

BOOK REVIEW

Fashion and Intellectual Property BY DAVID TAN, JEANNE C FROMER, AND DEV S GANGJEE, eds. [Cambridge: Cambridge University Press, 2025. + 382 pp. Hardcover: £100. ISBN: 9781009519618; Open Access]

In the past two decades, the field of “fashion law” has emerged at the intersection of intellectual property (“IP”) and a multi-billion-dollar global industry driven by creativity and constantly changing trends. Yet the relationship between fashion and IP has remained, in many respects, under-theorised and evolving. *Fashion and Intellectual Property*, edited by David Tan, Jeanne Fromer and Dev Gangjee, is an impressive and timely collection that brings together leading IP scholars from around the world to explore this complex theme. The book offers a fascinating range of theoretical, doctrinal and policy insights into how various IP laws interact with the fashion industry, exploring the role that fashion plays in society, how fashion exposes the tensions in patent, design, trademark and copyright doctrines, and to what extent IP laws accommodate phenomena like upcycling and cultural appropriation. The result is a rich, scholarly examination of fashion through an IP lens, one that should interest not only IP experts but anyone curious about how law engages with creativity and culture.

The book consists of eleven chapters, organised into four thematic parts. Part I sets the stage with two chapters offering foundational discussions on fashion and IP. Part II, which focuses on IP rights, contains five chapters that examine how the most typical IP rights interact with fashion. Part III presents two case studies of contemporary fashion business models that examine the fringes of IP infringement, namely, upcycling and *shanzhai* culture. Finally, Part IV comprises two chapters that evaluate emerging issues concerning the protection of traditional knowledge, cultural heritage, and craftsmanship in fashion under IP laws. This clear structure reflects a deliberate editorial effort to cover both the breadth of IP regimes and the latest developments in the fashion sector.

The two chapters in Part I set a broad conceptual stage. In Chapter 1, David Tan sets the tone of the book by interpreting contemporary fashion through a “post-postmodern” lens, noting trends such as self-disruption, upcycling, and “phygital” (physical-digital) fashion. He argues that clothing today increasingly expresses autonomous individuality amid global change. Thus, fashion is not merely clothing but “vestimentary signs” in dialogue with identity. Tan’s chapter explores how these theories of post-postmodernism help to explain current fashion trends and their implications for IP law. Barton Beebe, in Chapter 2, offers a provocative look at luxury fashion in a hypothetical future of abundance. He draws on economic

theory and legal history to argue that fashion's allure comes from creating artificial scarcity as a sign of distinction, and that IP law has long been (and will remain) a tool for enforcing that social scarcity. Beebe's chapter provokes thought by linking fashion to socioeconomic status symbols and by questioning whether IP's social function has been inherently conservative. This theoretical insight that IP might reinforce social hierarchy in fashion, rather than solely incentivising innovation, sets an intriguingly critical tone for the collection.

Part II of the book comprises of five chapters that explore how traditional IP doctrines apply in the context of fashion. In Chapter 3, Christopher Buccafusco and Jeanne C Fromer tackle the long-recognised tension in legal protection for clothing designs. They pointed out that fashion has a dual nature: garments are artistic and aesthetic objects, yet also functional articles of attire. This duality has long vexed IP law, leading to perplexing outcomes in copyright, trademark and design protection. Buccafusco and Fromer thus argue that a garment's design features should be considered "functional" not only when they serve a mechanical or utilitarian purpose, but also when they affect the visual perception of the wearer's body. By recognising aesthetic functionality in fashion, the authors seek to clarify how fashion designs ought to be treated under IP regimes.

Chapter 4 by Vicki Huang provides an empirical study of trademark law's response to the sneaker obsession. Huang notes that in recent decades, the evolution of the sneaker from a mere sports equipment into a high-fashion statement has been one of the most significant shifts in the industry. As sneaker culture went global, designers have sought new ways to protect their shoe designs from copycats. Huang empirically demonstrates that Australian designers have increasingly sought three-dimensional shape trademarks to protect the appearance of shoes, rather than rely on registered design rights. This trend, she argues, serves as a cautionary tale, suggesting that existing IP tools may be leveraged to fill gaps in design protection, potentially obviating the need for any new *sui generis* fashion design law. Interestingly, the chapter finds that the under-utilisation of Australia's design rights system might stem from designers' preference for the broader or more familiar trademark route, underscoring how business realities shape IP strategy.

In Chapter 5, Susanna H S Leong and Irene Calboli turn to the challenges of protecting non-traditional trademarks ("NTTMs"), such as colour, shape, or sound marks, by examining recent cases in the US, EU, and Singapore involving fashion brands that attempt to protect such marks. They find a mixed picture: designers sometimes win, but registering and enforcing NTTMs in general remains difficult. The authors compare the legal tests for distinctiveness, contrasting an "association" test with a stricter "reliance" test. They advocate for the "reliance" test, as it is better aligned with maintaining both brand and market clarity. This nuanced doctrinal discussion has practical significance: a stricter test would likely narrow the scope of protectable NTTMs, which, the authors imply, may be healthy for the creative freedom of the industry.

Chapter 6, by Roger Allan Ford, offers a revealing empirical and doctrinal analysis of how the fashion industry utilises (or shies away from) patent protection. Ford first presents data showing that, contrary to popular belief, fashion companies do seek patents, particularly for material innovations, manufacturing processes, and functional features in performance apparel. The number of fashion-related utility

patents has grown over time, though patent litigation involving fashion remains comparatively rare. The chapter then explores specific examples of patented fashion innovations, highlighting an underlying tension: fashion constantly balances function and aesthetics. Ford uses these examples to explore what they reveal about the relationship between fashion and IP. For instance, patents might encourage technical innovation in textiles or sustainable materials, but many aesthetic or trend-driven aspects of fashion lie outside the realm of patent protection. This thoughtful account demonstrates that, although not traditionally regarded as a major player in patents, the fashion industry has areas where patent law's incentives are significant.

In Chapter 7, Robert Burrell and Emily Hudson examine the effectiveness of design law in protecting fashion designs, using the UK as a case study. The authors observe that UK designers face significant hurdles in enforcing their design rights in practice. Some challenges stem from substantive law, while others arise from procedural or practical issues. Burrell and Hudson thus conclude that UK design law is in need of reform. They argue that Brexit has exacerbated the problem, as the UK's withdrawal from the EU resulted in the loss of the EU-wide Registered Community Design system and certain unregistered design protections, leaving UK designers with a patchwork of national rights and potentially weaker protection. Ironically, the authors note, Brexit has not yielded greater flexibility to improve UK design law. Instead, domestic political inertia means that little reform has occurred, and designers increasingly rely on copyright to fill the gaps. The result, they argue, is that British designers will increasingly shift legal disputes to the courts. Evidently, the discussion in this chapter effectively highlights the unsatisfactory state of design protection and invites lawmakers to consider more tailored solutions.

Part III contains two chapters that examine modern fashion business practices which push the boundaries of IP law. In Chapter 8, Martin Senftleben focuses on the burgeoning movement of upcycling in the fashion industry, where designers transform discarded or second-hand clothing into new, creative pieces, an eco-friendly innovation in line with circular economy principles. He explores the legal friction that arises when upcyclers incorporate branded elements into their creations. Such practices may trigger claims of trademark infringement or unfair competition by the original brand owners under the traditional legal practice, even though the upcycler may have added significant new expression and value. However, Senftleben argues that, given the environmental and artistic benefits of upcycling, IP law should not treat these acts as straightforward infringement. He went on to suggest that we should view the use of protected brand elements in upcycled fashion as a valuable form of artistic or referential expression. This chapter thus cleverly merges IP law with sustainability and artistic freedom, advocating that, with sensible legal interpretation, upcycling can flourish without undermining the legitimate interests of trademark owners.

In Chapter 9, Jyh-An Lee and Jingwen Liu explore China's unique culture of fashion copying, known as *shanzhai* (山寨), which refers to the phenomenon of imitation goods. It spans a spectrum from outright counterfeit luxury goods to knockoffs that copy designs or styles without using the trademarks. Lee and Liu explain that while Chinese law can easily crack down on clear-cut counterfeiting of trademarks, it has historically been more difficult to stop design knockoffs, as fashion designs are often deemed outside the scope of trademark protection in China.

The authors recount how global fashion brands have tried various legal theories in Chinese courts to combat imitative products. Importantly, they identify that some Chinese courts and authorities have become more receptive to protecting fashion designs and signature design elements. For example, certain signature patterns and product shapes have been accepted as registrable three-dimensional trademarks or colour marks in China, and courts have shown willingness to use the Anti-Unfair Competition Law to punish copycat designs. The authors provide a detailed comparison of these evolving legal tools, painting a picture of a Chinese fashion market where IP norms are gradually tightening. Their insights into China are particularly valuable, given the country's role as a manufacturing powerhouse and its reputation for producing replicas.

Part IV, the final part of the book, directs attention to safeguarding heritage and cultural aspects in the fashion domain. In Chapter 10, Dev S Gangjee explores the possibility of using geographical indications ("GIs") to protect traditional craftsmanship. GIs are typically used for wines, foods, and regional specialties, indicating the origin and associated quality or reputation of a product. Gangjee asks whether GIs could serve to promote and protect heritage textiles and garments. He argues that extending GI protection to fashion could help sustain artisanal communities by branding traditional fabrics and techniques with a mark of authenticity and origin. Such legal recognition might also support the fashion industry's shift toward more sustainable and ethical consumption, as heritage textiles produced with natural materials, handcrafting methods, and built for longevity stand in stark contrast to the disposable "fast fashion" model. GIs, in Gangjee's view, could thus be positioned as a tool to encourage "threads that last" – fashion items with cultural value and durability. He candidly notes, however, that adapting GI regimes to fashion is still in its early stages, and producers face economic pressures that may tempt them to compromise on quality or outsource elements of production. This nuanced contribution illuminates both the promises and the pitfalls of using IP for preserving cultural heritage in fashion.

In Chapter 11, Kal Raustiala and Christopher Jon Sprigman investigate cultural appropriation in the fashion industry. They observe that the global fashion industry's production mode makes it especially vulnerable to accusations of appropriating indigenous or minority cultural heritage. The authors found that current IP laws provide at best patchy coverage for cultural designs, and proposals for new "cultural IP" rights face significant hurdles. Importantly, the authors argue that not all acts labelled as "appropriation" are harmful, and many fashions or folk designs are themselves the product of long histories of cultural exchange. They contend that, while disrespectful borrowing or misuse should be criticised, appropriation, when done thoughtfully, can be a form of recognition or a creative dialogue that adds value for all. This perspective challenges a prevalent narrative, and the authors support it with examples, calling for a more nuanced public debate. As the final chapter of the book, it leaves the reader with a thoughtful framework for evaluating where the law should draw the line on cultural borrowing, a fitting endnote to a volume concerned with fashion's interplay with society and values.

Fashion and Intellectual Property is a comprehensive and enlightening contribution to the literature of both IP law and fashion studies. Across its four parts, the book effectively covers a remarkable range of issues, all while maintaining an

engaging and accessible style. The editors, David Tan, Jeanne Fromer and Dev Gangjee, have succeeded in curating a first-rate collection of essays that together provide a full view of how IP law protects fashion and how fashion, in turn, sheds light on challenges within IP law. Despite the diversity of topics, I especially like the cohesiveness of the book: recurring themes resonate across chapters, and the editorial preface and internal cross-references ensure that the reader can see the connections. Each chapter is meticulously researched and engagingly written, making the work both illuminating and scholarly. In summary, this beautiful book makes a substantial contribution to the IP literature and will serve as essential reading for IP academics, practitioners, policymakers and even fashion lovers interested in the evolving relationship between law and fashion. Even as fashions change, the legal and cultural questions it explores will remain highly relevant. I highly recommend it to anyone interested in finding out how IP doctrines can be analysed and (re)shaped to meet the needs of a dynamic, identity-conscious industry.

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