

Intellectual Property in the High Fashion Industry

by Ahlam Al Tamimi - a.altamimi@tamimi.com -

May 2016

The purchase of a designer handbag is most satisfying, despite being among the most expensive in the shopping list of any woman.

For some, it's not about what you're wearing; it's about who you're wearing. High fashion goods are a billion-dollar market, and this is the reason why fashion houses value their brand equity. It is due to this brand recognition and equity that the fashion houses develop a bond with their customers. As such, considerable resources are invested in protecting the names and brands through trademark registrations.

However, many brands protect their trademarks yet neglect other forms of intellectual property which may also be protectable, for example the shape of a handbag can be also be protected as an industrial design. The fashion industry invests huge sums to create new and original designs each season. Despite this significant investment, little use is made of the relevant design laws to register and protect these designs beyond the name of the brand. The main benefit of registering a design is to deter others from copying the design, and to fight unscrupulous competitors or even infringers from copying the design of the protected article.

In the UAE, Chapter 3 of the UAE Federal Law No. 17 of 2002 ("UAE Patents and Design Law") covers industrial designs, described as "any innovative three-dimensional shape that can be used in industry or craft" or "any innovative creation of lines or colors that generates a product that can be used in industry or craft".

Many high fashion houses often overlook the registration of the shape and look of their designs, reasoning that goods such as handbags are considered to have a short product life cycle – often no more than six-to-twelve months. While fashion trends may come and go, some designs stay timeless and are considered classic pieces. For example, the "Kelly" bag from Hermès grew to fame in 1956, when the Hollywood actress Grace Kelly married Prince Ranier III of Monaco and was photographed with the bag. It became known as the "Kelly" bag thereafter (although it was only formally re-named as such in 1977) and is seen by many as the ultimate classic handbag in any fashionista's closet. Many fashion houses strive to create such classic design pieces. If the design succeeds and if the designer has not obtained the appropriate design protection in time, infringers will be able to copy their designs.

Despite the fact that some designs are only created for one season and are not meant to be long term, designers need to be aware of the fact that in the longer term a failure to protect their designs, and other intellectual property, from unauthorised copies and cheaper knock-offs damages the brand's goodwill in terms of lost sales, loss of value to their new work, existing portfolio and inventory.

To this end, design protection is an essential step to take. It is important to protect a product design using the appropriate legal vehicles in a strategic manner. For example, protecting a unique 3D industrial design or a visual shape is critical to keep competitors from using and copying the creative design and the hard work invested by the designer. In addition, intellectual property protection of product designs adds to the assets of the business and therefore increases its commercial value.

Arguably, over the years the shape of a designer handbag has become more recognisable than the name on the bag. By way of example, in the early 1990's the Louis Vuitton Monochrome bags with the letters LV affixed were highly popular, one reason being that these heavily branded bags are highly noticeable. Although Louis Vuitton Monochrome bags remain very popular, designers are slowly moving away from heavily branding their bags with their logos and rather concentrating on the unique shapes of their bags. The aim is for people to notice the bag from afar, not only by the name written on it.

In the current business environment, the primary source of competitive advantage for all businesses, including those in the fashion industry, is innovation and original creative expressions. In order to maintain their market share in this highly lucrative industry, designers need to identify such valuable intangible assets in a timely manner, determine their business relevance, and agree on those to be protected and leveraged as intellectual property.

To this end, a designer's reputation is priceless, as it is an extension of their creativity. Consumers spend thousands on a single bag based on the shape of the bag and not just the logo because they want to be unique. In other words, if other merchants are selling similar bags, the designer piece will no longer be considered as unique.

In a nutshell, fashion houses are driven by their creativity and by the intellectual capital invested in them. Protecting that intellectual capital in the form of intellectual property assets serves to boost income through sales, licensing, and commercialisation of existing and new products, to improve market share, raise profit, and to effectively enforce their intellectual property against infringers looking to unduly take advantage of the designer's creative work.

Keep your designs to yourself.

Appreciate your creativity and protect it!