



Fashion is a multibillion industry with a variety of types of products, and innovative and unique solutions offered to customers every season. Fashion is an exceptional type of industry where innovation and creativity are anticipated every season, and exclusive features of each brand and style are easily incorporated in others. Therefore, one of the major challenges any fashion brand faces is the challenge of protection of intellectual property (IP) rights.

Vadim Blaustein, the CEO of BlauStein Business Lawyers, acknowledges the importance of intellectual property protection and as a fashion enthusiast highly supports new trendy ideas offered by diverse fashion designers. In this interview Vadim Blaustein gives recommendations to young designers with genius ideas on how to protect their designs, trademarks and patents in challenging environment of fashion industry.

Vadim, please provide us with the basic overview of the intellectual property protection in fashion industry.

Vadim Blaustein: Generally speaking there are different types of protection for IP: copyright, trademark, trade secret, industrial design and patent. The fashion industry may at different times enjoy different types of IP protection.

Therefore, the basic protection offer to the fashion industry depends on jurisdiction, features of the style offered, innovations involved and etc. There is no clear-cut answer to the type of protection applicable to all designs and questions, and a case by case recommendation is required.

Can you please provide us with a summary of the most applicable and relevant areas of IP protection in fashion industry?

Vadim Blaustein: Let's start with the most important type of protection for fashion industry, which is trademark.

A trademark is an indicator that distinguishes a product from other products. As the fashion is highly

linked to brands, and brands that support fashion determine the success of certain models, the protection offered by the umbrella of trademark is of the highest relevance in my opinion. Often, people buy the product not for the product itself, but for the brand it represents.

A trademark can be a design, a name, a slogan, a symbol, a pattern, and even a sound that distinguishes a product. Depending on a jurisdiction, trademark can be only registered, or also enjoys protection by a mere fact of its usage and present on the market place. Depending on the type of protection it enjoys there are different symbols used. TM is used for unregistered trademarks, SM for unregistered service marks and R is for trademarks registered in a domestic jurisdiction.

Why is trademark protection relevant?

Vadim Blaustein: To make sure the consumers can distinguish between brands as trademark is a great asset of the company in fashion industry. Most of the times it is the brand that is the main asset of the fashion company.

What are the primary benefits and drawbacks of a registration of a trademark?

Vadim Blaustein: The trademark registration provides the owner of the brand an exclusive set of rights depending on the jurisdiction, and the primary right is to use the brand, and prevent others from using it. This is an essential right for the fashion industry. As for the drawbacks, I do not see any for fashion industry as I said brand is an essential part of the costs associated with a product in fashion industry.

What are the risks if the company fails to register a trademark?

Vadim Blaustein: There are different risks involved: financial, legal and reputational.

Firstly, when you advertise the product using an unregistered trademark you might be investing into something that would benefit your competitor who later registers the trademark.

Secondly, unauthorized use of someone's trademark would lead to the breach of someone's rights, lead to negative legal consequences and would harm reputation significantly.

Thirdly, someone in the market can register the trademark that you were using and developed the reputation, and the entire purpose of even having a brand would be gone.

Therefore, to avoid these risks, even a young brand with not significant presence on market place should register a trademark before starting operations.

What types of registration of trademark exist?

Vadim Blaustein: There are three types of trademarks: domestic, the EU and international.

National trademarks are governed by each applicable law in each jurisdiction. This kind of trademark offers protection only in the country of its registration.

EU trademark offers a much more broad protection throughout all the EU Member States. This kind of trademark is also known as "the Community Trademark". The Community Trademark is valid for 10

years. The registration is renewable for a period of 10 years.

The EU trademark application requires indication of the class of trademark and has a complex procedure.

The International trademark is applicable worldwide and is administered by the United Nations special agency - World Intellectual Property Organization, "WIPO", situated in Geneva, Switzerland. In order to apply for an international trademark you need to first obtain either a national trademark or an EU trademark.

The unique benefits of international trademarks are offered under Madrid Protocol which is ratified by around 100 countries. Therefore, the international trademark offers a unique centralized international protection of the trademark. It is indeed a more expensive solution, but worth keeping in mind for an international fashion brand. Furthermore, the fees may be deducted up to 90% if the brand is originating from the least developed countries in accordance with the United Nations.

Can you please provide with real case examples for trademark protection in fashion industry?

Vadim Blaustein: One of the most interesting examples is the case of "Bottega Weaves", the bags produced by Bottega Veneta. These types of bags became recognizable due to the unique fabric - thin strips threaded together. Bottega Veneta did not use labels on the bags, but the threads on the bag were the unique feature of this brand. In 2007 Bottega Veneta applied to register the weave, and the registration was refused as being of an ornamental nature rather than a distinguishable feature. After a significant work by the company's lawyers, the trademark was registered as Bottega Veneta proved that the weaves are the product's signature, and they were used for a long period of time, and there was a lot of effort put in marketing this exclusive style of Bottega Veneta. The trademark applies only to the weave though, and not to design of bags of this brand.

What is another most relevant area of IP protection for fashion industry?

Vadim Blaustein: Industrial designs are protection the visual aspects of the design, such as shape, configuration, pattern and color, but only if the design does not have a purely utilitarian nature. As well as trademarks, industrial designs may be registered nationally, in the EU and internationally.

What is another most relevant area of IP protection for fashion industry?

National industrial designs are protected by the applicable domestic legislation and the protection depends on the applicable jurisdiction.

The EU industrial designs are also known as "the Community designs" in the EU. The EU provides two types of protection: registered and protection without registration. The protection without registration is perfect for short-term trendy design solutions, and lasts for 3 years from the day the design was first offered in the EU. If the designer wants to register the protection of unique features of the style, he or she shall apply for the registration of European Union Intellectual Property Office before starting its production. If the designer does not intend to register, he or she enjoys the unregistered protection and can produce the product immediately. However, bear in mind that to receive protection the industrial design shall be novel and have individual characteristics.

The international protection of industrial designs is also handled by World Intellectual Property

Organization, “WIPO”. The so-called Hague system provides an opportunity to apply for an international industrial design protection. Unlike international trademark registration, international industrial design registration procedure does not require to have a national or EU registration prior to applying for an international design. The international industrial design enjoys protection for a period of 5 years and may be renewed for 5 years.

The application for industrial designs is a complex and formal procedure. For example, all industrial designs are classified in accordance with Locarno classification. Umbrellas, for example, are in a separate category than gloves despite being accessories in an understanding of a fashion designer.

Which protection do you think is preferable?

Vadim Blaustein: It depends on the type of design and the location. If the product is only relevant for the EU market, than the Community industrial design is sufficient. Furthermore, if the design is only for a short-term, like a seasonal solution, the unregistered protection is sufficient. If it is a long period design like in the case I have provided, than it is better to obtain registration and obtain a long-term protection. The registered designs enjoy protection under the EU law for 25 years.

International design is more relevant for the brands that operate in the states outside the EU.

If the person registered the design, what are the next steps?

Vadim Blaustein: At the stage of production, of course, there shall be legal support of the confidentiality regime with regards to the on-sight production, and relevant non-disclosure agreements shall be in place. Depending on the applicable jurisdiction, the designer shall also obtain all the protection as the commercial secret when it comes to the type of material used, or the unique method used for such a production. All of these areas of IP protection are covered by trade secret protection.

Trade secret protection does not require registration, but rather creation of the legal environment supported by NDAs, policies, procedures. The reason this is important is because the moment the trade secret becomes public, it is losing its protection. However, the benefit of the trade secret is that it does not have expiration period. For example, Coca Cola’s secret recipe is not known due to the strong trade secret protection in place, and if the recipe was patented, everyone would know the recipe, and the period of its protection would be limited.

Trade secrets are not only recipes, of course, but also the lists of customers, partners, producers the brand works with, the unique techniques and knows-hows used, and even work processes. Therefore, trade secret is a very important area of business operation.

What are other types of protection relevant to fashion industry?

Vadim Blaustein: Fashion industry is not only limited to brands and designs, and the technologies are playing also an important role in it. As the intellectual property also offers patents for technical innovations, the fashion industry also enjoys protection provided under patent law. For example, CROCS shoes have patents involved in manufacturing their products.

Another interesting example is a young and trendy brand of the Italian designer, Anna Grindi, who has created Suberis, a fabric that derives from cork. Suberis is a substitute for leather, and the patent for its

production provides significant protection for this designer's idea. Suberis is used in bags, dresses, shoes and etc. As she uses the unique technology, I hope she has patented it.

Many fashion designers would agree that counterfeit is the biggest challenge to the industry, and some EU designers raised this issue when talking about downsizing of the EU fashion industry. What would you recommend to the designers with regards to their battle against IP theft?

Vadim Blaustein: It is indeed a big challenge to the fashion industry and it is also a criminal activity. Here, I would like to clarify that counterfeit goods are not only the cheap fake labels one can see, but very often a high quality counterfeit, and the customers often genuinely think that they buy a generic product. Therefore, it is a challenge both for producers and customers.

There are several legal options: first, reporting to the law enforcement agencies with regards to the criminal activity against your brand. Second, to take a legal action against a specific brand that is violating your IP rights to the civil court. For example, Adidas works on protection of the "Three stripes" design for many years, and brought lawsuits against Puma, Forever 21, Marc Jacobs and many other companies to protect "Three stripes". Third option is to take a legal action against a company or a platform that sells counterfeit goods. For example, there was a research by a British magazine the Guardian with regards to Amazon website having on its lists for sale counterfeit Louis Vuitton iPhone cases.

There are some areas of research what practical aspects the fight against counterfeit works. Despite these solutions being outside of the legal umbrella, it might be of an interest to the reader that often fashion designers create limited editions for a short period of time in order to strengthen their brand and to minimize the risk of counterfeit.

You have mentioned a lot of interesting cases, could you maybe share some more with readers?

Vadim Blaustein: Of course. I think maybe it is not that scandalous as some may would want to read, but there is a lot of evidence to indicate that fashion designers refer to IP registration more and more nowadays and there are examples of world-known luxurious brands like Louis Vuitton, Yves Saint Laurent and Hermès are the top users of the IP protection. An interesting example is Louis Vuitton's "Lockme" bag. Louis Vuitton has obtained both protection of the industrial design of the bag and the trademark for "Lockme". It is worth noting that it is an interesting regular practice of this brand as Louis Vuitton has also obtained a trademark protection for their bags "Artsy", "Neverfull", "Capucines", "Keepall" and other.

Summing up, what is your advice for a young fashion designer on protection of his or her idea?

Vadim Blaustein: A young designer shall make sure that his or her genius idea is protected before the production is started, as well as during the production. For this, it is necessary to be aware of intellectual property protection for designs provided in applicable jurisdiction, and apply for trademarks and patents protection when possible. The designer shall also make sure that he or she have relevant trademark, industrial design and patents protection granted in the country where the designer operates.

This sounds like a lot of legal work, does your company provide with such services?

Vadim Blaustein: Indeed, BlauStein Business Lawyers provides full support to the companies with

regards to application for all types of intellectual property protection.

Here I would like to highlight that registration of IP, creation of the legal environment for the most effective protection of trademarks and drafting of licensing agreements are complex legal tasks, and I would recommend referring these tasks to the qualified legal professional.

Our company highly supports new ideas and especially in fashion. The fashion designers are always welcome, and we highly support innovative and creative fashion designers, and are happy to provide them with the legal advice and support to maximize their protection and ensure that their fashion art is respected and protected.

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