



# IP in the Fashion Industry

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**“I don’t design clothes. I design dreams.”** Ralph Lauren

### I. Introduction

Europe is home to some of history’s most important textile and fashion inventions and a number of the most celebrated designers, manufacturers, innovators and artists, such as Coco Chanel, Giorgio Armani and Christian Dior, to name a few.

Today, the EU textile and clothing sector remains an [SME-based industry](#). Companies with less than 50 employees account for over 90% of the workforce and produce almost 60% of the value added. Clothing and textile is also a globalised industry with the chain of production, wholesale and retail including dozens of stakeholders and spanning over many continents. When referring to the fashion industry, we include clothing, shoes, bags, jewellery and other accessories. Due to its size, the fashion industry across Europe offers many business opportunities. Based on the latest available data from 2017, the EU textile and clothing sector is estimated to directly employ nearly 1.7 million people in over 175,000 companies, with a turnover of [EUR 181 billion](#). However, the fashion industry also has to face major issues such as:

- Counterfeiting: a copy of a clothing item or an accessory incorporating the trademark of the copied designer and usually of inferior quality than the original.
- Knock-offs: producing products that copy the design and style of another one, but without using the original trademark.
- Unfair competition: using an unregistered mark or characteristic of another company in order to take advantage of the reputation and good-will of said company (this will be determined at national level).

In this context, creating an effective IP strategy and adopting a proactive attitude becomes essential to protect your fashion business.

## II. Relevant IP rights

### a. Trademark

In all sectors, trademarks play an important role in helping differentiate the goods and services offered by a company from those of its competitors. But in the fashion industry, they are particularly valuable IP assets since they are among the most widely used means to protect fashion brands.

Trademarks not only protect brands, they also protect consumers by giving them clear visual signs that the product they are buying originates from a company they know, has been manufactured following strict quality protocols and are therefore safe to use. Consumers identify a brand e.g. by a logo. Many other aspects can be trademarked, such as the brand name itself, a specific pattern, or a specific colour. These details may give a product a secondary meaning and distinguish it further from competing products, such as the use of a red sole on Louboutin shoes.

The importance of trademarks has grown beyond simple differentiation from competitors, and often there is a psychological component behind each trademark. Consumer purchase is now oriented by the values of a brand and any false move or wrong commentary will have a detrimental effect on a brand's image, and thus on sales. In addition, a group usually identifies itself with a specific brand. For example, Vans is usually associated with skaters; Billabong with surfers. Each brand targets a specific group of consumers with a specific set of values. In this environment, trademarks become paramount to the success of any fashion business.

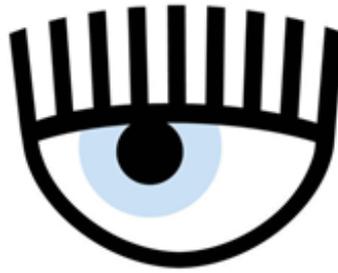
A trademark is defined as any sign capable of distinguishing the goods or services of one enterprise from those of another.

In Europe, trademark protection covers:

Word marks



Figurative marks



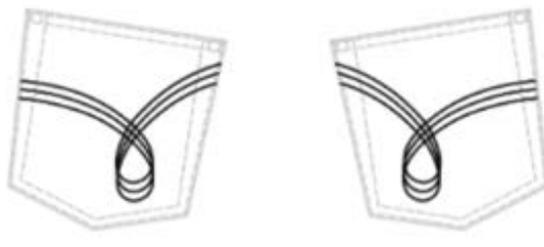
A combination of the above



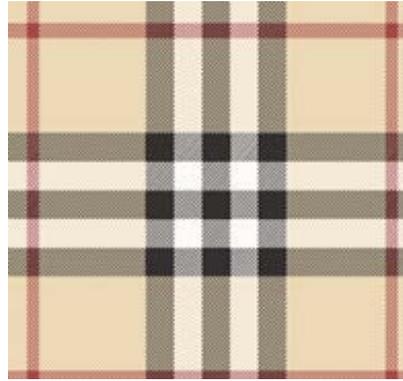
Shape marks

<p><b>Stella bag</b> Italian trademark no. 1001726, Italian trademark no. 862872, Community trademark no. 900963107</p>			
<p><b>Bicko bag</b> Italian trademark no. 1001726, Italian trademark no. 862872, Community trademark no. 4867267</p>			

Position marks



### Pattern marks



### Single colour marks (or colour combinations)



- Sound marks
- Motion marks
- Multimedia marks
- Hologram marks

Within the fashion industry, Dior, Valentino or Mango, as well as the signature YSL logo are examples of well-known trademarks. Distinctive styles such as the Louis Vuitton print and Burberry check are also registered as trademarks. However, trademark protection is not only important for big fashion brands. It is also essential for SMEs, not only to protect their assets, but also to slowly start building the reputation and recognition of their brand.

Trademarks, like all other IPR, are territorial rights. This means that protection will be granted only in the country where registration is applied for (the only exception is the EU trademark). This means that you should first establish a business strategy and decide on the countries you want to target, and then proceed to register in these countries. When registering your trademark, there are three options available.

- **National route:** if you plan to commercialise your products in one or two countries only, you will have to comply with the requirements of each national IP Office.
- **European route:** you can apply for a [European trademark](#) (EUTM) that grants protection for 10 years (renewable indefinitely for 10-year periods), in all EU Member States through a single application and review process. If you want to learn more on the subject check our [Factsheet on trademarks](#).
- **International route:** If you are planning to do business internationally, including outside of Europe, the [Madrid System](#) is a convenient and cost-effective way of registering and managing your trademark worldwide. Basically, through a single application and one set of fees, you can apply for protection in all signatory countries. Final granting remains subject to the approval of each national IP Office according to their national rules.

A trademark in the fashion sector may be registered in different classes according to the [Nice Classification](#), an international classification system used to classify goods and services for the purpose of registration of marks. In a nutshell, it allows you to determine which sectors you are going to target through your trademark. Hence, this decision will affect the scope of protection that the trademark will ensure. It is common in this field to file in several classes.

This non-exhaustive list outlines classes that might be relevant when applying for a trademark related to the fashion industry:

- Class 3: Fragrances
- Class 9: Sunglasses
- Class 14: Watches and jewellery
- Class 18: Handbags, purses, leather goods, umbrellas, clothing for animals
- Class 23: Yarns and threads, for textile use
- Class 24: Textiles, bed linen, table linen, rugs, tow
- Class 25: Clothing, footwear, headgear
- Class 26: Lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, artificial flowers, dressmakers' articles, badges
- Class 35: Retail services
- Class 40: quilting, embroidering, custom tailoring, textile dyeing, applying finishes to textiles.

Trademarks require time and effort in order to develop recognition and goodwill. In order to be able to build that goodwill on the marketplace, other IP rights are also needed (trade secrets, copyright, designs...) to prevent competitors from copying unique products.

### In conclusion, what are the benefits of registering a trademark?

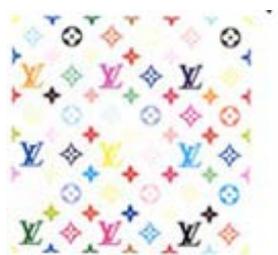
A registered trademark helps you to:

- prevent others from using the same or a confusingly similar mark for the goods/services and in the territory covered;
- protect your brand identity by avoiding confusion with similar brands;
- prevent and act against counterfeiters that are using your trademark without permission;
- keep third parties from taking unfair advantage of your reputation, causing damage by using an identical/similar mark in a way that will tarnish its reputation or cause dilution in the marketplace;
- do business with your trademark title, whether it is through licensing, transferring or even mortgaging your trademark.

## b. Design

Designs are used to protect the appearance of a product or parts of it (for example, the design of a jacket or the unique design of the pocket of said jacket). Designs are usually the result of a combination of features such as lines, contours, colours, shapes, texture and material.

Designs have relevance in the fashion industry as they can protect the structure or the look of your core products such as clothing, footwear, handbags and accessories.



Design number	000084223-0001
Filing date	06/10/2003
Locarno class number	99.00
Indication of the product	Graphic symbols
Design status	Registered and fully published (A.1.)

Just like trademarks, designs are territorial rights. It is therefore important to think about the markets you want to target and to develop your filing strategy accordingly. Depending on where you are planning to commercialise, there are three options available for design protection.

- **National route:** if you plan to commercialise your products in one or two countries only, you will have to comply with the requirements of each national IP Office.
- **European route:** you can apply for a Registered Community Design (RCD) before the [EUIPO](#). It grants protection for all EU Member States through a single application and review process, for an initial 5-year period renewable for additional 5-year periods up with a maximum of 25 years in total. You can also rely on the protection granted through Unregistered Community Designs (UCD). Since many fashion items are only intended to last for the duration of a single season, the 3-year protection granted by this unregistered

right is usually enough for most designers and requires no effort. It may, however, be more difficult to enforce (rights are more difficult to prove when unregistered). Unlike RCD, UCD holders can only prevent others from using their design if the use is a result of direct copying (there will be no infringement if the third party can prove that it created the design independently).

- **International route:** If you are planning to do business internationally, including outside of Europe, the [Hague System](#) is a convenient and cost-effective way of registering and managing your industrial design worldwide. Basically, through a single application and one set of fees, you can apply for protection in all signatory countries. Final granting remains subject to the approval of each national IP Office according to their respective rules.

The owner of a registered industrial design has the right to prevent third parties from producing, selling or importing articles bearing a design which is a copy of, or substantially similar to, the protected design – if such acts are undertaken for commercial purposes. Hence, designs play a crucial role in the fashion industry preventing competitors from copying your design during a limited period of time.

Please take into account that, at European level, design protection will not extend to features of appearance of a product which:

- are dictated solely by the product's technical function (e.g. a zipper);
- must be reproduced in their exact form and dimensions to enable the product incorporating the design to fit/connect with another product so they perform their function (e.g. a bolt that fits a screw);
- are contrary to public policy or accepted principles of morality (e.g. a graphic design that is discriminatory or offensive);
- include a protected symbol (e.g. the Olympic rings, an emblem owned by a Royal Family or a national flag) if permission has not been granted by the country or organisation concerned.

### c. Copyright

Copyright describes the creators' rights over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programmes, databases, advertisements, maps, and technical drawings.

In the context of fashion, copyright is generally dealing with two-dimensional works and is mainly considered complementary to other IPR. For example, copyright will protect original prints, graphic images and photographs featured on textiles and garments. Copyright will usually protect other aspects of a designer's business such as databases of clients, aspects of its website, look-books and brochures, sketchbooks, promotional materials, etc.

In all countries which have signed the [Berne Convention](#), copyright protection arises automatically without the need to file for registration or pay any fees. However, some countries, such as the US, require registration in order to bring a lawsuit in case of infringement.

Copyright does not protect:

- ideas and concepts in the mind of the creator;
- names or titles (although these may be eligible for trademark protection);
- inventions (although these may be protected by patents).

Any work fulfilling the following two conditions will enjoy copyright protection:

- The work must constitute the author's own intellectual creation (originality).
- The work must be an expression of such a creation, in the sense that the object can be accurately and objectively identified (the work must be expressed to the outside world).

Once your work is created, copyright will automatically grant you the following set of exclusive rights:

- **Economic rights**, allowing you to derive financial reward from the use of your work. This means that you are the only one who can decide on:
  - the reproduction of the work (protecting your work against unauthorised copies);
  - distribution of copies (protecting your work from issuing copies of it to the public);
  - public performance (covering performing, showing or playing a work to the public, for example, a play in a theatre or showing a film in public);
  - broadcasting or other forms of communication to the public (sharing the work to the public via an electronic transmission, such as sharing the work on the internet);
  - adaptation of the work (for example, turning a book into a movie).

- **Moral rights**, allowing the creator (individual person) to take certain actions to preserve the link with his/her work. This includes: the right to be recognised as the author of the work, the right to preserve the integrity of the work, or the right to object to false attribution. In most EU member states, moral rights cannot be waived.

A recent decision from the Court of Justice of the EU (CJEU)<sup>4</sup> confirmed that utilitarian objects, such as clothing items, can enjoy copyright protection in all EU member states. Back in 2011, the CJEU established<sup>5</sup> that any work, whether or not it is, or has been subject to design right protection, can enjoy copyright protection. However, the CJEU left it to the member states “to determine the extent to which, and the conditions under which, such a protection is conferred, including the level of originality conferred”. As a consequence, differing national approaches (and different originality thresholds) were developed throughout the EU. This originality threshold is what was at the heart of the Cofemel case.

In the dispute between G-Star and Cofemel concerning a jeans, sweater and T-shirt model, the Portuguese Supreme Court asked the CJEU whether the national standard for copyright protection for utilitarian works could be upheld. In essence, the Portuguese copyright originality threshold for utilitarian works (i.e. works of applied art, industrial designs and works of design) required proof of an individual, aesthetically remarkable, visual effect.

According to the Cofemel decision:

- Copyright and designs have different purposes. As long as their purposes is respected, both IP rights can coexist and protect the same subject.
- Even if one product accumulates both types of protection, this does not change the requirements for copyright protection. Subjective requirements (such as the Portuguese “aesthetic effect”) do not apply and the originality threshold remains the same as for other works of art.

<sup>4</sup>Case C-638/17 – Cofemel – Sociedade de Vestuário SA v G-Star Raw CV <http://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-683/17>

<sup>5</sup>Case C-168/09 – Flos SpA v Semeraro Casa e Famiglia SpA <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-168/09>

#### d. Patent

Patents may not immediately come to mind when considering the fashion industry. However, technical innovation can grant a competitive advantage to a fashion business. A portfolio of patents of fabrics that do not crease, or are softer, or more weather-resistant can become attractive to potential business partners or investors, and of course products encompassing such inventive features can become highly popular amongst consumers.

A patent grants an exclusive right over an invention, product or a process providing a new way of doing something or offering a new technical solution to a problem. For an invention to be patentable, it must:

- be new or include some new characteristics that is not comprised in the prior art (body of existing knowledge in this specific field);
- involve an inventive step, meaning that it cannot be obviously obtained or deduced by a person having ordinary skills in the relevant field;
- have an industrial application.

Innovations in the fashion industry have not only been limited to new fabrics (for example softer, thinner, better insulated, water-resistant fabrics, etc.); they now also include embedded connectivity, smart textiles (providing ground-breaking advantages such as thermal regulation, heated clothing, electronic moisture management) or even fabric with embedded on-demand illumination. The convergence of smart textiles and nanotechnology opens up endless possibilities and extensive patenting opportunities. Innovation also offers the possibility to reduce the environmental impact of the fashion industry by creating new methods of dyeing or advancing in the field of green chemistry for textiles.

For example, in the sports industry, Speedo created and patented a fabric named “FastSkin”. Inspired by shark skin, this fabric manages to increase the glide in water by reducing resistance, enabling swimmers to win valuable seconds in competitions.



Another example is [Beyond Surface Technologies](#), a Swiss-based textile chemical producer with the goal to advance green chemistry in textile finishing applications without compromising on performance. This company works with renewable materials, such as plant seed oils, micro algae oils and bio waste streams, in order to decrease the carbon footprint and lower the hazard potential of textile chemicals.

miDori PORTFOLIO		BEYOND SURFACE TECHNOLOGIES		
bioWick	bioDry	bioSoft	evoPel	
SYNTHETIC FIBRES	CELLULOSE & REGENERATED	ALL FIBRES	ALL FIBRES	
FOR WICKING	FOR WICKING & SOFTNESS	FOR SOFTNESS	FOR WATER REPELLENCY	
miDori® WA 1.0 100% MICROALGAE	miDori® WP 3.0 PLANT SEED	miDori® DP 1.0 PLANT SEED	miDori® RP 2.0 PLANT SEED	
> 70% BIO CARBON			< 70% BIO CARBON	
Up to 80% CO <sub>2</sub> reductions	Up to 70% CO <sub>2</sub> reductions	Up to 60% CO <sub>2</sub> reductions	Up to 60% CO <sub>2</sub> reductions	
CERTIFICATIONS	CERTIFICATIONS	CERTIFICATIONS	CERTIFICATIONS	CERTIFICATIONS
<ul style="list-style-type: none"> <li>• USDA Bio-Preferred</li> <li>• GOTS 5.0</li> <li>• ZDHC Listed</li> <li>• GreenScreen Bronze</li> <li>• LCA</li> </ul>	<ul style="list-style-type: none"> <li>• USDA Bio-Preferred</li> <li>• GOTS 5.0</li> <li>• ZDHC Listed</li> <li>• GreenScreen Bronze</li> <li>• LCA</li> </ul>	<ul style="list-style-type: none"> <li>• USDA Bio-Preferred</li> <li>• GOTS 5.0</li> <li>• ZDHC Listed</li> <li>• GreenScreen Silver</li> <li>• LCA</li> </ul>	<ul style="list-style-type: none"> <li>• USDA Bio-Preferred</li> <li>• GOTS 5.0</li> <li>• ZDHC Listed</li> <li>• GreenScreen Silver</li> <li>• C2C Platinum</li> </ul>	<ul style="list-style-type: none"> <li>• USDA Bio-Preferred</li> <li>• GOTS 5.0</li> <li>• ZDHC Listed</li> <li>• Bluesign® Listed</li> </ul>

Another example is [Kasia Molga](#) who created Human Sensor, clothing that changes colour to reflect the pollution levels, depending on the air exhaled by the person wearing it.



Copyright: [Nick Harrison](#) and [Felix AAA](#)

However, the use of patent protection in the fashion industry is not limited to the big players. SMEs are agile and can quickly innovate in niche markets. They can protect their inventions using patents and, if they do not wish to manufacture, can license their inventions to the bigger players benefiting from a fair return on their research and development investments. Collaboration between larger and smaller enterprises is the key to success in this highly competitive environment, enabling the sector to leverage specialised knowledge of smaller players in areas that are not the core business of the larger companies.

Just like trademarks or designs, patents are also territorial rights. It is therefore important to think about the markets you wish to target and to develop your filing strategy accordingly. Depending on where you are planning to commercialise, there are three options available for design protection.

- **National route:** if you plan to commercialise your products in one or two countries only, you will have to comply with the requirements of each national IP Office.
- **European route:** you can apply for a “European patent” through the [European Patent Office](#) (EPO). Take into account that a European patent will not grant you one title valid in 36 Member States. Indeed, the European patent refers to a single European procedure for the grant of patents on the basis of a single application, making it faster to protect your patent in the contracting states. You will therefore be granted a bundle of national patents through a single registration procedure.
- **International route:** If you are planning to do business internationally, including outside of Europe, the [Patent Cooperation Treaty](#) (PCT) is a convenient and cost-effective way of registering and managing your patents worldwide. Basically, through a single application and one set of fees, you can apply for protection in all signatory countries. Final granting remains subject to the approval of each national IP Office according to their national rules.

Once a patent has been granted, you will be given the right to prevent or stop third parties to commercially exploit the invention without authorisation. This means that the invention cannot be commercially made, used, distributed, imported or sold by others without the authorisation of the legitimate owner.

#### e. Trade secrets

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.

Any information qualifies for trade secret protection, if

- it is confidential information giving a company a competitive edge;
- it is not generally known or easily accessible by proper means (for example, reverse engineering);
- the owner safeguards the information using reasonable measures to keep it secret.

There is no exhaustive list of what can constitute a trade secret. For instance, it can refer to processes, formulations, patterns, information compilation, designs, strategies, techniques, customer, leads lists, or pricing strategies.

#### When should you consider trade secret protection?

Protecting valuable information as a trade secret always comes into play when you disclose information on a new project, novel technologies or solutions in the context of potential research or business collaborations. During meetings with your potential business, research or financial partners, you might reveal confidential information, know-how and specific plans regarding the way in which your project should be carried out. Make sure you make your partners sign a **non-disclosure agreement** (NDA), one-way or mutual, to protect all sensitive information exchanged during the meeting. This will provide you with a contractual basis to defend your rights in case any of your potential partners infringes its confidentiality obligations.

Secondly, there might be situations in which trade secrets have a greater value than patents for your company, whether it is because the invention does not meet patentability requirements or because the secret information might grant a competitive advantage for more than twenty years.

There is no registration process for trade secrets, the only prerequisite is to maintain secrecy. Putting a protection plan in place will be helpful in demonstrating the efforts taken in maintaining confidentiality. This plan should include:

- the implementation of procedures that will improve the effect of NDAs (making sure that corporate policies are followed);
- the control of physical and electronic access to the information;
- details on how to identify, assess and prioritise trade secret vulnerabilities;
- the establishment of due diligence and ongoing third-party management procedures;
- the creation of a protection team;
- continuous training and capacity building for employees and third parties;
- possible corrective actions and continually improved policies and procedures.

Please take into account that trade secret protection is only effective for inventions which competitors will not be able to figure out based on the public aspects of your product and business.

For example, Zara uses a proprietary information technology (IT) system to shorten their production cycle, enabling them to reduce the time between the identification of a new trend and the delivery of a finished product to 30 days. Apparently, for most of their competitors, this takes 4 to 12 months. The company receives daily e-mail streams from store managers identifying new trends, fabrics and cuts serving as a base for the designers to quickly prepare new apparel. The fabric selected is immediately cut in an automated facility, and sent to work shops. A high-tech distribution system then ensures that the finished items are shipped and arrive in stores within 48 hours.

## f. Geographical Indications: should non-agricultural products be included as GIs?

A geographical indication (GI) is a distinctive sign used to identify a product whose quality, reputation or other such characteristics are linked to its geographical origin. Champagne or Prosciutto di Parma (ham) are well-known examples of agricultural GIs.

Protecting a GI ensures fair competition for producers and provides consumers with reliable information regarding the place of production or specific characteristics of a product. The protection offered by GIs helps to preserve traditional, high-quality products and know-how, as well as the jobs related to them.

There is currently no EU-wide GI protection for **non-agricultural** goods. Various laws exist in some EU countries that include regional or national regulations on specific crafts (for example, Italy actively protects ceramics and pottery through Collective Marks), specific laws on a certain product (for example, in Germany, “Solingen” is a collective mark that can only be used in relation to cutting equipment that (a) was processed and finished in all major stages of manufacturing in the Solingen industrial area and (b) complies with the established quality requirements), or regional or national laws that protect all non-agricultural GI products.

With the aim of finding a way to harmonise protection for non-agricultural goods, the European Commission has been exploring the possibility of creating a sui generis GI right for non-agricultural products at EU-level, such as Carrara marble or Scottish tartans. As part of this initiative, the Commission published a study<sup>9</sup> to assess the added value of offering a specific “sui generis” geographical indication protection to non-agricultural products in comparison to the already available protection offered through trademarks, unfair competition rules and quality certificates.

In particular, the study:

- evaluates the effectiveness of specific geographical indication (GI) protection in limiting the availability of non-authentic products;
- assesses the value of this specific GI protection to consumers, and the impact on consumer search costs for authentic products with and without explicit GI protection;
- identifies the value of this specific GI protection to producers of authentic geographically rooted products.

How does this relate to the fashion industry? In the European Union, there are several textile products made based on **local knowledge** and following **local production methods**, rooted in the cultural and social heritage of a specific region and possessing unique distinctive qualities and characteristics which are due to their geographical environment. Although their geographical origin is indicated, creating a sui generis GI right to emphasise the link between such a product and its qualities and the region or location where it is produced could be useful.

<sup>9</sup>European Commission - Economic aspects of geographical indication protection at EU level for non-agricultural products in the EU [https://ec.europa.eu/growth/content/study-economic-aspects-geographical-indication-protection-eu-level-non-agricultural-products\\_en](https://ec.europa.eu/growth/content/study-economic-aspects-geographical-indication-protection-eu-level-non-agricultural-products_en)

### III. IPR infringement in the fashion industry

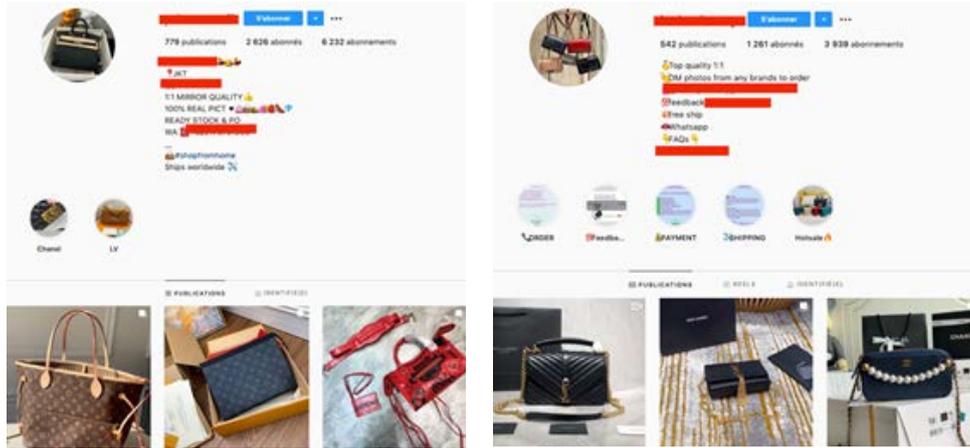
According to a sectorial study conducted by the European Union Intellectual Property Office (EUIPO) a few years ago<sup>10</sup>, the estimated total counterfeiting effect in the fashion industry amounts to 9.7% of the sector's sales (€26.3 billion) for the EU as a whole. This is a direct estimate of sales lost due to counterfeiting in this sector, which includes losses in the manufacture, wholesale and retail trade sectors. In addition to the direct loss of sales, there are also impacts on other sectors of the EU economy and on employment rates in this industry. These indirect effects are a result of the interrelation between the fashion industry and other sectors and industries.

The fashion industry is among the most competitive ones. In case a design gets stolen, this could jeopardise the entire season for a brand, because people would then be buying the counterfeit, either because it is cheaper or because they are genuinely confused as to the origin of the good. In any case, this could entail a substantial economic loss.

In general, intellectual property rights (IPR) are one of the pillars for the proper functioning of the fashion industry, regardless of the size of the company. Counterfeits come from a violation of these IPR (trademark, design, patent...) which usually results in people all over the world having access to counterfeit products or "fakes".

<sup>10</sup>EUIPO – the economic cost of IPR infringement in the clothing, footwear and accessories sector [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/resources/research-and-studies/ip\\_infringement/study2/the\\_economic\\_cost\\_of\\_IPR\\_infringement\\_in\\_the\\_clothing\\_footwear\\_and\\_accessories\\_sector\\_en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/research-and-studies/ip_infringement/study2/the_economic_cost_of_IPR_infringement_in_the_clothing_footwear_and_accessories_sector_en.pdf)

A report from the analytics firm [Ghost Data](#) has found that Instagram is one of the cores of the imitation trade: from fake Chanel bags to dupe Nike trainers or counterfeit Valentino studs. According to the firm’s study, nearly 20 percent of all posts about fashion products on Instagram feature counterfeit products. That is almost 50,000 accounts, most of them extremely active, promoting and selling counterfeits, mostly focused on copying luxury fashion.



*Examples of Instagram accounts selling counterfeit goods*

Reddit has also quickly become the new search engine for counterfeits or recommendations of the best sellers of cheap imitations. The platform’s major forums (subreddits) regarding fashion replicas amount to over 700,000 users. These feeds aim at providing all the necessary information on how to start selling or buying counterfeits, including tips to avoid getting caught, lists of trusted well-known sellers, and reviews of replica. This is, unfortunately, a growing trend, especially among younger consumers, and one that’s quite difficult to stop.

Although social media has given counterfeiters a platform to increase their outreach, it does not stop there. Counterfeiters have invaded all available internet spaces, including the basics of online marketing, such as appearing at the top of searches for original product queries.

Dubious SEO methods, such as “keyword stuffing” (overloading a page with keywords to improve its ranking in search engines), enable counterfeiters to appear at the top of a search result on a search engine. Although this would be detrimental to a normal business on the long run, counterfeiters are mainly interested in short-term profits.

Cybersquatting is another popular technique. Here, counterfeiters are using a brand’s name in their domain name, copying as much visual content as they can to make their fake website look as authentic as possible. Cybersquatting is used in order to improve the infringer’s SEO

positioning, to trick visitors into thinking that the website is authentic, or to directly harm the real trademark owner. If you want to learn more on cybersquatting and domain names, make sure you check the [European IP Helpdesk factsheet on the topic](#).

And even with no specific website in place, there are plenty of opportunities for counterfeiters on marketplaces such as Amazon. Images, descriptions and titles used by counterfeit sellers are the same as the ones used by real brands. The only way for consumers to distinguish fake from real, is to look at the seller's page and check if they are authorised sellers of the brand, or, more often than not, once they receive the product.

In this case, the internet is both a blessing and a curse, as it offers so many possibilities for consumers to stumble upon fake products by accident. The problem is that, with the rise of fast fashion and a shift in consumers' purchasing mentality, fashion items are consumed and bought at a quick rate. And, although high-end luxury brands are not considered part of fast fashion, their imitations are, since they allow consumers to be trendy at an affordable price at any time of the year.

Consumers need to be educated and made aware that the sale of counterfeit products doesn't just hurt the brand, but it can also hurt them directly, i.e. when it comes to quality and safety issues of the products purchased or the lack of warranties. Aside from the impact of fake fashion on the economy and on the environment (mass production, poor quality of the chemicals used, disposal of tons of clothes every year), this unregulated industry usually relies on sweatshops, with all the human impact and implications attached to that. In addition, many counterfeit organisations are known to be associated with organised crime and counterfeits have also become one of the preferred methods of funding for terrorist groups.

## IV. EU support

According to the European Commission, the fashion and high-end industries are a significant part of the creative economy and could have a significant impact on the growth of manufacturing in Europe. At the same time, these industries face a number of challenges that the European Commission works to address, such as the growing number of counterfeit goods, the protection of IPR, and the financing difficulties small businesses are facing.

Hence, the Commission has been funding initiatives to strengthen the competitiveness of the fashion and high-end industries, such as:

- the [WORTH Partnership Project](#) which creates and supports transnational collaborations between fashion designers, creative people, manufacturing enterprises (SMEs) and technology firms looking to develop design-driven and innovative products.
- the [European Clothing Action Plan \(ECAP\)](#) which was one of the first EU LIFE funded projects to address clothing sustainability. ECAP's approach encompassed sustainable design, production, consumption, public procurement, collection, recycling and reprocessing focusing on the clothing supply chain. The project was completed on 31st December 2019.
- [RESET](#), an Interreg project that seeks to address
  - recycling in textile and waste disposal;
  - water consumption and energy saving, sustainable company organisations;
  - new sustainable chemistry, including reduction of chemical substances;
  - smart textiles and new ways of production;
  - eco-creativity, natural fibres, short value chains;
  - new materials and new applications.
- [Re-FREAM](#): a collaborative research project where selected artists and designers team up with a community of scientists to rethink the manufacturing process of the fashion industry. The goal is to develop new concepts for the future of fashion by means of new processes and aesthetics that are inclusive and sustainable.
- [ART-CHERIE](#) is a project more focused on education and the task of inspiring young fashion designers through European cultural heritage.

These are just a few examples of EU-funded initiatives seeking to support SMEs and a more sustainable fashion industry.

Bolstering the long-term competitiveness of these industries is part of the broader Commission strategy for the re-industrialisation of Europe, a strategy aiming to [increase the proportion of GDP generated by manufacturing to 20% by 2020](#). These industries also have to continuously reinvent their business models due to pressures for change arising from trade liberalisation, growing external competition, consumer developments, technological advances, changes in production costs and environmental requirements. In this environment, IPR and the support offered by the numerous initiatives of the European Commission play an essential role.

## V. Conclusion

The first step to protect your fashion brand and act against counterfeits, is to make sure the all the legal aspects are covered. Without registered IPR, such as trademarks or designs, no action can be initiated against counterfeiters; they are the pillars to build a successful fashion brand.

Competing with counterfeiters can be demanding, disheartening and jeopardise your brand. However, most internet players are introducing mechanisms to effectively support brand owners in the online fight against counterfeits. Amazon, for example, has recently launched [“Project Zero”](#). Upon providing Amazon with the brand’s logo, trademark and other key data, automated protections will continuously scan the site and proactively remove suspected counterfeits. This tool also allows brands to directly remove and control listings from Amazon’s store without having to first contact Amazon. This is closely connected to another initiative launched recently by Amazon, the [“Amazon Brand Registry”](#). It allows brand owners to increase their influence and control over their brand and the products listing on Amazon. Again, an automated process locates infringing or suspicious products and removes them proactively.

Hence, when it comes to protecting your fashion brand’s IP online, technology is your best ally. As in Project Zero and other similar tools, artificial intelligence (AI) has proven to be effective in the fight against counterfeits, reducing the time brands have to spend on a manual search for potential infringers. With so many counterfeiters and platforms, one must now rely on software and AI to try and remove them effectively. But don’t forget that the fight against counterfeits also involves the analogical world and entails relying on [traditional means such as customs](#) or legal actions to effectively protect any IPR asset.

Our main goal is to support cross-border SME and research activities to manage, disseminate and valorise technologies and other IP rights and assets at an EU level. The European IP Helpdesk enables IP capacity building along the full scale of IP practices: from awareness to strategic use and successful exploitation.

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The heart of our service portfolio to keep you updated



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Meet us at key networking and brokerage events and conferences



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