

## **Committee on Development and Intellectual Property (CDIP)**

**Thirty-First Session**  
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### **EXECUTIVE SUMMARY OF THE WIPO TOOL ON THE ROLE OF INTELLECTUAL PROPERTY RIGHTS IN THE FASHION INDUSTRY: FROM CONCEPTION TO COMMERCIALIZATION**

*prepared by Professor Noam Shemtov*

1. The Annex to this document contains the Executive Summary of the WIPO tool on “The Role of Intellectual Property Rights in the Fashion Industry: From Conception to Commercialization”.
2. This tool has been undertaken in the context of the Development Agenda (DA) Project on “Promoting the Use of Intellectual Property in Creative Industries in the Digital Era in Chile, Indonesia, the United Arab Emirates and Uruguay” (document CDIP/26/5). It was prepared by Professor Noam Shemtov, who holds a Chair in Intellectual Property and Technology Law at the Centre for Commercial Law Studies, Queen Mary University of London.
3. *The Committee is invited to take note of the information contained in the Annex to the present document.*

[Annex follows]

## **The Role of Intellectual Property Rights in the Fashion Industry: From Conception to Commercialization**

### **Executive Summary**

Estimated at 759.5 billion United States dollars,<sup>1</sup> the fashion industry is a significant driver of global economic growth, and a major source of tax revenue and employment in many jurisdictions.

Intellectual property (IP) is a key component of the industry's legal ecosystem, with different IP rights vital to its sustainability and growth. This tool focuses on copyright, patents, designs, trademarks and trade secrets as most relevant to the fashion industry and outlines how these may be deployed in a fashion product's lifecycle. It serves as a practical tool to assist fashion designers and retailers in road mapping these key IP rights, with a view to safeguard their interests and monetise their creative endeavours. It also details their role and utility in the successful running of small fashion and design businesses.

The tool draws a distinction between counterfeits and knockoffs, as a tailored approach is required to address the different kind of threat each can pose to businesses and fashion designers. A counterfeit refers to the unauthorized reproduction of an original, sold with the intent to deceive. In contrast, a knockoff refers to the imitation of an original's key elements, without the intention of passing it off as the original.

The fashion industry comprises a diverse range of sectors, and this tool focuses on the primary sectors of apparel, garment and textile designs<sup>2</sup>, as well as handbags as a significant category of accessories. Each sector requires a different set of IP rights, and each IP right may be appropriate for protecting a different facet of a fashion product at various phases of its lifecycle.

Hence, the tool examines the IP rights that can be used for protecting intellectual creative assets at the pre-launch conception and development phase, which is the initial life cycle phase of a fashion product. It then proceeds with an analysis of the IP landscape at the post-launch commercialization phase, outlining the relevant IP rights and their role at this stage. The tool concludes with a risk mitigation map of third-party IP rights for consideration by businesses before they embark on creating and launching a new fashion product. A checklist is also included to provide businesses in the fashion industry with a brief list of key IP-related issues to consider throughout the fashion product's lifecycle.

### **Important considerations**

The key practical takeaways throughout fashion product's main lifecycle phases are as follows:

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<sup>1</sup> According to Statista's Fashion eCommerce Report 2022, at: <https://www.statista.com/study/38340/e-commerce-report-fashion/>

<sup>2</sup> Garment and textiles are often used in creating apparel items but not exclusively. For example, a particular tweed garment pattern may be used in creating a blazer, but also in upholstering an armchair. Thus, the protection of garment design is best viewed separately from the protection of a finished fashion product.

### *Conception, design and development*

- Ensure the adoption and implementation of a trade secret policy, addressing nondisclosure clauses in employment contracts, as well as relevant agreements with third parties (for example, feasibility of subcontract manufacturing).
- Implement a clear policy for complete documentation (aka paper trail) of the design process, including its different phases, personnel involved, dates, photos and other recordings of key stages of the design process.
- Where possible, opt for copyright registration.
- File trademark applications.
- File design rights applications (or design patents, as appropriate), bearing in mind the novelty threshold and ensuring that the business does not engage in novelty-destroying prior disclosure.
- In cases where European Union or United Kingdom unregistered design rights may be relevant (as their markets may be key commercialization territories), consider the requirement of first public disclosure in these territories as a precondition for protection.
- Consider patent protection where relevant (albeit in a small minority of cases).
- Clear any potential conflicts with pre-existing third party rights, prior to launching products or services (and seek to register IP rights in relation to such products or services)

### *Launch and commercialization*

- After launch, monitor third-party use of the design or any of its key elements.
- Conduct monitoring and detection on an *ad hoc* basis or more systematically by subscribing to a domain name/trademark watching service, so as to be notified when something identical or confusingly similar is published.
- Trademark proprietors may consider subscribing to an Internet monitoring service, that checks digital channels and platforms for counterfeits and unauthorized goods.
- Apply to customs and border authorities for protection against infringement of IP rights on imports into and exports out of relevant territories (such option is available to IP proprietors of trademarks, designs, patents and, on occasions, copyright).

Full version of the tool is available at:

[http://www-dev.wipo.int/edocs/mdocs/mdocs/en/wipo\\_webinar\\_cr\\_2023\\_7/wipo\\_webinar\\_cr\\_2023\\_7\\_ww\\_615976.pdf](http://www-dev.wipo.int/edocs/mdocs/mdocs/en/wipo_webinar_cr_2023_7/wipo_webinar_cr_2023_7_ww_615976.pdf)

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