noted in the legal and economic scholarship of A. Huttner,⁴ over the past thirty years the fashion industry has undergone deeper changes than most other manufacturing industries due to intense globalization since the 1990s. This industrial framework does not eliminate the creative dimension of fashion but rather embeds artistic creation within a commercial system. This hybrid nature creates important difficulties when approached from a legal perspective. As highlighted by copyright scholars, fashion is often considered as a "useful article"⁵ because garments serve the practical function to be worn and guarantee protection and comfort; at the same time, original shapes, patterns and embellishments classify as artistic elements that create the problem of separability: how much of a design can be considered as "artistic"

³ C. S. Hemphill, J. Suk, *The Law, Culture, and Economics of Fashion*, Stanford Law Review, 2009.

⁴ A. Huttner, *Overdressed and Underprotected: The Not-So Glamorous Side of the U.S. Fashion Industry Without Explicit Copyright Protection*, Cleveland State Law Review, 2022.

⁵ B. Scruggs, *Should Fashion Design Be Copyrightable?*, Northwestern Journal of Technology and Intellectual Property, 2007.

and therefore be eligible for copyright protection? The issue has been widely discussed in copyright scholarship as one of the main obstacles to extending protection to fashion design.⁶

Traditional intellectual property systems offer protection for certain aspects of fashion, such as the shape of a garment or the brand under which it is sold. However, these tools do not extend to the creative choices behind the design itself. As a result, a protection gap exists: originality, aesthetic decisions, and stylistic innovation often remain outside the scope of legal coverage. Understanding the duality provides the necessary foundation for assessing the adequacy of the tools traditionally employed to protect fashion design and sets the stage for the discussion around copyright protection.

1.2 Intellectual property tools for the protection of fashion design

Intellectual property protection is traditionally justified on several theoretical grounds. From an economic perspective, the incentive theory argues that exclusive rights are necessary to encourage creative production by allowing creators to recoup their investments. From a personality-based perspective, creative works are seen as extensions of the author's identity, deserving recognition and protection. At the same time, IP systems must preserve a balance with the public domain, ensuring that exclusive rights do not excessively restrict access, competition and cumulative innovation. Fashion design challenges these theoretical foundations because its creative process is highly iterative, collaborative and trend-driven, raising the question of whether strong exclusivity is compatible with its structural dynamics.

Having outlined the framework that positions fashion design as a structurally hybrid phenomenon, it is necessary to understand the differences between the intellectual property instruments traditionally employed to protect it. The fashion industry represents a challenging field of application of the tools provided by the legal systems to safeguard originality, innovation and market differentiation. The primary intellectual property rights available to designers reveal conceptual and practical limitations that stem from the mismatch between the traditional logic underlying these protection regimes and the specific characteristics of fashion design. Therefore, a comprehensive protection of fashion design is prevented.

I. Industrial design as traditional form of protection

Design law is often regarded as the most natural and immediate form of protection for fashion creations. Features such as shape, lines, contours, colours, textures and ornamentation constitute what is called "the appearance" of a product, which is what industrial design aims to protect. According to Article 3(a) of

⁶ R. M. Nagel, *Tailoring Copyright to Protect Artists: Why the United States Needs More Elasticity in Its Protection for Fashion Designs*, University of Richmond Law Review, 2020.

Regulation (EC) No 6/2002 on Community Designs, a design is “the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.”⁷ This normative definition clarifies that industrial design protection is concerned exclusively with the external visual features of a product, independently of its technical or functional aspects. This form of protection appears particularly attractive in the fashion context, as garments and accessories are generally visually driven products. The legal rationale of design law is that the appearance of a product, only for its aesthetic components, can constitute a form of competitive advantage deserving protection.⁸

In practice, design law has been widely used to protect clothing, both with registered and unregistered rights that allow a certain degree of flexibility as it accommodates the rapid pace of fashion cycles and the seasonal nature of collections. This apparent suitability, however, is limited to the external appearance and does not extend to the broader creative dimension of fashion design. Consequently, only the specific form of a garment is protected, while the stylistic choices and aesthetic vision often remain legally invisible.⁹ Moreover, a further limitation is represented by the temporality: registered designs are subject to fixed durations, while unregistered designs offer only short-term and geographically constrained protection. As a consequence, the practical effectiveness is highly compromised in an industry characterized by rapid imitation and global circulation. Scholars have noted that this form-based and time-bound approach struggles to capture the fluid and iterative nature of fashion creativity, where innovation often consists in the reinterpretation and recombination of existing elements rather than in radical formal novelty.¹⁰

A paradigmatic example can be found in the dispute concerning the iconic design of Moon Boots.¹¹ The dispute between the Italian maker of the footwear, Tecnica Group, and Chiara Ferragni’s fashion brand that launched a pair of boots with a visual configuration that really resembles the one of Moon Boot, with the same distinctive bulky and rounded form, illustrates both the strengths and limitations of design law. In early 2021, the Tribunale di Milano issued judgment no. 493/2021, holding that the footwear sold under the Chiara Ferragni label constituted a plagiarism and infringement of the industrial design protected by copyright vested

⁷ Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs, Art. 3(a).

⁸ EU Regulation No. 6/2002 on Community Designs.

⁹ B. Scruggs, *Should Fashion Design Be Copyrightable?*, *Northwestern Journal of Technology and Intellectual Property*, 2007.

¹⁰ A. Huttner, *Overdressed and Underprotected*, *Cleveland State Law Review*, 2022.

¹¹ *Tecnica Group S.p.A. v. Anniel Group S.p.A.*, Court of Appeal of Milan, 2016.

in the Moon Boot.¹² The court acknowledged the individual character of the shoes, but the protection was strictly limited to the specific registered design, leaving room for competitors to produce similar boots without reproducing the protected form in its entirety. This outcome highlights the fact that design law fails to safeguard the broader stylistic idea underlying the design, and constitutes a way too “form-based” approach to prevent aesthetic appropriation. Moreover, it raises a fundamental question on the threshold of creativity required for copyright protection. If it is only justified when a work reflects the author’s own intellectual creation, the decisive question is about whether the aesthetic configuration of the shoe results from free creative choices or it is constrained by functional considerations, as a response to structural and thermal requirements.

The legal uncertainty surrounding the protection of fashion designs under copyright law has been further clarified at the European level by the judgment of the Court of Justice of the European Union in *Cofemel – Sociedade de Vestuário SA v. G-Star Raw CV* (2019). In this decision, the Court held that copyright protection for designs cannot depend on the aesthetic or artistic value of the work, but solely on the presence of originality understood as the author’s own intellectual creation. The ruling rejected the possibility for Member States to impose additional criteria, such as artistic merit, in order to grant copyright protection to works of applied art. While this decision potentially broadened the scope of copyright protection for fashion design, it also reinforced the importance of identifying whether the visual configuration of a product reflects genuine creative choices or whether it is primarily dictated by functional considerations. In the context of fashion design, this distinction becomes particularly delicate, as garments and accessories frequently combine aesthetic expression with technical constraints related to wearability, ergonomics and production.

This tension has also resurfaced in the recent *Birkenstock* case, where in 2025 German courts were asked whether the iconic sandal design could be considered copyrightable. As in the previous case, the visual identity could stem from ergonomic necessities, revealing that the boundary between functionality and authorship is hard to define.

In this case, German courts were asked to determine whether the iconic sandals could qualify for copyright protection. The brand argued that the distinctive configuration of the shoe reflected creative design choices and should therefore be protected as a work of art. The opposing argument, however, emphasized that the distinctive features were primarily dictated by ergonomic and orthopedic considerations, as the brand's historical development is closely linked to the production of anatomically shaped footwear designed to support the natural structure of the foot. The central difficulty in applying copyright law to fashion design is highlighted with clarity by this case: while the sandals possess a recognizable visual identity, their form is influenced by technical requirements linked to comfort and support. In this sense, the *Birkenstock* dispute

¹² EU Regulation No. 6/2002 on Community Designs.

illustrates a scenario in which design is neither purely functional nor purely creative, but the result of an inseparable interaction between the two dimensions.

When this dispute is read in light of the principles established by the CJEU in *Cofemel*, it is evident that if the configuration of a product is significantly constrained by technical considerations, the margin for free and creative choices is limited. The *Birkenstock* case therefore exposes a structural tension within the European approach itself: although *Cofemel* formally removes any requirement of artistic merit, it does not resolve the underlying difficulty of assessing originality in contexts where functionality and expression are deeply intertwined.

II. Trademark law and patents

Trademark law constitutes a second cornerstone of fashion protection, particularly for established brands.¹³ Through trademarks, fashion companies are able to protect signs that identify the commercial origin of their product and distinguish them from those of competitors. In the fashion industry, it is particularly evident how trademarks play both an economic and strategic role, indicating quality and lifestyle. The primary objective of trademark protection is the prevention of consumer confusion, not the reward of originality or artistic merit. As a result, trademark law safeguards brand identifiers rather than the aesthetic content of garments. This limitation is illustrated by the *Christian Louboutin v. Yves Saint Laurent* case, that concerned the distinctive red sole of Louboutin shoes, registered as a trademark in 2010.¹⁴ The controversy emerged when Yves Saint Laurent marketed a monochrome red high heeled shoe, and it reached the Court of Justice of the European Union. In its 2018 judgment, the CJEU upheld the validity of Louboutin's trademark, clarifying that the sign did not consist of the "shape" of the product as such, but rather of a specific colour applied to a particular part of the product, namely the outsole of a high-heeled shoe. As a result, the mark did not fall under the exclusion of signs consisting exclusively of a shape giving substantial value to the goods under Article 3(1)(e)(iii) of the Trade Marks Directive (now Article 7(1)(e)(iii) EUTMR).

Crucially, the Court emphasized that the red sole functioned as a source-identifying sign, allowing consumers to associate the footwear with a specific commercial origin, rather than as a purely decorative or aesthetic feature. At the same time, the dispute exposes the structural limitations of trademark protection in the fashion industry. What trademark law protected was not the overall design of the shoe, nor the creative concept of contrasting soles, but a single element—the red outsole—only insofar as it had acquired distinctiveness through consistent use and strong market recognition. The aesthetic value of the feature was legally relevant only because it served a distinctive function, not because of its creative merit. Indeed, YSL's monochrome red

¹³ C. S. Hemphill, J. Suk, *The Law, Culture, and Economics of Fashion*, Stanford Law Review, 2009.

¹⁴ Case C-163/16, *Christian Louboutin SAS v. Van Haren Schoenen BV*, CJEU, 2018.

shoe was ultimately held not to infringe because it did not reproduce the contrast between the red sole and a differently coloured upper, which was central to the scope of Louboutin's trademark protection.

The fundamental asymmetry in trademark law is therefore clear: protection is granted on the basis of consumer perception and brand recognition, not design creativity itself, which is why it offers limited utility to emerging designers whose innovative creations have not yet acquired the requisite distinctiveness.¹⁵

Lastly, patent law occupies a marginal position within the fashion industry, largely due to its stringent substantive requirements. In order to qualify for patent protection, an invention must be novel, involve an inventive step and be capable of industrial application. While these criteria may occasionally be satisfied by technical innovations in textile production, materials or wearable technology, they rarely apply to the aesthetic aspects of fashion design.¹⁶ As a result, patents are generally irrelevant for garments and accessories whose value derives primarily from their visual and stylistic qualities. This separation underscores the underlying mismatch between the technical and functional advances awarded by patent law and aesthetic differentiation on which is based fashion design.

Taken together, these intellectual property instruments provide fragmented protection, inapplicable to fashion design as a whole: design law safeguards form but not expression, trademark law protects brand identity but not creativity, patent law addresses technical solutions but excludes aesthetic content. The consequence is a protection gap that explains the growing legal interest in copyright as a potential mechanism for protecting fashion design.

III. Copyright as a controversial form of protection

The structural limitations highlighted in the previous section have gradually redirected legal attention to copyright as a potential mechanism for protection of fashion design. What differentiates copyright from the other protection instruments is that it is conceptually oriented towards original expression rather than status identification, as in trademarks, or product appearance as such as in design law. Fashion design, especially in its high-end and haute couture forms, frequently embodies aesthetic choices that resemble the orchestration of a unique aesthetic language across a collection. It is in this logic of creativity that copyright's promise lies: scholars who argue in favour of expanded fashion copyright in the United States typically present two linked claims: (i) the industry has evolved from generic functional clothing to design-driven creativity; and (ii) the law has failed to evolve accordingly, leaving designers exposed to systematic appropriation.¹⁷ A practical

¹⁵ G. Dinwoodie, *Trademark Law and the Fashion Industry*, Oxford University Press.

¹⁶ W. Cornish, D. Llewelyn, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, Sweet & Maxwell.

¹⁷ Robin M. Nagel, 'Tailoring Copyright to Protect Artists: Why the United States Needs More Elasticity in Its Protection for Fashion Designs' (2020) 54 *University of Richmond Law Review* 635.

illustration of this dynamic is the fast fashion model, in which runway designs are rapidly translated into low-priced replicas sold by fast fashion stores. These aim to capture the same aesthetic impact while avoiding classic counterfeiting markers. The potential harm is not limited to lost sales, as it can include erosion of exclusivity, dilution of brand identity, and shortened product life cycles.¹⁸ In this environment, copyright appears “promising” because it is not tied to consumer confusion (as trademark law is), but to whether a competitor has appropriated protectable original expression.

The major obstacle is still the classification of clothing as a functional article. In this environment, copyright protection becomes possible only for those features that can be conceptually separated from utilitarian aspects. The central legal question revolves around understanding which portion of a garment serves as expression rather than function. This question defines the boundary of the entire debate, as commentators have repeatedly stressed that this binary distinction is hardly applicable to a field where the two are frequently inseparable.¹⁹ A vivid example of how this issue surfaces in litigation is the U.S. Supreme Court decision in *Star Athletica, LLC v. Varsity Brands, Inc.* (2017), where the Court held that certain surface graphic features (such as stripes, chevrons and colour blocks) on cheerleading uniforms could be eligible for copyright if they can be identified separately from, and capable of existing independently of, the uniform’s utilitarian aspects.²⁰ The decision really illustrates the controversy: the line between legitimate inspiration and unlawful appropriation may become uncertain and litigation prone.²¹ The importance of *Star Athletica* for fashion design lies in its practical consequences: by allowing copyright protection for surface graphic elements that are visually simple and commonly used, the decision potentially expands exclusivity to features that many designers regularly draw upon. This development increases uncertainty about which design choices remain freely usable and which may trigger legal disputes.

The controversy exists more broadly as a policy question: given that fashion is a cumulative field in which prior styles, historical silhouettes and cultural motifs are constantly referenced, to what extent should fashion designers be granted exclusive rights over their creations? The risk often raised by critics is that robust copyright protection could chill creativity by transforming ordinary design processes (mood boards, references, trend adaptation) into potential liability. In this context, originality rarely emerges *ex nihilo*; rather, it is produced through processes of citation, transformation, and dialogue with existing visual languages. This cumulative character complicates the traditional logic of intellectual property, which is based on individual

¹⁸ Anna Huttner, ‘Overdressed & Underprotected: The Not-So Glamorous Side of the United States Fashion Industry Without Explicit Copyright Protection’ (2022) 70 *Cleveland State Law Review* 363.

¹⁹ Brandon Scruggs, ‘Should Fashion Design Be Copyrightable?’ (2007) 6 *Northwestern Journal of Technology and Intellectual Property* 122.

²⁰ *Star Athletica, LLC v. Varsity Brands, Inc.*, 580 U.S. 405 (2017).

²¹ ‘*Star Athletica, L.L.C. v. Varsity Brands, Inc.*’ (2017) 131 *Harvard Law Review* (case comment).

authorship and identifiable originality. In fashion, influence and adaptation are not anomalies but structural features of the creative process. Any expansion of exclusive rights must therefore confront the risk of constraining the very mechanisms through which fashion innovation occurs.

IV. The phenomenon of imitation

The risk that copyright may overprotect common design elements and creative practices finds a systematic expression in the debate on innovation and imitation in fashion. The most influential challenge to the assumption that “more copyright is better” is the claim that fashion may function efficiently precisely because it operates under relatively weak intellectual property protection, and that imitation can, under certain conditions, support rather than undermine innovation. Raustiala and Springman famously describe fashion as an “industry puzzle” that, unlike music or film, has historically lacked strong copyright protection but has remained innovative and economically successful.²² In their “piracy paradox” they argue that in this industry copying plays a functional role in accelerating the spread of trends, by increasing competitive pressure and sustaining demand for new designs.

Since fashion innovation is structurally linked to rapid diffusion and turnover, the logic according to which granting copyright encourages creation may not align with the industry’s actual dynamics. The key question shifts to whether strong exclusive rights are the appropriate legal response for an industry whose creativity depends on openness. Under this optic, the protection gap may serve an economic function and the analysis becomes more nuanced: rather than assessing that under-protection is necessarily a failure, the debate revolves around understanding if in light of contemporary industry conditions this IP equilibrium is justified.

Fast fashion, digitalization and globalization have further increased the scale and speed of imitation and changed the conditions of the piracy paradox. Over the past three decades the fast fashion industry has undergone an important structural transformation. The sector traditionally operated through seasonal cycles in which the collections are designed 12-24 before reaching the market, constituting a system with a “push” logic in which designers firstly develop creations according to their creative vision, then present them during fashion weeks and lastly distribute to retailers. Since the 1990s, the waves of globalization reshaped the system by relocating production to countries with lower labor costs. This practice of outsourcing improved cost efficiency but reduced the responsiveness to the rapid shifts in consumers’ preferences, creating a problematic

²² Kal Raustiala and Christopher Sprigman, ‘The Piracy Paradox: Innovation and Intellectual Property in Fashion Design’ (2006) 92 Virginia Law Review 1687.

rigidity in an industry characterized by short product life cycles, high demand volatility and limited predictability.²³

It is within this evolving context that a new model emerged: fast fashion, a market dynamic built on speed and flexibility in the coordination between design, manufacturing and distribution. Fast fashion operates through a “pull” approach, according to which production decisions are driven by real time data about demand and sales.²⁴ This drastically shortened the time-to-market allowing brands to continuously introduce new items and making trend-driven garments more affordable. In this context, the traditional “fashion pyramid” was reshaped: while historically higher levels of creativity were directly associated with higher prices, now highly fashionable products can be purchased at low costs. As a consequence, the fast fashion model relies on rapidly reinterpreting runway designs, which can impact the commercial performance of luxury brands and weaken the perception of exclusivity.

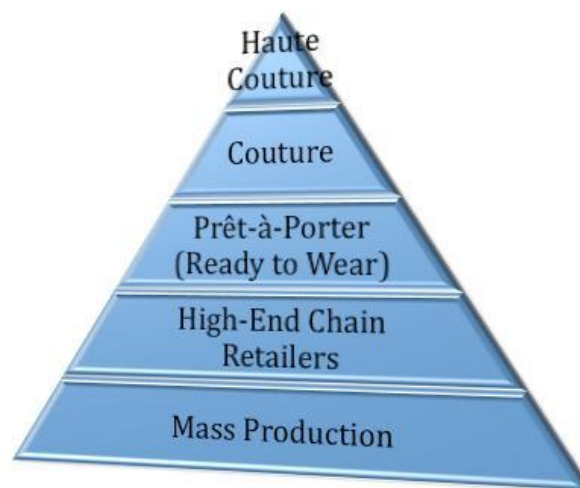


Figura 1: The Fashion Pyramid - <https://thebkmag.com/2011/03/24/runway-red-carpet-armani-prive-haute-couture/>

As seen in Figure 1, at the top of the pyramid is haute couture and couture, representing the most exclusive segment. This is the category that includes the most labor-intensive garments, entirely handmade using premium materials and meticulous craftsmanship. Below couture lies Ready to Wear, that combines high quality material with industrial production. Although more affordable than Couture, Ready to Wear clothes remain positioned above what average consumers would typically spend. These lines are structured through the traditional seasonal calendar, with collections presented during fashion weeks.

Between luxury and mass market lies the segment often referred to as “better” fashion, which includes moderately priced garments created or inspired by top designers with the aim of expanding sales volumes and

²³ Bhardwaj V. and Fairhurst A., *Fast fashion: Response to changes in the fashion industry* - Taylor & Francis Group, 2010.

²⁴ Linden Radner A., *An Analysis of the Fast Fashion Industry* – Bard College, Senior Projects Fall, 2016

reaching a wider audience. This segment has frequently been associated with what are known as high-end chain retailers. These retailers operate large, internationally distributed store networks and offer products with a higher level of design and quality than traditional mass-market brands, yet at more accessible prices than luxury labels. Examples include brands that bridge the gap between designer fashion and mainstream retail, combining recognizable style, brand identity, and industrial efficiency. High-end chain retailers therefore occupy an intermediate position, balancing aspirational appeal with relative affordability.

At the base of the pyramid there is the mass market, that includes fast fashion's basic, standardized products. At this stage, competition revolves around economies of scale and highly efficient supply chain management. The relationship between the stages of the pyramid seems clear: as one moves downward, prices decrease and with them the level of creative content. However, the rise of fast fashion has made it possible for customer to afford highly fashionable garments, challenging the alignment between creativity and cost.

The fast fashion production process is highly streamlined. In approximately five weeks, a design idea becomes a finished product available for purchase.²⁵ To maintain this rhythm, the main implication for the industry is that fast fashion brands rely heavily on design imitation: garments inspired by high-end clothing presented during fashion weeks frequently appear in stores before the original luxury version is made available.²⁶ These reproductions often replicate distinctive elements of the original creations, offering consumers visually similar alternatives at a fraction of the price. The most significant advantage of fast fashion companies relies on their ability to reproduce designs proven to attract consumer demand, introducing their versions before the trends fade.²⁷

From the perspective of designers, two main consequences emerge. First of all, the direct economic impact: producing and presenting collections during fashion weeks requires substantial financial investment, which fashion houses typically recover through the sale of ready-to-wear lines. Since the Great Recession²⁸ consumer behavior has shifted significantly: brand loyalty has declined, and customers increasingly mix products from different market segments, combining luxury items with fast fashion alternatives. This has led to a substitution effect, whereby consumers opt for lower-priced imitations instead of purchasing the original, more expensive design. Moreover, the widespread availability of similar knockoffs saturates the market, further reducing potential sales. This also has to do with the reputational harm, due to which the perceived uniqueness of designs diminishes and the aura of exclusivity that sustains luxury pricing is eroded. Secondly, the adequacy

²⁵ Cline E.L., *Overdressed: the shockingly high cost of cheap fashion* – Portfolio/Penguin, 2012

²⁶ Agins T., *Copy Shops: Fashion Knockoffs Hit Stores Before Originals as Designers* – WALL ST. J., 1994.

²⁷ Scott Hemphill C. and Suk J., *THE LAW, CULTURE, AND ECONOMICS OF FASHION* – Stanford Law Review at 61 STAN. L. REV. 1147, 2009

²⁸ The *Great Recession* was a period of economic downturn that lasted from approximately December 2007 to June 2009.

of IP protection is significantly challenged, as the balance between protecting the original design through copyright and maintaining a dynamic, competitive market remains a central issue in the debate over fashion law.

As a consequence, these tensions are problematic not only for the mere market practices, but for the entire legal debate on fashion. The coexistence of creativity and industrial reproduction, of authorship and diffusion, forces intellectual property law to confront a fundamental question: should fashion be protected as art, regulated as industry, or understood as a hybrid space in which controlled imitation is structurally embedded? To shape the concrete boundaries of protection, it is necessary to move on from the theoretical analysis to examine the normative framework of this field and engage with the judicial interpretations and policy choices about fashion design.

2. Copyright and Fashion Design: Legal and Comparative Perspectives

This chapter moves from the general framework outlined in Chapter 1 to a more strictly legal analysis of copyright protection in the fashion industry, focusing on the requirements for protection, the differences between the European and United States approaches, and the main arguments for and against extending copyright to fashion design.

2.1 The requirements of copyright protection

In order to assess whether fashion design may be protected under copyright law, it is necessary to examine the main requirements that should be satisfied. Although the precise formulation of these requirements varies across jurisdictions, copyright systems generally converge on two elements: the existence of a work and the presence of originality.²⁹ The application of these requirements becomes particularly complex in the context of fashion design.

In the European Union, copyright protection arises automatically once a work satisfies the requirement of originality; this is understood as the expression of the author's own intellectual creation. The Court of Justice of the European Union has progressively clarified this principle, establishing a relatively harmonized concept through out the Member States.³⁰ According to the standard, a work has to reflect the author's free and creative choices in order to be considered copyrightable, allowing them to express their personal imprint on the final product.³¹ The crucial aspect is the emphasis on the creative freedom: copyright grants production not only to the final product itself, but the intellectual choice through which the author selects and arranges selective elements.³²

As it was said in the previous chapter, when it comes to fashion design the originality requirement raises immediate questions concerning the creative choices in the design process: do they lie in the invention of new forms, or in the specific configuration and combination of elements that produce a distinctive visual identity?³³

²⁹ Lionel Bently, Brad Sherman, *Intellectual Property Law*, Oxford University Press.

³⁰ Case C-5/08, Infopaq International A/S v Danske Dagblades Forening, Judgment of 16 July 2009.

³¹ Case C-145/10, Painer v Standard Verlags GmbH, Judgment of 1 December 2011.

³² Eleonora Rosati, *Copyright in the EU*, Oxford University Press.

³³ Kal Raustiala and Christopher Sprigman, "The Piracy Paradox: Innovation and Intellectual Property in Fashion Design", *Virginia Law Review*.

The originality requirement does not demand novelty in absolute sense, unlike in patents, but instead requires that the autonomous creative judgement of the designer is expressed.³⁴

The relationship between originality and functionality of the garments represents the biggest challenge in the application of copyright law because many aspects of clothing are often determined by practical needs such as movement and protection rather than aesthetic choices. Copyright law has traditionally excluded functional elements from protection because it could interfere with competition and technical innovation.³⁵ The difficulty arises when these aspects are intertwined, making it hard to determine whether a design feature responds to a mere technical necessity or results from creative freedom.

One of the most notable decisions by the CJEU in which this tension is addressed is *Cofemel – Sociedade de Vestuário SA v. G-Star Raw CV*, where it was clarified that protection arises solely from the presence of originality in the sense of the author's intellectual creation without depending on the artistic value.³⁶ This basically means that the idea that works should meet a certain threshold of artistic significance in order to qualify for protection was rejected, confirming that, in the case of fashion design, garments may in principle benefit from copyright if they embody sufficient creative choices.³⁷ On the other hand, however, it was emphasized that copyright cannot extend to elements dictated solely by technical considerations; copyright protection cannot apply when the form of a product is determined exclusively by its technical function³⁸, while it can be applied when the design reflects free creative choices.³⁹

In practical terms, the importance of identifying the margin of the creative freedom available to the designer is particularly relevant for fashion design, and it involves asking whether alternative design solutions are possible when the garment is conceived. If the designer has genuine freedom to choose among different aesthetic configurations, the resulting design may qualify as an original work; copyright protection becomes instead more difficult to justify if the features were imposed by functional constraints.⁴⁰ This analytical framework demonstrates that in fashion design copyright protection depends on the examination of the relationship between creativity and constraint and the presence of genuine originality rather than radical novelty. This

³⁴ Estelle Derclaye, "The Notion of Originality in Copyright Law", *International Review of Intellectual Property and Competition Law*.

³⁵ William Cornish, David Llewelyn and Tanya Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, Sweet & Maxwell.

³⁶ Case C-683/17, *Cofemel – Sociedade de Vestuário SA v G-Star Raw CV*, Judgment of 12 September 2019.

³⁷ Eleonora Rosati, "The Cofemel Case and the EU Concept of Originality", commentary on EU copyright law.

³⁸ Annette Kur, "Design Law and Copyright Overlap in the EU", *Journal of Intellectual Property Law & Practice*.

³⁹ Case C-833/18, *Brompton Bicycle Ltd v Chedech/Get2Get*, Judgment of 11 June 2020.

⁴⁰ H. Härkönen, "The Role of Creative Freedom in EU Copyright Originality", *Journal of Intellectual Property Law*.

distinction particularly challenges courts when distinguishing if fashion products operate as aesthetic objects, industrial goods or commercial commodities,⁴¹ and the problem becomes particularly acute in legal systems that explicitly distinguish between artistic expression and utilitarian design, as is the case under the U.S. doctrine of useful articles.

2.2 Fashion design and the “Useful Article” doctrine

The obstacle highlighted in the previous sector has historically led intellectual property law systems, especially in the United States, to be reluctant in extending protection to clothing design as such.⁴² Within this framework, the issue is addressed through the so-called “useful article doctrine”. Under Section 101 of the U.S Copyright Act, a useful article is defined as an object having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.⁴³ Because garments clearly perform a utilitarian function, their overall design is generally excluded from copyright protection. However, the law allows protection for those artistic features that can be conceptually or physically separated from the utilitarian aspects of the object. This principle is commonly referred to as the separability doctrine, which attempts to distinguish protectable expressive elements from functional design features.⁴⁴

The application of this doctrine has generated significant uncertainty in the U.S copyright jurisprudence, as courts have struggled to develop consistent criteria for determining the independence of a design feature from the utilitarian function. For example, some decisions have focused on the physical separability of artistic features while others have adopted a more conceptual approach asking if the artistic element can exist independently as a work of art.⁴⁵ The resulting jurisprudence therefore produced a fragmented landscape of interpretations and outcomes.

A turning point in this debate came with the decision of the United States Supreme Court in *Star Athletica, LLC v. Varsity Brands, Inc.*, in which the Court was asked to assess whether the graphic designs applied to cheerleading uniforms could be protected by copyright despite the fact that uniforms themselves constitute useful articles. The Court held that, if a design feature can exist independently as a work of art, separated by

⁴¹ Susy Frankel and Daniel Gervais, *The Internet and the Emerging Importance of New Forms of Creativity*, Cambridge University Press.

⁴² Christopher S. Hemphill and Jeannie Suk, “The Law, Culture and Economics of Fashion”, *Stanford Law Review*

⁴³ 17 U.S.C. §101 (definition of “useful article”).

⁴⁴ William Cornish, David Llewelyn and Tanya Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, Sweet & Maxwell.

⁴⁵ *Mazer v. Stein*, 347 U.S. 201 (1954).

the article, copyright protection may cover it.⁴⁶ In this case, the stripes and colours decorating the uniforms were considered conceptually separable from the utilitarian function of the garments and therefore copyrightable. While this decision clarified the legal test for separability, the underlying conceptual tension is argued by critics to remain too complex, making it difficult to apply it in practice especially in fields like this.⁴⁷

From this perspective, the Useful Article doctrine reveals the structural limits of the application of copyright to fashion. Unlike paintings, sculptures or photographs, garments are objects whose aesthetic and functional dimension are more deeply intertwined. As a result, the scope of copyright protection for fashion design remains narrow in jurisdictions that rely heavily on this doctrine.⁴⁸ An important contrast between the U.S approach and the European legal framework emerges: European copyright law does not formally imply a similar doctrine, while instead stresses on the key question if an object reflects the author's own intellectual creation. Nevertheless, the distinction between creativity and functionality remains central to both legal systems although it is articulated through different frameworks. This reality has led designers to rely heavily on alternative forms of intellectual property protection to safeguard their creations, due to the key structural challenge of adapting traditional copyright categories to fashion.

2.3 European and United States approaches to fashion copyright protection

While both jurisdictions recognize the possibility to protect certain forms of applied art under copyright protection, the doctrinal frameworks through which this possibility is assessed diverge in important ways, reflecting broader philosophical distinctions in the conceptualization of creativity and functionality. This divergence does not merely concern doctrinal interpretation, but also shapes the strategies adopted by fashion designers and companies to protect their creations. Understanding these differences is therefore essential to assess the effectiveness of copyright protection within the industry.

Within the European Union, copyright protection arises whenever a work reflects the author's free and creative choices, without the need to demonstrate particular artistic merit.⁴⁹ Unlike the United States system, CJEU does not automatically exclude the utilitarian aspect of garments from protection; instead, the decisive question becomes whether the aesthetic configuration of the product embodies sufficient creative freedom. As a result, it allows what is known as cumulative protection, where the same fashion item may be protected

⁴⁶ *Star Athletica, LLC v. Varsity Brands, Inc.*, 580 U.S. 405 (2017).

⁴⁷ Jeanne C. Fromer, "The Separability Doctrine and the Limits of Copyright Protection for Useful Articles", SSRN.

⁴⁸ Brandon Scruggs, "Should Fashion Design Be Copyrightable?", *Northwestern Journal of Technology and Intellectual Property*.

⁴⁹ Case C-683/17, *Cofemel – Sociedade de Vestuário SA v G-Star Raw CV*, Judgment of 12 September 2019.

simultaneously by different intellectual property tools, provided that the respective legal requirements are satisfied⁵⁰. The coexistence between design protection and copyright protection is reflected in Regulation (EC) No 6/2002 on Community Designs, which does not exclude the possibility that the same object may simultaneously benefit from copyright protection where the requirements of originality are satisfied.

For fashion designers, this implies that copyright can potentially serve as an additional layer of protection when design law proves insufficient. However, this does not eliminate the tension between creativity and functionality and in practice the assessment requires careful examination of the two dimensions.

The United States adopt a significantly more restrictive approach: fashion is mainly addressed through the doctrine of useful article and the associated concept of separability. Because garments are considered useful articles, their overall configuration generally falls outside the scope of copyright protection. Only the elements that can be identified separately from the functional aspects of the garment may qualify for protection.⁵¹

These differences have important consequences for the strategies adopted by fashion companies. In the European Union, designers may rely on copyright protection in cases where the originality threshold is satisfied, often alongside design rights. In the United States, however, fashion companies tend to rely more heavily on alternative forms of intellectual property protection. A prominent role is played by trademark law and branding strategies as they allow companies to safeguard the commercial identity of the products even when the underlying design remains legally unprotected.⁵² While European designers often pursue claims in relation to distinctive designs, American fashion houses often insist on protecting logos, distinctive patterns or iconic brand elements that serve as identifiers. As a result, intellectual property protection in the U.S. revolves more around brand identity than specific designs. The comparative analysis therefore reveals that the key issue is not whether fashion should be covered under copyright law in principle but rather how far such protection should extend without restricting competition and innovation in an industry characterized by rapid cycles of imitation and reinterpretation.⁵³

2.4 Advantages and critical issues of copyright protection in the fashion industry

The possibility of extending copyright protection to fashion design has generated a long-standing debate among scholars. While some commentators argue that copyright protection is necessary to safeguard the creative dimension, others warn that excessive protection may undermine the dynamics that sustain innovation

⁵⁰ Annette Kur, “Design Protection in Europe and the Concept of Cumulative Protection”, *Journal of Intellectual Property Law & Practice*.

⁵¹ 17 U.S.C. §101 (definition of “useful article”).

⁵² Christopher S. Hemphill and Jeannie Suk, “The Law, Culture and Economics of Fashion”, *Stanford Law Review*.

⁵³ Christopher S. Hemphill and Jeannie Suk, “The Law, Culture and Economics of Fashion”, *Stanford Law Review*.

and competition. It is this fundamental tension between protecting creative efforts and preserving an open environment in which fashion trends evolve that the debate revolves around.

One of the principle arguments in favor of copyright protection is that fashion designer develop distinctive aesthetic languages by combining silhouettes, colours, textures and symbolic references reflecting an identifiable vision. This is consistent with the broader objective of copyright law, which is to grant authors exclusive rights to encourage creativity.⁵⁴

Moreover, the absence of effective protection may expose designers, especially the ones with limited market power, to systematic imitation by larger companies. This problem is particularly visible in the context of fast fashion, where the economic value of an original runway design may be significantly eroded before the designer has had the opportunity to fully exploit it commercially. Therefore, stronger protection could serve as a mechanism copying and preserve incentives for experimentation.⁵⁵ This argument is supported by the substantial investment in research, design development and marketing that may be undermined if competitors appropriate succesful designs without incurring similar costs.

On the other hand, however, copyright protection applied to fashion raises significant concerns. The mostly cited risk is the one of overprotection, that is incompatible with the historical evolution of fashion through reinterpretation of existing styles. If protection is extended too broadly, practices such as drawing inspiration from past collections, historical or cultural references may qualify as infringements.⁵⁶ As stated in the theory of the Piracy Paradox, it is the wide adoption of trends, with eventually the loss of its exclusivity, that stimulates continuos innovation.⁵⁷ From this perspective, copying may serve as a mechanism that sustains the cyclical nature of fashion.

The Piracy Patradox does not imply that all forms of imitation are beneficial, but it rather underlines the complex relationship between fashion industry and intellectual property. The conditions under which imitation occurs have been altered by the emergence of fast fashion, challenging the assumptions underlying the paradox. The traditional low protection equilibrium is therefore argued to be no longer adequate in the current market environment.⁵⁸

The debate must therefore balance two competitive objectives: on the one hand, designers have to be provided with sufficient protection to benefit from their creative efforts; on the other hand, overly broad monopolies

⁵⁴ Lionel Bently and Brad Sherman, *Intellectual Property Law*, Oxford University Press.

⁵⁵ Robin M. Nagel, "Tailoring Copyright to Protect Artists: Why the United States Needs More Elasticity in Its Protection for Fashion Designs", *University of Richmond Law Review*.

⁵⁶ Susy Frankel and Daniel Gervais, *The Internet and the Emerging Importance of New Forms of Creativity*, Cambridge University Press.

⁵⁷ Kal Raustiala and Christopher Sprigman, "The Piracy Paradox: Innovation and Intellectual Property in Fashion Design", *Virginia Law Review*.

⁵⁸ Anna Huttner, "Overdressed and Underprotected: The Not-So-Glamorous Side of the United States Fashion Industry Without Explicit Copyright Protection", *Cleveland State Law Review*.

over aesthetic forms should be avoided. Ultimately, the unique position of fashion design between art and industry is challenging for copyright law not simply in determining whether fashion may be protected, but in defining a balanced framework capable of recognizing creativity without stifling the dynamic processes that drive the evolution of fashion trends.

3. The Stella McCartney v. Steve Madden Case: A Paradigm of Incomplete Protection

3.1 Presentation of the case

The legal tension outlined in the previous chapter can be examined through concrete disputes within the fashion industry. The litigation involving Stella McCartney and Steve Madden is one of the most illustrative examples, because it highlights the structural limitations of intellectual property protection and how challenging it is to regulate design appropriation in such a competitive and fast-moving market. The case revolves around the alleged imitation of the Falabella bag, signature product of Stella McCartney, and provides a concrete entry point into the legal and commercial dynamics in applying copyright to fashion⁵⁹.

The Falabella bag was firstly introduced in 2009 and it quickly became one of the brand's most recognizable design. Unlike traditional luxury handbags, more often made in leather, the Falabella was designed using alternative materials such as vegan-friendly fabrics. This choice reflects the designer's ethical stance against animal-derived products and exemplifies the brand's commitment to sustainable and cruelty-free fashion.⁶⁰ The bag is particularly distinctive for its design: it features an unstructured body combined with a diamond cut metal chain that, running along the edges of the bag, forms the handles and the shoulder strap. This chain is inspired by jewelry designs and developed in collaboration with artisans, representing not only a decorative feature but a unique interplay between form and function⁶¹. The Falabella aesthetic identity is further defined by the small circular logo medallion attached to the chain.⁶² Over time the model has been reinterpreted in multiple sizes and materials, yet always preserving its core visual elements. It is exactly this continuity that has contributed to the strong association between the design and the brand itself, reinforcing its status as a signature product within the luxury market.

⁵⁹ Kal Raustiala & Christopher Sprigman, *The Piracy Paradox: Innovation and Intellectual Property in Fashion Design*, Virginia Law Review.

⁶⁰ Stella McCartney, *Brand Sustainability and Materials Policy*, official website and corporate reports

⁶¹ Fletcher, Kate, *Sustainable Fashion and Textiles: Design Journeys*, Routledge.

⁶² Stella McCartney product descriptions (Falabella collection), official website archives



Figura 2: Stella McCartney Celebrates Iconic Falabella Bag's 15th Anniversary - <https://www.harbourcity.com.hk/en/article/stella-mccartney-celebrates-iconic-falabella-bags-15th-anniversary/>

The dispute arose when Steve Madden, a U.S based fashion company operating mainly in the more accessible market segment, introduced handbags that allegedly reproduced the key visual elements of the Falabella's design. The contested product incorporated a combination of features that closely resembled the overall configuration of the bag without replicating it identically. In particular, the Madden design displayed a soft silhouette comparable to that of the Falabella, as well as the presence of the chain, the feature that is most widely recognized as the defining element of the original bag.⁶³ Certain aspects of the bag were still different, such as materials, details and branding, but the overall impression of the product was sufficiently similar to raise concerns regarding imitation. The analogous proportions and the use of the metallic chain trim framing the perimeter of the bag contributed to a resemblance that went beyond generic stylistic inspiration. However, the absence of exact replication and the presence of distinguishable brand identifiers illustrate a recurring pattern in fashion disputes: alleged copying often operates through the selective reproduction of key features rather than complete duplication.⁶⁴

⁶³ Stella McCartney sues Steve Madden for Falabella copy, Vogue (9 October 2015)

⁶⁴ Raustiala, Kal & Sprigman, Christopher, The Piracy Paradox: Innovation and Intellectual Property in Fashion Design, Virginia Law Review.

In response, Stella McCartney initiated legal proceedings asserting that Steve Madden's commercialization of the handbag constituted an unlawful appropriation of the distinctive features of the Falabella. Specifically, the complaint included allegations of trade dress infringement under §43(a) of the Lanham Act, federal and state unfair competition, deceptive trade practices, trade dress dilution, and design patent infringement relating to U.S. Design Patent No. D654,691.⁶⁵ The reliance on multiple causes of action reflects the structural fragmentation of intellectual property protection in this industry. According to the complaint, the combination of distinctive elements of the Falabella had, taken together, acquired an enormous popularity in the market, reportedly amounting to ten millions of dollars in sales⁶⁶. This configuration was argued to be non-functional and inherently distinctive, thereby qualifying for trade dress protection.⁶⁷ Within this framework, the allegation of infringement was based on the appropriation of the overall visual identity of the product rather than on the replication of a single element. It was explicitly stated that the Steve Madden bag was "virtually identical in appearance" and was likely to cause consumer confusion.⁶⁸ In addition to confusion, the potential reputational harm and dilution of brand value was emphasized, because the lower quality of the Madden product risked damaging the goodwill associated with the Falabella design.⁶⁹ This multi-layered litigation strategy demonstrates how designers often construct cumulative legal claims over products that do not fit in a single category of intellectual property. In the absence of copyright protection for fashion design, the combination of trade dress and unfair competition claims is the necessary mechanism that safeguards both the economic value and the symbolic identity of the creation.⁷⁰

Under U.S. law, trade dress protection extends to the overall appearance of a product where such appearance functions as an indicator of its commercial origin, pursuant to §43(a) of the Lanham Act. In order to prevail, the claimant must demonstrate that the asserted trade dress is (i) distinctive, either inherently or through the acquisition of secondary meaning, (ii) non-functional, and (iii) that the defendant's use of a similar design is likely to cause confusion among consumers as to the source, sponsorship or affiliation of the goods.⁷¹

⁶⁵ *Stella McCartney Ltd. v. Steve Madden Ltd.*, Complaint, United States District Court, Southern District of New York, Case No. 1:15-cv-07906 (6 October 2015)

⁶⁶ Stella McCartney Sues Steve Madden Over Handbag Knockoff, Fashionista (9 October 2015)

⁶⁷ *Stella McCartney Ltd. v. Steve Madden Ltd.*, Complaint, cit., paras. 51–52

⁶⁸ *Stella McCartney Ltd. v. Steve Madden Ltd.*, Complaint, cit., para. 3

⁶⁹ *Stella McCartney Ltd. v. Steve Madden Ltd.*, Complaint, cit., paras. 4 and 47–48,

⁷⁰ Kal Raustiala and Christopher Sprigman, 'The Piracy Paradox: Innovation and Intellectual Property in Fashion Design' (2006) 92 *Virginia Law Review* 1687

⁷¹ 15 U.S.C. §1125(a) (Lanham Act); *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763 (1992); *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205 (2000).

In this case, it was argued that Falabella satisfies all these requirements, with a strong emphasis by the brand on the combination of elements that made the item widely recognized by consumers as a Stella McCartney identification symbol.⁷² The recognition was supported not only by the extensive commercial success but also the sustained media exposure, that contributed to the acquisition of secondary meaning in the marketplace.⁷³

Another critical aspect of the claim was constituted by the issue of functionality. Features that are considered functional, therefore essential to the use of the product and determining its cost and quality, are excluded from U.S. trade dress law.⁷⁴ Consequently, Stella McCartney asserted that the defining elements of the design were primarily ornamental and not functional, so their protection could not hinder fair competition.

On the other hand, the defendant could rely on several lines of defense, including the fact that the contested features lacked distinctiveness. Elements such as chain detailing and soft structures are widely used across the fashion sector and may not therefore serve as exclusive indicators of source. Moreover, the differences in branding, price point and target consumer base could challenge the argument of confusion, as these factors are often used by U.S. courts in assessing consumer perception.⁷⁵ Finally, the defendant could invoke the principle of functionality, arguing that certain design features serve practical or aesthetic purposes that should remain available to competitors.

These defenses reflect a broader structural characteristic of fashion law disputes: the difficulty of isolating protectable trade dress in an industry in which design elements are frequently shared and reinterpreted while maintaining the balance between protection of brand identity and preservation of competitive freedom. Even if the dispute did not result in a landmark judicial decision that clarified the scope of protection, it remains significant as a practical example on how fashion companies attempt to reinforce their rights within the fragmented intellectual property framework. The case illustrates the extent to which litigation is often used strategically: besides obtaining judicial remedies, it can deter competitors and signal the proprietary value of

⁷² *Stella McCartney Ltd. v. Steve Madden Ltd.*, Complaint, United States District Court, S.D.N.Y., Case No. 1:15-cv-07906 (6 October 2015), paras. 25–30.

⁷³ *Stella McCartney Ltd. v. Steve Madden Ltd.*, Complaint, *cit.*, paras. 31–36

⁷⁴ *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23 (2001)

⁷⁵ *Polaroid Corp. v. Polarad Electronics Corp.*, 287 F.2d 492 (2d Cir. 1961)

specific designs.⁷⁶ In fact, fashion disputes frequently settle before reaching the final judgement, which contributes to the relative scarcity of binding precedents in this field even if conflicts are highly frequent.⁷⁷

The *McCartney v. Madden* case also demonstrates that legal conflicts in fashion rarely emerge from replication, but rather from the reproduction of a combination of elements that produce a visual identity taken all together. This aligns with the way U.S. courts conceptualize trade dress, where protection may extend to the “total image” or “overall look and feel” of a product rather than to isolated features.⁷⁸ At the same time, however, this holistic approach makes it particularly difficult to establish clear boundaries between lawful inspiration and unlawful appropriation, especially in industries where stylistic elements are widely shared. In addition to this, a recurring factual and economic pattern is reflected by this case: the accessible brands, operating on short production cycles, rapidly reinterpret and commercialize high-end designs, also due to accelerated trend diffusion, globalized supply chains, digital dissemination and real time consumer data.⁷⁹

This environment generates a constant overlap between originality and imitation, causing many disputes to arise precisely at the boundary between the two concepts where the legal qualification of copying is highly contested. The *McCartney* case exemplifies this tension: while the similarities between the products were sufficiently pronounced to trigger litigation, they also fell within a grey area in which imitation operates through the selective adaptation of key aesthetic features rather than through direct duplication.⁸⁰

⁷⁶ C. Sprigman and K. Raustiala, ‘The Piracy Paradox Revisited’ (2012) 61 *Stanford Law Review* 1201

⁷⁷ Bently, Lionel, Sherman, Brad, Gangjee, Dev and Johnson, Phillip, *Intellectual Property Law* (5th edn, Oxford University Press 2018)

⁷⁸ McCarthy, J. Thomas, *McCarthy on Trademarks and Unfair Competition* (Thomson Reuters), §8:1

⁷⁹ Anna Huttner, ‘Fast Fashion: A System of Accelerated Consumption’ (SSRN Working Paper, 2015)

⁸⁰ Christopher S. Hemphill and Jeannie Suk, ‘The Law, Culture, and Economics of Fashion’ (2009) 61 *Stanford Law Review* 1147.



Figura 3: A visual from the campaign for the Falabella handbag's 15th anniversary - Stella McCartney - <https://uk.fashionnetwork.com/news/Stella-mccartney-cara-delevingne-bares-all-for-falabella-handbag-s-15th-anniversary,1631110.html>

3.2 The legal problem raised by the controversy

The first critical issue concerns the absence of copyright claims in the litigation. Stella McCartney did not rely on copyright protection as the primary legal basis for the action despite the creative nature of the Falabella. The omission, far from being incidental, reflects the structural limitations of copyright law applied to fashion analyzed so far. The defining features of the design in this case are not merely decorative additions but structural parts of the construction of the product: the chain, for instance, contributes both to the visual identity of the bag and to its functionality as a carrying mechanism. This duality makes it difficult to classify the feature as conceptually separable from the useful article.⁸¹ Similarly, the silhouette of the bag is closely linked to the usability and material composition while being aesthetically distinctive, further complicating the attempt to isolate the expressive component.⁸² More broadly, the Falabella perfectly exemplifies the category of fashion products whose originality lies in the combination and rearrangement of multiple feature, even if U.S. copyright does not protect such holistic configurations when they are inseparable from their functional identity. As a result, these designs may fall outside the scope of copyright protection.

In light of these limitations, the claimant relied primarily on trade dress protection under §43(a) of the Lanham Act. While this approach offers certain advantages, most notably the possibility of protecting the overall visual identity of a product, it is subject to equally significant doctrinal constraints, as said in the previous section. The requirement of distinctiveness is especially demanding in the context of product design. A product design trade dress can never be as distinctive as a word mark or logo and therefore requires proof of acquired distinctiveness.⁸³ In practice, this means that the claimant must demonstrate that in the mind of consumers the design of the product serves as an indicator of its commercial origin.

This requirement posed a significant challenge in the McCartney case: in order to establish this secondary meaning, the brand had to show that the combination of elements of the Falabella bag had become uniquely associated with the brand in the perception of consumers.⁸⁴ This required extensive evidence including sales figures, advertising expenditures, media recognition and consumer surveys demonstrating source

⁸¹ 17 U.S.C. §101 (definition of “useful article” and separability requirement); see also Robert C. Denicola, ‘Applied Art and Industrial Design: A Suggested Approach to Copyright in Useful Articles’ (1983) 67 *Minnesota Law Review* 707.

⁸² Jeanne C. Fromer and Mark P. McKenna, ‘The Fashion Industry and Intellectual Property’ in Rochelle C. Dreyfuss and Justine Pila (eds), *The Oxford Handbook of Intellectual Property Law* (Oxford University Press 2018)

⁸³ *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205 (2000)

⁸⁴ *Stella McCartney Ltd. v. Steve Madden Ltd.*, Complaint, United States District Court, S.D.N.Y., Case No. 1:15-cv-07906 (6 October 2015), paras. 25–36.

identification.⁸⁵ Moreover, the assesment of secondary meaning is particularly complex when consumers are exposed to a wide range of similar stylistic elements across different brands. As a result, even a well-known product may struggle to meet the threshold required for trade dress protection if its defining characteristics are perceived as part of a broader design vocabulary rather than as source-identifying indicators.



Figura 4: on the left, the Steve Madden bag; on the right, the Falabella bag by Stella McCartney - <https://www.vogue.co.uk/article/stella-mccartney-sues-steve-madden-falabella-bag>

Additionally, a further layer of complexity is added by the requirement of non-functionality. The principle developed by the Supreme Court in *TraFFix Devices, Inc. v. Marketing Displays, Inc.* states that a feature considered functional and therefore ineligible for trade dress protection is essential to the use or purpose of the article or affects its cost and quality.⁸⁶ A broader policy objective is reflected by this principle: trademark law should be prevented from granting exclusive rights over features that should remain available for competition. As courts have recognized, the application of the functionality doctrine is particularly problematic in the context of fashion design. In the case taken into consideration, several elements presented

⁸⁵ *Converse, Inc. v. ITC*, 909 F.3d 1110 (Fed. Cir. 2018)

⁸⁶ *TraFFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23 (2001), at 32–33.

as part of the trade dress present this dual character; stitching techniques and material choices themselves may influence the durability and quality of the product, complicating the claimant's burden. In fact, this implicates that the brand demonstrates that such features are not essential to the product's use and do not provide a functional advantage.⁸⁷ The structural tension within fashion law is clear: the more a design achieves coherence through the integration of its elements, the less likely it is that those elements can be isolated as purely non functional. Legal scholarship has emphasized that the fashion industry is disproportionately affected by this doctrinal constraint, because innovation often lies in the combination of form and function rather than in the creation of separable features.⁸⁸

The likelihood of confusion test also presents significant limitations in the fashion context. Under U.S. trademark law, courts typically assess confusion through a multi-factor analysis, most notably the *Polaroid* test, which considers elements such as the similarity of the products, the proximity of the markets, the strength of the mark, evidence of actual confusion and the sophistication of consumers.⁸⁹ While this framework is well-suited to cases involving direct brand misappropriation, its application becomes problematic in industries such as fashion, where imitation often operates at the level of design rather than branding. The structure of the market further complicates the assessment of confusion in the McCartney case, given that Steve Madden's products are sold at a significantly lower price and through different retail channels than McCartney's goods. Courts interpret this as a reduction of the likelihood of confusion.⁹⁰ The argument may be also weakened by the presence of clear branding on both the products. However, this framework fails to account for one of the most distinctive aspect of fashion consumption: the fact that consumers may intentionally purchase products that may replicate the aesthetic of luxury designs while still being aware of the different origin. In the fashion market, the value of a product often lies in its visual similarity to an high-end design rather than in any misinterpretation of source. This reflects a mode of consumer behaviour that falls outside the scope of traditional trademark protection; the absence of confusion, however, does not eliminate the competitive impact of copying,

⁸⁷ *Stella McCartney Ltd. v. Steve Madden Ltd.*, Complaint, United States District Court, S.D.N.Y., Case No. 1:15-cv-07906 (6 October 2015), paras. 40–48

⁸⁸ Graeme B. Dinwoodie and Mark D. Janis, *Trademark Law and Theory: A Handbook of Contemporary Research* (Edward Elgar 2008)

⁸⁹ *Polaroid Corp. v. Polarad Electronics Corp.*, 287 F.2d 492 (2d Cir. 1961)

⁹⁰ Barton Beebe, 'An Empirical Study of the Multifactor Tests for Trademark Infringement' (2006) 94 *California Law Review* 1581

An important misalignment between intellectual property law and the realities of the fashion industry is highlighted by this limitation, as trademark law is not designed to regulate the appropriation of artistic value as such but to prevent consumer confusion. As a result, it is difficult to apply to situations in which imitation is economically impactful but not legally actionable.⁹¹ These elements, applied to the case, confirm the structural protection gap in which copyright law is too narrow while trade dress is too demanding. The result is that designs which are clearly original and commercially valuable may nonetheless fall outside the scope of effective legal protection. The McCartney case thus demonstrates that rather than merely occupying a hybrid space between art and industry, fashion design may challenge the assumption upon which intellectual property is built. The process of continuous reference, reinterpretation and adaptation from which fashion design emerges, relying on its position within an evolving visual and cultural dialogue as its main source of value, is in contrast with the traditional IP categories. These presuppose that creativity can be isolated and protected as a discrete output, while the value of a fashion creation has little to do with novelty and attribution.

Consequently, it is possible to say that while intellectual property law seeks to define boundaries, fashion thrives on their permeability, creating a complex tension in which imitation does not operate as an external disruption but as an intrinsic mechanism. The reliance of enforcement strategies on indirect forms of protection, that target specific aspects of market behaviour rather than designs themselves, is a consequence of this phenomenon. While these tools may offer remedies in individual cases, they cannot address the underlying issue, resulting in a deep conceptual misalignment where law is required to regulate a phenomenon that it is not structurally equipped to define.

at a fast rate. This results in an increasing fragility of the equilibrium, implying that the traditional low protection in fashion may no longer capture the current market dynamics and re-evaluation in light of contemporary industry structures is required. In practice this could entail moving beyond an exclusionary model of protection toward a more differentiated framework that distinguishes forms, scales and effects of appropriation. The McCartney case, in this respect, illustrates the need for a more context-sensitive legal response, one that acknowledges both the productive and potentially disruptive dimensions of imitation within contemporary fashion markets.

According to this perspective, the McCartney case should be considered as a manifestation of the deep structural tension between two logics rather than merely an instance of legal insufficiency. The persistence of disputes at this intersection suggest that the friction observed so far is inherent to the interaction between these two systems, resulting in attempts to enforce strict proprietary boundaries that are either under-inclusive and fail to protect valuable designs or over-inclusive and risk the monopolization of aesthetic forms. Therefore, rather than pursuing the unrealistic goal of fully enclosing fashion within rigid proprietary frameworks, the law should aim to mediate between competing interests. Ultimately, the McCartney case underscores that the

⁹¹ Mark P. McKenna, 'The Normative Foundations of Trademark Law' (2007) 82 *Notre Dame Law Review* 1839

core issue, rather than being absence of protection per se, is the difficulty of reconciling a legal system based on exclusivity with an industry that is so vital exactly because of openness.

3.4 Strategic implications for fashion brands

The analysis conducted so far carries significant implication for fashion brands operating in this context. The McCartney case demonstrates that intellectual property law in its current configuration cannot be relied upon as the primary mechanism for safeguarding design innovation. As a result, brands are compelled to adopt strategies extending beyond legal enforcement.

The first implication concerns the strategic role of branding. As illustrated by the McCartney dispute, the value of a product can be preserved through the construction of a strong brand identity when the design cannot be effectively monopolized. This is the reason why the Falabella bag derives a big portion of its market value not from its formal characteristics but from the association with the brand's narrative, centered on sustainability and ethical luxury production. This is the symbolic dimension that is not replicable by competitors even when the physical features of the product are identical. Branding, therefore, becomes not merely a marketing function but a legal asset: the stronger the association, the greater the potential for legal protection. These legal limitations reconfigure the competitive dynamics leading brands to compete through the control of meaning; shaping the cultural significance attached to the product is more effective than the ownership of specific forms.⁹² For instance, although the Madden bag replicated key elements of the Falabella design, it did not replicate the context through which the original product acquired its meaning and desirability. This implies that in the modern world, the locus of protection is shifting from material object to immaterial sphere of brand identity, not expecting exclusive control over material features.⁹³

Secondly, an important defensive mechanism is the speed and market positioning in this industry. The ability to introduce, circulate and continuously renew designs is a central determinant of competitive advantage. The imitation of the Falabella bag did not occur in a static environment but in a system defined by speed, where the temporal dimension of competition is critical. The economic value of the design is often concentrated in a limited time period where the original creator seeks to establish recognition before imitation diffuses the trend. Rather than representing an ex-post threat, this temporal logic affects the functioning of the process and copying becomes an anticipated and structural component of the market. When imitation becomes inevitable, fashion brands focus on maintaining a continuous flow of new designs that outpace competitors.⁹⁴

⁹² Douglas B. Holt, *How Brands Become Icons* (Harvard Business School Press 2004)

⁹³ Kal Raustiala and Christopher Sprigman, *The Knockoff Economy* (Oxford University Press 2012)

⁹⁴ Kal Raustiala and Christopher Sprigman, *The Knockoff Economy* (Oxford University Press 2012)

From the strategic perspective, brands seek to preserve their competitive position through constant innovation and strategic timing of product releases. In this sense, speed serves the function of an informal protection that shortens the period within which a design retains its exclusivity and reduces the economic impact of imitation. In the current context, imitation becomes a predictable market condition that brands must anticipate and strategically manage, integrating it into their business models.⁹⁵

A further implication is clearly the selective and strategic tools. As illustrated by the case, enforcement strategies tend to rely on the combination of intellectual property rights since no individual regime is capable of fully capturing the aesthetic identity of a product.⁹⁶ In the McCartney dispute, this strategy is evident in the reliance on trade dress and unfair competition claims focusing on the market function of the Falabella bag as a source identifier rather than on the design itself.

Brands, consequently, identify and protect components that anchor the product with their brand identity rather than seeking exclusive control on the aesthetics. Such an approach is, however, not neutral. Multi-layered legal strategies require substantial financial resources, resulting in being a more accessible strategy for established fashion houses rather than emerging designers and therefore reinforcing asymmetries in the industry.

The McCartney case, finally, suggests that brands should operate with clear awareness of the structural conditions that define the industry, instead of attempting to resist them through purely legal means. It demonstrates that imitation is not an external anomaly in this field, but an intrinsic feature of a system where efforts to fully enclose design through intellectual property rights are likely to prove ineffective and strategically counterproductive. In fact, they risk diverting resources toward enforcement mechanisms that cannot adequately address the speed and scale of contemporary imitation. A more resilient approach requires instead the integration of legal protection within business models that specifically meet these conditions. Legal tools retain value when deployed as part of a wider strategic framework that also includes brand development, timing of market entry and continuous creative renewal.⁹⁷ This conceives protection not as a static outcome but as a more dynamic process that unfolds over time in interaction with market forces and, most importantly, consumer perception. Strategy reorients from defensive to proactive and adaptive, where the diffusion of designs is anticipated and incorporated in the competitive logic.⁹⁸ In this light, brands need to position themselves effectively within an ecosystem where imitation is inevitable and somehow functional. The McCartney case thus underscores that success in contemporary fashion markets depends less on the capacity to exclude others from using specific design features, and more on the ability to remain at the forefront of aesthetic innovation and cultural relevance.

⁹⁵ C. Hemphill and J. Suk, 'The Law, Culture, and Economics of Fashion' (2009) 61 *Stanford Law Review* 1147

⁹⁶ J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* (5th edn, Thomson Reuters), §§7:23–7:27

⁹⁷ Christopher M. Moore and Grete Birtwistle, 'The Burberry Business Model' (2004) *International Journal of Retail & Distribution Management*.

⁹⁸ Elizabeth L. Rosenblatt, 'A Theory of IP's Negative Space' (2011) 34 *Columbia Journal of Law & the Arts* 317.

Conclusion

As demonstrated throughout this analysis, the relationship between fashion design and intellectual property law cannot be adequately understood in terms of effectiveness or failure. The difficulties do not arise merely from the gaps in the legal framework, but from the deeper structural misalignment between two very different logics: the exclusivity of intellectual property rights and the openness of the fashion system.

The assumption that creativity can be identified, isolated and protected, in which copyright law is traditionally grounded, presupposes that the value of a work lies primarily in its originality and that legal protection should grant the author exclusive control over the reproduction and exploitation of its creation. This assumption is challenged by fashion design at a fundamental level: fashion operates as an hybrid phenomenon that is simultaneously embedded in artistic expression and industrial production. The creative process typically consists of the reinterpretation, recombination and contextualization of existing elements with an evolving visual language rather than the invention of new forms. This makes the concept of originality in fashion relational rather than absolute, as it emerges from the way in which designers position their work within a broader system of references.

The legal analysis conducted has shown that existing doctrines attempt to accommodate this complexity, but remain constrained by their underlying assumptions. As interpreted in European law, the requirement of originality depends on the identification of free and creative choices, yet it struggles to capture forms of creativity that are embedded in functional constraints and collective stylistic vocabularies. In turn, the “useful article” doctrine in the United States reinforces this limitation by excluding protection for designs that cannot be conceptually separated from their utilitarian function. These doctrinal boundaries reveal the difficulty in translating into legal terms the logic of fashion. The concrete manifestation of these tensions has been provided by the study of the *Stella McCartney v. Steve Madden* case. Even highly recognizable designs, as demonstrated by the dispute, may fall outside effective protection, not because they lack economic or creative value but because the specific forms of appropriation that characterize the fashion industry are not addressed by the legal framework as it is designed. The absence of a direct mechanism, capable of capturing design as a whole, is highlighted by the reliance on trade dress and unfair competition claims; moreover, the limits of these existing tools are illustrated by the difficulties associated with distinctiveness, functionality and consumer confusion.

What the case reveals is that imitation in fashion does not operate as a deviation from the system but as one of its constitutive mechanisms. Copying occurs through the selective appropriation of elements that contribute to a shared aesthetic vocabulary rather than exact replication. The binary logic of intellectual property law is challenged by this mode of imitation, as the distinction between lawful inspiration and unlawful reproduction

is inherently unstable in a field where the same practice may simultaneously function as creative engagement and competitive appropriation.

The normative implications of this observation are important. If imitation is structurally embedded in the functioning of the industry, the objective of intellectual property law cannot be reduced to its elimination. The attempt of expanding copyright protection risks imposing a model of exclusivity that is misaligned with the logics of fashion. Indeed, the approach that transforms widely shared design practices into potential infringements could restrict the processes of reference and reinterpretation that make fashion evolve continuously.

On the other hand, the contemporary transformation of the industry, marked by the acceleration of production cycles and the capacity for large scale imitation, raises concerns regarding the legitimate distribution of value and its sustainability. This shifts the challenge from choosing between protection and openness to the recognition that they are both essential components of the system and their careful balance. The central contribution of this thesis, in this context, is to shift the perspective from the adequacy of specific tools to the broader relationship between law and industry structure.

As a consequence, the difficulties encountered in protecting fashion design do not indicate a failure of regulation but the limits of applying a legal model to a form of creativity for which it was not originally conceived. This insight reveals that the underlying assumptions of the fashion system must be adequately reconsidered in any attempt to reform its legal protection. The most realistic approach would acknowledge the coexistence of creation and imitation as defining features of the industry rather than seeking to fully enclose design within exclusive rights. In this perspective, the role of law is not to eliminate these tensions but to mediate it by identifying those forms of appropriation that undermine creative incentives while preserving the openness that enables innovation. This is why the protection of fashion design requires a nuanced understanding of the concept of creativity and its relational and dynamic nature, in such a way that engaging with this complexity can move copyright protection beyond its current limitations and respond more effectively to the reality of the contemporary fashion system.

A final and particularly revealing development in today's fashion system can be observed in Stella McCartney's 2026 collaboration with H&M. The relevance of this partnership does not lie merely in its commercial dimension, but in the tension it exposes when read against the *McCartney v. Madden* dispute analyzed in this thesis. In that case, the designer sought legal protection against the alleged appropriation of the Falabella's distinctive aesthetic by a more accessible market actor. In the H&M collaboration, by contrast, McCartney voluntarily brings elements of her design language into the high-street sphere, including sustainable reinterpretations of iconic pieces and even a version of the Falabella bag. This does not contradict the argument developed in this thesis; rather, it confirms it. The issue in

fashion is not circulation as such, but control over the conditions under which circulation occurs. When aesthetic diffusion is unauthorized, it may appear as appropriation; when it is strategically managed by the designer, it becomes a tool of brand expansion, symbolic leadership and market positioning. The McCartney–H&M collaboration therefore reinforces the central conclusion that fashion law should not aim to eliminate imitation or diffusion, but to distinguish between uncontrolled appropriation and forms of circulation that preserve authorship, brand meaning and creative value.

While my thesis has sought to provide a structured analysis of the relationship between fashion design and intellectual property law, it inevitably remains limited in scope. The complexity of the fashion system, combined with its continuous transformation, suggests that any attempt to fully capture its dynamics within a single analytical framework is necessarily partial. The fashion sector, precisely because of its hybrid and evolving nature, offers a particularly valuable lens through which to examine the tensions between legal systems and industries. For this reason, the questions raised throughout this work do not represent a closed line of inquiry, but rather a starting point for further investigation into the ways in which law can adapt to forms of creativity that challenge its traditional boundaries.

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