

# INTELLECTUAL PROPERTY IN THE FASHION INDUSTRY

*Versace's* medusa motif, the *Vera Wang* wedding dress, *Dr. Martens* boots – all these are products of applied intellectual creativity and skill in the fashion industry. No one doubts the tremendous value of intellectual capital to the creation and marketing of products in the fashion industry, be it high fashion or ready-to-wear. Yet many small and medium-sized enterprises pay little attention, if any, to protecting such intellectual assets. 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. Business managers need to identify such valuable intangible assets in a timely manner, determine their business relevance, and agree on those to be protected and leveraged through the intellectual property (IP) system.

This article looks at the strategic management and use of IP rights to reduce risk, develop business partnerships, and enhance competitiveness of all types of businesses in the fashion industry.

## Designs

At the heart of fashion are fresh, new designs. Among the range of IP tools, the protection of industrial designs – also simply referred to as designs – is the most clearly relevant to the fashion industry. Registration of a design helps the owner to prevent all others from exploiting its new or original ornamental or aesthetic aspects, which may relate to a three-

dimensional feature, such as the shape of a hat, or a two-dimensional feature, such as a textile print. (For some definitions of industrial design, see page 10.)

The fashion industry invests huge sums to create new and original designs each season. Despite this significant investment, little use is made of relevant national and/or regional design law to register and protect these designs. In some countries, fashion designs may be adequately protected by copyright law as works of applied art. However, a frequently cited explanation for not registering fashion designs is that the short product life cycle – often no more than one six-to-twelve month, season – does not justify the considerable time and financial cost involved.

The arguments for registering a new design have to be considered on a case-by-case basis. Registering a design should help to deter others from copying it, and to fight unscrupulous competitors who do so. Moreover, design protection is not always a major financial burden, at least to begin with. Some countries

and regions, such as the United Kingdom and the European Union (EU), offer an *unregistered form of protection* for industrial designs for a relatively short period of time. Unregistered design protection, wherever available, is extremely useful for fashion designers or businesses with limited budgets, and for all those that wish to test market new designs before deciding which to register. The unregistered community design right of the EU offers protection for a maximum period of three years, starting from the date on which the design is first made available to the public in any of the 25 countries of the EU.

While fashion trends may come and go in the blink of an eye, some never pass. Many items become classical pieces. There is a one year waiting period at the French fashion house *Hermès* for the classic “Kelly” Bag, which grew to fame in 1956 after Princess Grace Kelly of Monaco appeared carrying the bag on the cover of LIFE Magazine. The classic *Chanel* suit – designed by Coco Chanel in the 1930s – is still sold today, for US\$5,000 a suit. Many fashion houses strive to create such



Credit photos: Hermès

*The Hermès Kelly Bag and the new Hermès Plume Bag – Hermès is one of the top ten users of the Hague System for the international registration of industrial designs (see page 10), with hundreds of designs registered through the System.*

*“In order to be irreplaceable one must always be different.”*

– Coco Chanel

classic design pieces. When they succeed, if they have not obtained the appropriate IP protection in time, imitators will be able to 'free ride' on their creative work.

For fashion items with a long life span, filing an application for a registered industrial design may be the best way to prevent others from using the design. It is possible to request at the time of filing – not after – that the publication of the application be deferred for up to 30 months. This is a particularly useful feature, offered under the Hague System, the EU community mark, and many national systems, for those who may want to keep their design secret until it comes to market.

### Branding and trademarks

Big fashion houses value their brand equity. Most develop a bond with their customers through their brand names and fiercely protect these through registration of trademarks and protection of associated artwork by copyright law. Trademarks are just as important for a small or start-up company in the fashion industry.

The Italian clothes company, *Pickwick* ([www.pickwick.net](http://www.pickwick.net)), offers an interesting example of the strategic use of a trademark to build a successful business in the fashion industry. Pickwick now sells a range of casual fashion wear to adolescents across Europe. But not so long ago, all that the company had was the trademark itself, which depicted a young, faceless boy with a spiky

hairstyle. The trademark owner started his business by selecting items he judged would have particular style appeal to teenagers, adding his distinctive trademark and distributing them through the local shops in Rome. Initially, the business costs were kept low by operating from a garage.



Teenagers perceive the Pickwick logo as trendy and are willing to pay extra for clothes bearing its trademark. Today, the company subcontracts the manufacturing and focuses on marketing, distribution and monitoring and controlling the use of the trademark.

### Patents

Patents may not immediately spring to mind when considering the fashion industry. Yet technical innovation can equally put a fashion business ahead of the competition. A portfolio of patents may, for example, reflect technical superiority in inventing new fabrics that do not crease, or are softer, or more weather-resistant, etc. Such a patent portfolio could help attract business partners or investors.

*Novozymes*, a Danish biotech company specializing in enzymes and microorganisms ([www.novozymes.com](http://www.novozymes.com)), pioneered the

### Israel's Textile Patents

Israel has over 40 fashion and textile exporters, which account for annual exports estimated at approximately US\$1.1 billion, reports the Israel Export and International Cooperation Institute. The country's textile industry keeps inventing ways to improve clothing and this innovation has kept the industry alive and growing against stiff competition. Products resulting from Israeli patents, such as suits that can be cleaned in a standard washing machine or sports socks that always remain dry, can probably be found in your closet.

use of enzymes in the treatment of fabrics. Though not previously involved in the fashion industry, in 1987 the company developed and patented a technology for the treatment of "stone washed" denim jeans. This technology is based on an enzyme called cellulase, which removes some of the indigo dye from denim so as to give the fabric a worn look. Within three years, most of the denim finishing industry was using cellulase under license from Novozymes. Today, Novozymes' technology for improving production methods and fabric finishing has been licensed worldwide. The company holds more than 4,200 active patents and patent applications, and

pursues a pro-active licensing strategy to maximize royalty revenue from these IP assets.

The Italian company *Grindi Srl* invented Suberis, an innovative fabric made of cork, said to be as smooth as velvet, light as silk, washable, unscratchable, stain-resistant, waterproof and fireproof. After testing and codifying the treatment, Grindi filed an international patent application under the PCT in 1998 to protect its unique product in a large number of countries. The Suberis fabric is used in the manufacture of clothing, footwear and sportswear, as well as in many other applications. The story of Grindi Srl and Suberis can be found at [wipo.int/sme/en/case\\_studies/suberis.htm](http://wipo.int/sme/en/case_studies/suberis.htm).

### Trade secrets and new business models

Trade secrets may range from a list of key suppliers and/or buyers, to use of software tools for fashion design, to logistics management of the entire value chain. In some fashion businesses, core trade secrets serve to protect the computer-implemented, software-based business models, which underpin an entire business strategy, based on stealth and speed, to supply a limited quantity of fashion products.

For example, the Spanish retail fashion chain, **ZARA**, uses a proprietary information technology (IT) system to shorten their production cycle – i.e. the time from identifying a new

## Fashion Design Success in South Africa

The South Africa Fashion Week, created as a showcase for the abundance of fashion talent that was largely unnoticed in the country, is now in its ninth year. The resounding success of last year's Fashion Week showed how far the industry had advanced in developing fashion into a serious business, creating wealth through design, and giving South Africa's designers a presence on the international stage.

Fashion Week exclusively promotes the South African design industry – clothing, accessories, footwear and textiles. Its organizers hold workshops fusing fashion and craft in the country's smaller remote provinces. They also support talent competitions for young South African designers – winners get an opportunity to launch a debut collection at the Fashion Week.

The rich colors and exotic designs in South African fashion set it apart from others. Many of the country's designers take inspiration from their cultural heritage. South Africa's fashion industry is moving forward with confidence that it is being taken seriously. The next South Africa Fashion Week will run July 28 to 31, 2005.



Photo: Ivan Naudé

The Bongiwe Walaza collection at South African

**SA FASHION WEEK**   
THE SHOWS OF FASHION

trend to delivering the finished product – to a mere 30 days. Most of their competitors take from 4 to 12 months. The company receives daily streams of e-mail from store managers signaling new trends, fabrics and cuts, from which its designers

quickly prepare new styles. The fabric selected is immediately cut in an automated facility, and sent to workshops. A high-tech distribution system, with some 200 kilometers of underground traces and over 400 chutes, ensures that the finished

items are shipped and arrive in stores within 48 hours.

Other fashion houses use IT to make customized products in response to an individual customer's request. For example, *Shirtsdotnet* ([www.shirtsdotnet.com](http://www.shirtsdotnet.com)) aims to reshape the traditional clothing industry by reversing the process of decision making and following the made-to-order business model. Shirtsdotnet is a Business to Business clothing software platform provider, offering made-to-measure, mass customization clothing solutions for mail order companies. Customers can design and order apparel directly from the virtual shop. The business relies on proprietary software, which is protected as a trade secret and by copyright law.

The above examples show that the strategic use of new information technology, protected by the tools of the IP system, can play a critical role in establishing and consolidating a market position.

The fashion industry is driven by creativity and by the intellectual capital invested in it. Protecting that intellectual capital in the form of IP assets serves to boost income through sale, licensing, and commercialization of differentiated new products, to improve market share, raise profit margins, and to reduce the risk of trampling over the IP rights of others. Good management of IP assets in a business or marketing plan helps to enhance the value of an enterprise in the eyes of investors and financing institutions.

## Brimful Designs – Pakistan

For the past seven years Brimful Designs, a textile design studio based in Lahore, Pakistan, has produced and marketed a successful brand of high quality, printed cotton designer clothing under the label Yahsir Waheed Designer Lawn ([www.yahsirwaheed.com](http://www.yahsirwaheed.com)). But in 2003 the very existence of the company was threatened by large scale copying. Inferior quality copies of Yahsir Waheed's original designs for its spring/ summer collection flooded the market under various labels at a third of the price of the original product. Salesmen used the Yahsir Waheed Designer Lawn's product catalogue to sell the fake designs, thus confusing Brimful's loyal customers.

A negative backlash from customers led to a rapid decline in the company's market share. Brimful consulted local experts at an IP training seminar organized by Pakistan's Small and Medium Enterprise Development Authority (SMEDA), who recommended seeking protection under Pakistan's Industrial Design Ordinance 2000. Brimful engaged legal counsel and since 2004 has registered all designs for the Yahsir Waheed Designer Lawn Collection with the aim of deterring infringers and providing the possibility of legal action.

As yet, their battle continues. The infringers are no longer replicating the exact designs, but the copies are still close enough to confuse buyers. While IP legal counsel is becoming widely available in Pakistan, this remains an expensive route; and Brimful owners note that the process of obtaining and implementing a court injunction currently takes too long. They would like to see strong, high profile punitive action by the authorities against IP violators in the textile sector in order to give teeth to design protection legislation and to deter further wide scale copying.

*Based on a case study prepared by Aisha Amjad, SMEDA, Ministry of Industries and Production, Pakistan; with additional comments from Brimful Designs.*



Photo: Saifur Akhter Mahmood

Model Amna Shafaat in a 2003 Yahsir Waheed design

For more information on various practical aspects of the IP system of interest to business and industry, please visit the website of the SMEs Division at [www.wipo.int/sme](http://www.wipo.int/sme). The next article in the IP and Business series will discuss "Role of IP in Innovation and New Product Development"