

**REPUBLIC OF TURKIYE
ANKARA UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF
INTELLECTUAL PROPERTY RIGHTS, TECHNOLOGY POLICIES AND
INNOVATION MANAGEMENT**

**A COMPARATIVE ANALYSIS OF THE PROTECTION OF
FASHION DESIGNS UNDER INTELLECTUAL PROPERTY
RIGHTS LAW**

Master's Thesis

Elif Feyza DEMİRCİ

Ankara, 2025

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To the Directorship of the Graduate School of Social Sciences

I hereby declare that all information in my master's thesis named "**A Comparative Analysis Of The Protection Of Fashion Designs Under Intellectual Property Rights Law**" has been prepared under the supervision of **Prof. Dr. Arzu OĞUZ** has been gathered and submitted in compliance with academic rules and ethical conduct principles. As required by these rules and principles, I have fully indicated and cited all sources that are not original to this work. I also declare that I have acted according to scientific research and ethical rules during the study process, and if it is proven otherwise, I will accept all legal consequences.

Date: 18.04.2024

Elif Feyza DEMİRCİ

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Av. Elif Feyza DEMİRCİ

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	i
TABLE OF CONTENTS	ii
LIST OF ABBREVIATIONS	iv
TABLE OF FIGURES	v
INTRODUCTION	1

CHAPTER I

FASHION DESIGN

I. INTRODUCTION TO FASHION DESIGN.....	5
A. Historical And Sociological Analysis Of Fashion	5
B. The Artistic Dimension of Fashion Design	18
II. DEFINITIONS AND IMPLICATIONS OF FASHION	19
A. Knock-Off.....	20
B. Fast Fashion	22
C. Slow Fashion.....	23
D. Close Copying	24

CHAPTER 2

PROTECTION of FASHION DESIGN UNDER INDUSTRIAL PROPERTY LAW

I. DESIGN	29
A. Sui Generis Design Protection.....	33
1. Registered Design Protection	35
2. Unregistered Design Protection.....	36
B. Design Patent	38
II. TRADEMARK.....	39
A. Three-Dimensional Trademark Protection	43
B. Trade Dress	45
III. PATENT.....	46
IV. COMPARISON OF PROTECTION METHODS.....	48

CHAPTER 3
PROTECTION of FASHION DESIGN UNDER COPYRIGHT LAW

I. COPYRIGHT PROTECTION FRAMEWORK	50
A. Evaluation of Copyright.....	52
B. Requirements for Protection of Fashion Designs with Copyright.....	62
II. CONDITIONS of PROTECTION of WORK.....	71
A. Originality.....	71
1. Creativity Balance	74
2. Innovation and Competition Balance	78
3. Aethetical Value	80
B. Fixation Requirements.....	85
III. PROTECTION of ECONOMIC RIGHTS	86
IV. PROTECTION of MORAL RIGHTS	87
V. PROBLEMS ENCOUNTERED IN PRACTICE	90
A. Structural Weaknesses in Copyright Protection.....	90
B. Procedural and Economical Challenges	91
C. Lack of International Harmonization	92
 CONCLUSION	93
BIBLIOGRAPHY.....	95
ÖZET	109
ABSTRACT	111

LIST OF ABBREVIATIONS

3D	: Three-Dimensional
AI	: Artificial Intelligence
BATIDER	: Journal of Banking and Commercial Law
CJEU	: The Court of Justice of the European Union
ed.	: editor, edition
EU	: The European Union
GRUR	: Journal of European and International IP Law
H.R.	: House Report
InfoSoc	: Directive 2001/29/EC of the European Parliament and the Council IP : Intellectual Property
IPC	: French Intellectual Property Code
no.	: number, issue
p.	: page
pp.	: pages
Rep.	: Report
RIDA	: Revue Internationale Du Droit D’auteur
SSRN	: Social Science Research Network
TRIPS	: Agreement on Trade-Related Aspects of Intellectual Property Rights
U.S.	: The United States
UCC	: Universal Copyright Convention
UDHR	: Universal Declaration of Human Rights
USPTO	: United States Patent and Trademark Office
UNCTAD	: United Nations Conference on Trade and Development
VARA	: Visual Artists Rights Act of 1990
vol.	: volume
WIPO	: World Intellectual Property Organization
WTO	: World Trade Organization

TABLE OF FIGURES

Figure 1.	Dress with Led Light and Purse with Swarovski Crystals Designed by Tommy Hilfiger and Hussein Chalayan, 2022 Met Gala.....	15
Figure 2.	Dress with Led Light and Purse with Swarovski Crystals Designed by Tommy Hilfiger and Hussein Chalayan, 2022 Met Gala.....	15
Figure 3.	Cape, Armour, and Bodysuit by Donatella Versace, 2021 Met Gala.....	15
Figure 4.	White Shirt Dress by Karl Lagerfeld Met Gala, 2023.....	16
Figure 5.	White Shirt by Zara, 2024	16
Figure 6.	AMIRI MX2 Jeans and Zara Skinny Biker Jeans	22
Figure 7.	Gucci sweater and Forever 21 sweater	26
Figure 8.	Ferrarini’s bikini (left) & KIINI’s bikini (İpek Irgit) (right).....	76
Figure 9.	Richard Prince and Painting of Andy Warhol.....	77

INTRODUCTION

From the primal need for protection to a global cultural phenomenon, clothing has transformed from a mere survival imperative to a profound expression of human identity and social dynamics. As societies evolved, garments became more than coverings, weaving intricate narratives of culture, status, and personal identity. Shoes, bags, perfumes, and jewelry emerged as complementary accessories, creating a complex ecosystem of personal adornment that transcends mere functionality. In Ancient Egypt, Ancient Greece, Mesopotamia, and the Middle Ages of later centuries, fashion showed itself as clothing and an indicator of social class distinctions. The concept of fashion crystallized around the 14th century, originating in the vibrant cultural landscape of Italy, where it quickly became a powerful vehicle for social stratification and artistic expression.¹ Supported as a state policy and particularly pronounced within royal circles, fashion reflected the nuanced class distinctions of the era. The emergence of a merchant class with disposable income and access to exotic fabrics through Mediterranean trade routes created fertile ground for fashion development. The concept quickly gained royal patronage, with rulers recognizing fashion's potential as a diplomatic tool and a symbol of power. The Industrial Revolution of the 18th century further cemented fashion's role, transforming it from an elite privilege to an indispensable part of daily life across social boundaries.² Skilled artisans and craftspeople gained prominence, establishing workshops that would later evolve into the first fashion houses. This democratization of fashion led to the emergence of early ready-to-wear clothing, setting the stage for the modern fashion industry.

¹ Curoğlu, Füsün / Ertürk, Nilay: *Moda Tasarım*, Anadolu Üniversitesi Yayını No: 3014 Açıköğretim Fakültesi Yayını No: 1967, p.1-20

² Fogg, Marnie: *Modanın Tüm Öyküsü, Fashion the Whole Story*, Emre Gözgü (translation), Hayalperest Press, 2014, p.8.

As fashion evolved from a privilege of the few to a widespread cultural and economic force, the need for legal frameworks became increasingly apparent. Creative designers and artisans, who had long crafted unique pieces, found their work vulnerable to unauthorized copying as production scales grew. This challenge led to the gradual development of legal protections, particularly within Intellectual Property Law. As a result of these developments, the fashion industry has established a close relationship with intellectual property law, which ensures the legal protection of creations, designs, and innovations to sustain creative activity, economic progress, and cultural development.³

Copyright law emerged as a crucial shield, offering designers economic rights over their creations and recognizing their artistic contribution through moral rights. The legal framework expanded further to include multiple layers of protection - from design rights protecting the visual aspects of fashion items to trademark protection safeguarding brand identities. Even patents, though less common, found their place in protecting innovative elements of fashion design. Additional mechanisms like unregistered design protection and three-dimensional trademark protection evolved to address the unique challenges of the fashion industry, though these play more specialized roles in the overall legal landscape.

The concept of aesthetic value plays a pivotal role in determining how fashion designs are evaluated and regulated under these legal frameworks. Fashion designs straddle two key approaches: they can be seen as works of fine art or as standard products of industrial production. Fashion designs can justify both perspectives depending on the product, making assessing a design's artistic and aesthetic value crucial.

³ Kılıçoğlu, Ahmet *Sınai Haklarla Karşılaştırmalı Fikri Haklar*, Turhan Kitabevi, 2017, p.5

With these explanations, it is seen in the cases encountered that fashion designs are stuck between being a mass-production product born of industrialization and being a form of artistic self-expression. For this reason, there are also differences in legal protection. The problems arising from these differences will be discussed in this thesis.

This study examines the impact of copyright protection on fashion designs. While reviewing this, other questions occurred. Which country protects fashion designs, and how are they protected? Does the aesthetical value of the work of art have a decisive role in protecting copyright? Does the cultural impression affect the protection of fashion design?

This study used a comparative legal analysis method to answer these questions. This study focused on Türkiye, the United States of America, the United Kingdom, France, and Italy. These countries have been selected based on the export reports of the Republic of Türkiye's Ministry of Trade's report for 2021-2022.⁴ In this report, the central countries in Türkiye relations on export are Germany, Spain, United Kingdom, Netherlands, France, the USA, and Italy. Because of the synchronization of laws and their effect on each other and the importance of the historical development of fashion, this study focused only on the mentioned countries. This thesis conducts a comparative analysis of various intellectual property rights mechanisms available for protecting fashion designs. The study is structured in three main chapters, examining both industrial property rights and copyright law approaches to fashion design protection.

The first chapter establishes the foundational understanding of fashion design, exploring its historical and sociological aspects alongside its artistic dimension. It examines key concepts within the fashion industry, including knock-off, fast fashion,

⁴ Republic of Türkiye Ministry of Trade, *Clothing Industry Export Report*, <https://www.trade.gov.tr/data/5b8fd6d913b8761f041feee0/Clothing%202022.pdf> (accessed: 14.12.2024)

slow fashion, and close copying, which are crucial for understanding the legal challenges in protecting fashion designs.

The second chapter extensively analyzes fashion design protection under industrial property law. It examines various protection methods, beginning with *sui generis* design protection through both registered and unregistered designs. The chapter analyzes trademark protection mechanisms, mainly focusing on three-dimensional trademarks and trade dress. It further explores patent protection and unfair competition laws as alternative means of protecting fashion designs. The comparative analysis of these protection methods provides insights into their effectiveness and limitations within the context of the fashion industry.

The third chapter explores the protection framework copyright law offers for fashion designs. It examines the requirements and conditions for protection, emphasizing originality criteria, including the balance between creativity and innovation, competition considerations, and aesthetic value. The chapter analyzes both economic and moral rights protection while addressing practical challenges such as inadequate protection mechanisms, legal proceedings' costs and difficulties, and international protection issues.

Through this comparative analysis, the thesis aims to evaluate the effectiveness of different intellectual property rights in protecting fashion designs, examining their respective strengths, limitations, and practical implications in this dynamic creative industry.

CHAPTER I

FASHION DESIGN

I. INTRODUCTION TO FASHION DESIGN

A. Historical And Sociological Analysis Of Fashion

Fashion is far more than mere clothing—it is a living, breathing narrative of human creativity, social dynamics, and collective identity. At its core, fashion represents a complex cultural language that speaks volumes about time, place, aspiration, and transformation. While traditionally understood through the lens of apparel, fashion has evolved into a comprehensive visual communication system that extends far beyond fabric and design.

In the contemporary landscape, fashion transcends its original boundaries. It is no longer confined to clothing but has become a versatile concept encompassing everything visible and desirable—from architectural forms and digital interfaces to personal branding and social movements. This expansive understanding reflects the fluid, interconnected nature of modern cultural production.

Historically, fashion has undergone a remarkable metamorphosis. What began as a practical necessity for protection and modesty has transformed into a sophisticated global industry—a complex ecosystem of creativity, commerce, and cultural expression. The Fashion Industry has become a powerful international force, weaving together the talents of diverse creative professionals into an intricate, vibrant tapestry.

This industry is a kaleidoscopic world where multiple artistic disciplines converge. It is not merely about clothing but about creating visual experiences. Designers, photographers,

models, makeup artists, stage designers, and stylists collaborate like musicians in an elaborate symphony, each bringing their unique expertise to create something more significant than the sum of its parts. Every fashion collection tells a story, every runway is a stage for cultural narrative, and every garment is a potential work of art.

Fashion operates as a collective endeavor—a dynamic, collaborative process of producing and interpreting visual culture. It is simultaneously an art form, a commercial enterprise, and a powerful medium of personal and social expression. Individuals and communities communicate their identities, aspirations, rebellions, and cultural memories through clothing and aesthetic choices. More than just trends that come and go, fashion is a continuous dialogue between tradition and innovation, between individual creativity and collective imagination. It reflects the zeitgeist—the spirit of the times—capturing the essence of social transformations, technological advancements, and cultural shifts.

In essence, fashion is a living, breathing organism—constantly evolving, always surprising, endlessly fascinating. It is both a mirror and a window, reflecting our current realities while offering glimpses into potential futures, inviting us to reimagine ourselves and our world through the transformative power of visual creativity. Specific cultural values that are open to rapid change constitute fashion.⁵ Fashion is also a result of customs and traditions and can thus show itself in everything a person is in.⁶

According to the anthropologist Ted Polhemus, who has centered his studies on fashion, the possibility and desire for change will be possible when fashion becomes an ideology of social change.⁷ On the other hand, according to John Flugel, a practicing psychoanalyst, an individual's perspective on clothing is twofold. One of these aspects is

⁵ Kawamura, Yuniya: *Modaloji*, translated by Şakir Özudoğru, Ayrıntı, 2022, p.21

⁶ ibid, p.21; Sumner, William Graham: *Folkway: A Study of the Sociological Importance of Usages, Manners, Customs, Mores and Morals*, Ginn and Company, 1940

⁷ ibid, p.22; Polhemus, Ted: *Street Style*, Thames and Hudson, 1994

adornment, and the other is the emphasis on chastity and respectability. In this sense, fashion is a covering that carries aesthetic value.⁸

For society, fashion has more than one meaning. French philosopher Roland Barthes revolutionized cultural analysis through semiotics, particularly in fashion and media. He explored how language and signs create meaning, revealing the hidden ideological layers in everyday communication. His work challenged traditional understanding of cultural symbols, ultimately questioning the very mechanisms of artistic interpretation. Barthes calls fashion "innovation madness."⁹

Meanwhile, Rene König has a different perspective. König was a pioneering German sociologist who contributed significantly to fashion sociology. He viewed fashion as a complex social phenomenon, extending beyond mere clothing to represent a dynamic system of social communication and cultural expression. König argued that fashion is not just about aesthetic choices but a critical mechanism through which individuals negotiate identity, social status, and collective belonging in modern societies. He says that fashion cannot be attributed a positive or negative meaning due to the public's uncertain view of fashion.¹⁰

These definitions summarize fashion. Fashion is constantly changing. Its content varies; it is an external ornament, and this ornament is aesthetic rather than intellectual. These features are the ones that make fashion irrational, exceptional, and unpredictable.¹¹ In this sense, expecting a single truth from fashion is wrong. Fashion is a form of perception. And when the designer presents this form of perception, it can gain a place for itself with society's acceptance. In this sense, objects can be evaluated as the artist's perspective in his work, as in

⁸ ibid, p.23; Flugel, J.C.: *The Psychology of Clothes*, Hogart, 1930

⁹ ibid, p.23; Barthes, Roland: *Elements of Semiology*, Hill and Wang, 1967, p.300

¹⁰ ibid, p.23; König, Rene: *The Restless Image: A Sociology of Fashion*, George Allen& Unwin, Ltd, 1973

¹¹ ibid, p.28

the impressionism movement in art. In all these features, it is possible to say that there are many truths in fashion and that these truths vary according to society in a sociological sense. Although it resembles the existential art movement impressionism, it has also been debated whether fashion is art.

Vera Zolberg, an American sociologist, was a key figure in understanding art and cultural sociology, including the sociology of fashion. She explored how cultural institutions and social processes shape artistic and fashion production, emphasizing the complex interplay between creativity, social structures, and aesthetic innovation. Zolberg viewed fashion as a critical lens for examining broader social dynamics, power relations, and cultural transformations. For Zolberg to evaluate art beyond its aesthetic meaning, the relationship between the artist and his work should be conceptualized with space and time at its center.¹² According to Bourdieu and Becker, the sociological place of the aesthetic idea should be evaluated with the product that emerges from the creative process and the production organization. These views show that fashion, like art, is a social context and comes from a social basis and cannot be interpreted separately from this.

Fashion is a form of expression because of the tendency of a person to reveal their personality¹³, style, and stance towards life by using clothing. Due to this existential instinct, it will exist as long as the human race exists. When a general evaluation is made for many leading sociologists, it is seen that fashion is a class separator, and this separation leads to imitation because the lower class tends to imitate to resemble the upper class. The difficulty of the production process of fashion design and the fact that the materials used are not easily accessible increase the product's price, while the social segregation increases and adds value

¹² ibid, p.105; Zolberg, Vera: *Constructing a Sociology of the Arts*, Cambridge University Press, 1990

¹³ ibid, p.2; Horn, Marilyn J. / Gurel, Lois: *The Second Skin*, Houghton Mifflin Co, 1975

and status to the user. It is understood that the concept of fashion is related to the idea of imitation from its origin.¹⁴

Thorstein Veblen is an influential American economist and sociologist best known for his critical analysis of consumer behavior and the economic system. In Veblen's perspective on fashion, clothing is primarily a tool for conspicuous consumption and social signaling. He viewed fashion as a means by which individuals, especially in the leisure class, demonstrate their economic status and social standing.¹⁵

Veblen explains fashion in three items:

1. Fashion is an expression of the wealth of the wearer.
2. Fashion shows that someone does not need to earn money or is not involved in a workforce that requires physical productivity.
3. Fashion is suitable for the day.¹⁶

All three of these items indicate class segregation. Keeping up with changing fashion and new designs shows economic power, indicating class segregation. For this reason, fashion cannot find a place for itself in strict hierarchies. In other words, as long as the political administration can prevent class segregation, it may also have prevented fashion and imitation. In the social system of the modern era democratization process, due to the need for a sense of equality and the elimination of class distinctions, the authority pursues a policy of allowing imitation to a reasonable extent.¹⁷

Georg Simmel was a prominent German sociologist and philosopher who offered a sophisticated analysis of fashion as a social phenomenon. In his approach, fashion is a

¹⁴ ibid, p.43

¹⁵ Güleç, Cansu: “Thorstein Veblen ve Gösterişçi Tüketim Kavramı”, *Erciyes Sosyal Bilimler Enstitüsü Dergisi*, 38, 2015/1, p.62-67, <https://dergipark.org.tr/tr/pub/erusosbilder/issue/23772/253409> (accessed:14.12.2024)

¹⁶ ibid, p.44-45; Veblen, Thorstein: *The Theory of Leisure Class*, Allen and Unwin, 1957

¹⁷ ibid, p.46.

dynamic social differentiation and integration process. Simmel viewed fashion as a mechanism through which social classes simultaneously seek to distinguish themselves from lower classes while imitating higher-status groups. He argued that fashion represents a complex social dance: the upper classes introduce new styles to differentiate themselves, while lower classes gradually adopt and normalize these styles, compelling the elite to innovate continually.¹⁸

Unlike Veblen's focus on conspicuous consumption, Simmel emphasized fashion's deeper social psychological function of balancing the individual desire for uniqueness with the human need for social belonging. In his view, fashion is a collective mechanism that resolves the tension between personal expression and social conformity. Rather than calling fashion an abstract separator that directly creates class distinction, it is also possible to see it as a tool for the need for differentiation that comes from human nature.

Herbert Blumer was a prominent American sociologist at the University of California, Berkeley, best known for developing symbolic interactionism. Blumer viewed fashion as a dynamic, collective process of social meaning-making. Unlike traditional theories, he argued that fashion trends emerge through collaborative social interactions, where groups collectively interpret, select, and negotiate the symbolic significance of clothing styles. In his view, fashion is not dictated from the top down but continuously constructed through shared social understanding and interpretation.¹⁹

According to Blumer, fashion does not result from class segregation and class imitation. It is a form of expression of changing tastes in a changing world. It is also possible

¹⁸ Ülger, Emir G.: "G.Simmel'de Sınıfsal Farklılığın Nesnelleştiği Bir Alan: Moda Felsefesi", *Felsefe Dünyası*, 59, 2014/1, p.183-206
<https://dergipark.org.tr/tr/pub/felsefedunyasi/issue/58328/854853> (accessed: 14.12.2024)

¹⁹ Demir Parlak, Sevda: "Giyim Modasıyla Kimliğin Temsili Üzerine", *Turkish Journal of Fashion Design and Management (TJFMD)*, 2022, 4(2), p.105
<https://dergipark.org.tr/en/pub/tjfdm/article/1116294> (accessed:14.12.2024)

to call it a way of assimilating innovations and revealing changing tastes in a changing and developing world.²⁰

A cultural anthropologist, Aubrey Cannon, thinks this should be included here. According to Cannon, social interaction creates fashion. Fashion cannot be seen as a phenomenon put forward by marketers, manufacturers, and a group of high-level designers for the continuation of the money transfer cycle because fashion is a tool for the expression of individual identity. The social world's need for comparison and personal existence has given birth to fashion.²¹

After this perspective, it is also helpful to mention the following. Due to this social feature, fashion only finds a place in societies open to social interaction. This interaction is possible in societies where fashion is open to change and modernity exists.²² Change comes from the existence of fashion. This change brings about two results: transience and uncertainty, and these concepts lead to the fact that fashion is not taken seriously because it does not present scientific clarity. However, what changes is not the basic institutions of fashion but its content.²³ The openness of fashion designs to change does not negate their fundamental need for legal protection, mainly when assessed within the specific scope of this study.

The following quote explains the place of fashion in life:

J.C. Flugel: "a mysterious goddess whom we are raised to believe in and who generations of writers have contributed to this belief in countless magazines, and who decrees

²⁰ ibid, p.59; Blumer, Herbert: "Fashion: From Class Differentiation to Collective Selection", *The Sociological Quarterly*, 10:3, 1969, p.281

²¹ ibid, p.56; Cannon, Aubrey: "The Cultural and Historical Contexts of Fashion", Sandra Niessen and Anne Bryden (editors) *Consuming Fashion: Adorning the Transnational Body*, 1998, Berg, p.24-35

²² ibid, p.53; Baudrillard, Jean: *For a Critique of the Political Economy of the Sign*, translated by Charles Levin, 1981, Telos Press, p.78

²³ Kawamura, Yuniya: *The Japanese Revolution in Paris Fashion*, 2004, Berg, p.30

that we must believe rather than understand it; in fact, these commandments go beyond all ordinary human understanding; we do not know what they are for or how long they will last; we only know that they must be obeyed; that is, that the fastest, the most beautiful wheel, the most magnificent are virtues. “²⁴

Another approach should be mentioned by James Laver, a British art historian, curator, and author, particularly noted for his work in costume history.

Laver is best known for developing Laver's Law, a humorous and insightful theory about the cycle of fashion acceptance, which posits that what is considered "fashionable" predictably changes over time. He suggested that fashion operates through a sequence of being 'indecent,' 'shameless,' 'daring,' 'smart,' 'dowdy,' and 'ridiculous.' Laver's insights were significant in understanding how societal changes influence fashion trends and how clothing functions as a form of non-verbal communication within a culture.²⁵

This quote explains another approach:

*James Laver: “The pleasures of indecision increase the joy of life; the fads, indulgences, fashion attitudes, and fashion crazes in the fashions of the day offer short-lived amusements; people who always do the same things and wear the same clothes get bored with themselves and bore others; every fashion exists at a certain period, and no one knows exactly or why its popularity suddenly increases and then fades away as quickly as it came.”*²⁶

When we examine these evaluations and explanations, we see that fashion is a system that starts with a person's clothing but has gained an abstract meaning above clothing, develops cumulatively and contains sociological findings, commercial developments, and artistic aesthetic perception. Fashion has a broad market share that covers the entire world.

²⁴ ibid, p.77; Flugel, p.137

²⁵ Laver, James: *The Concise History of Costume and Fashion*, H.N. Abrams, 1969, p.101

²⁶ ibid, P.78; James Laver, *Dress*, 1950, Murray, p.66

Both philosophical and sociological approaches reveal that fashion is a tool that draws attention to cultural and class differences in people and has been used for this purpose in the past centuries. On the other hand, this tool is not only a movement of thought but also a substance that finds a physical counterpart in our lives. The gradual decrease in class differences with the globalization of the understanding of equality in today's sociological structure does not change the fact that this class distinction feature of fashion still continues implicitly. At this point, this reveals that brands make sales by determining the buyer audience in the designs they offer for use.

The fact that fashion has been a means of determining status throughout history has also brought with it imitation designs because with the need to appear to belong to a different class, when necessary, the designs worn by kings and queens and, when necessary, famous artists have been imitated, but in later periods, with the mass production line and commercial developments, we see that this has already been used to achieve economic gains in a broad sense. With the globalization of the world, the ease and acceleration of trade, and the fact that developments have an instant effect all over the world, fashion designs have been imitated in other ways when necessary. However, when fashion designs are evaluated based on commercial income, technological developments, your factory and art today, technology, aesthetic perception, and the quality of a work of art, it will be necessary to use different parameters when making this evaluation.

It is impossible to decide whether fashion designs are works of art with a single evaluation because when examined, it is evident that all kinds of materials that people use, especially personal clothing and accessory materials, should be examined separately in this sense. Similarly, it is not possible to evaluate fashion designs that serve daily use in the same way as the designs we see at the Met Gala, the Academy Awards, or the Cannes Film Festival.

The Metropolitan Museum of Art's Costume Institute Gala, commonly known as the Met Gala, serves not only as an annual fundraising event but also as a vivid illustration of the interplay between fashion and cultural identity. Academically, the Gala can be analyzed through the lens of fashion sociology to explore how attire at this high-profile event reflects and influences social norms, gender identities, and power structures. The extravagant and often thematic fashion choices showcased at the Gala highlight the role of dress as a medium of social discourse and identity negotiation. This convergence of celebrity, art, and media at the Met Gala makes it a rich subject for academic inquiry into the dynamics of fashion as a form of cultural communication.

At this juncture, it is crucial to recognize how clothing items have evolved into forms of art. The transformation of apparel from mere necessities to expressions of artistic creativity is evident in the intricacies of design, the choice of materials, and the innovative techniques employed by designers. Each garment can be viewed as a canvas, where color, texture, and form converge to create a unique aesthetic statement. This artistic elevation of clothing challenges the conventional view of fashion as simply utilitarian and opens up a discourse on its potential to be seen as a legitimate art form worthy of intellectual property protection. As fashion continues to intersect with art, it pushes the boundaries of traditional art mediums, inviting a reevaluation of what constitutes artistic work in contemporary culture. This shift not only enriches our visual and cultural landscapes but also reinforces the importance of legal protections in nurturing and sustaining the creative industries.



Figure 1. Dress with Led Light and Purse with Swarovski Crystals Designed by Tommy Hilfiger and Hussein Chalayan, 2022 Met Gala



Figure 2. Dress with Led Light and Purse with Swarovski Crystals Designed by Tommy Hilfiger and Hussein Chalayan, 2022 Met Gala



Figure 3. Cape, Armour, and Bodysuit by Donatella Versace, 2021 Met Gala

Although Prof. Dr. Ernst Hirsch argued in 1943 that fashion designs should not be considered intellectual works in the legal sense due to their nature as standard materials used in daily life, it is essential to make a clear distinction in this context. This perspective necessitates a nuanced understanding of how fashion transcends mere functionality and embodies artistic creativity and originality. Moreover, recognizing the unique elements within fashion design can help delineate the boundaries between everyday utility and protected artistic expression.

Considering that a standard shirt or trousers can be easily found in every store and also have an anonymous design, it is not possible to protect them with a brand or design from intellectual property law protection methods. On the other hand, it is possible to legally protect a design that has the features listed in the articles that intellectual property law has listed to protect a work of art



Figure 4. White Shirt Dress by Karl Lagerfeld Met Gala, 2023



Figure 5. White Shirt by Zara, 2024

In particular, it will be possible to protect a fashion design with design protection, and in the same way, it will be possible to establish some designs that have different features and are not suitable for production in a mass production line with both copyright law and standard artistic work protection.²⁷

The place fashion represents in social analysis explained by König:

“We distinguish between the socio-psychologically produced form of fashion as a social regulator in its essence and its infinitely diverse contents, which underlines that we take fashion as a completely independent social institution. Such an approach to fashion also means that, unlike many writers who write in daily newspapers, magazines, magazines, and bulletins, we do not want to make judgments about different engines. As we have already pointed out, our main intention is to analyze the fashion system, which means that the action of one will bow to ten, and we will be caught in the dialectical vortex of its endless fountains.”²⁸

When these sociological and philosophical evaluations are examined together, it is seen that fashion is not an industrial sector consisting only of clothing pieces. Fashion is a unique element that has always been used as a means of class determination within society. It is not possible to call this element a product, a work, an opinion, or a perspective because it is still fashion, a thought approach that comes from human existence and has been transformed into material. Therefore, the elements of fashion, just like itself, constantly flow and change.

In this sense, while evaluating fashion designs within this style, it will be emphasized that legal protection should be made by taking this element of fashion into consideration. The position of designers within the stratification system determines the status of the products they

²⁷ Hirsch, Ernst: *Hukuki Bakımdan Fikri Say*, Kenan Basımevi ve Klişe Fabrikası, 1942, p.40

²⁸ König, p. 38-39

produce. In fact, the social status of designers is reflected in their followers. When the subject is a field that lives and shows rapid development and change, like fashion, a balance is essential in order not to hinder creativity with conservation methods.

B. The Artistic Dimension of Fashion Design

The relationship between art and fashion design represents a complex evolution in creative expression. Since the Industrial Revolution, Western culture maintained a sharp distinction between scientific/quantifiable work and aesthetic/evaluative art. Fashion design, however, challenges this binary by bridging artistic expression and industrial production. William Morris and the Arts and Crafts movement argued that creating beautiful objects, whether functional items like dresses or pure art like sculpture, constitutes artistic work. Morris rejected the artificial division between "intellectual arts" (architecture, sculpture, painting) and "decorative arts" (interior design, crafts), viewing both as means to beautify everyday life.²⁹

Modern design philosophy emphasizes the unity of form and function. As demonstrated by pioneers like Raymond Loewy, design is not mere decoration but an integral part of an object's essence. This integration of aesthetics and functionality defines contemporary fashion design, where artistic expression manifests through wearable forms. The creative process in fashion involves unique methods of adaptation, transformation, and recontextualization.³⁰ Unlike traditional art forms, fashion design explicitly builds upon previous works through appropriation, referencing, and derivation. This cyclical nature of creativity distinguishes fashion while maintaining its artistic integrity.

²⁹ Morris, William / Morris, May: *The Collected Works of Willam Morris: With Introductions by His Daughter May Morris: Vol.22: Hopes and Fears for Art; Lectures on Art and Industry. Vol:22. Cambridge Library Collection-Literary Studies*, Cambridge University Press, 2012, p.2, <https://doi.org/10.1017/CBO9781139343145> (accessed: 01.01.2025)

³⁰ Monseau, Susanna: The Challenge of Protecting Industrial Design in a Global Economy, *Texas Intellectual Property Law Journal* 20 (3), 2012, p.499-501

Major cultural institutions increasingly recognize fashion's artistic legitimacy. The Metropolitan Museum of Art's exhibitions like "About Time: Fashion and Duration" and "In America: A Lexicon of Fashion" place fashion designs alongside traditional fine art, acknowledging their cultural and artistic significance. High-end designers' works are now valued for their artistic merit beyond utility.

However, fashion design maintains a dual nature - existing simultaneously as art and commercial products. This duality creates a two-tier system: high-end designers whose works appear in museums and galleries and mass-market designs serving more utilitarian purposes. This division reflects fashion's unique position at the intersection of artistic expression and practical function. The perception of fashion as frivolous or unworthy of serious study has historically undermined its recognition as an art form. However, increasing academic attention and cultural recognition demonstrate fashion's significance as both artistic expression and cultural commentary. This evolution in understanding positions fashion design as a legitimate form of creative expression that merits serious consideration in artistic discourse.³¹

II. DEFINITIONS AND IMPLICATIONS OF FASHION

The fashion industry has perennially wrestled with the pervasive challenge of imitation, manifesting in a spectrum from verbatim replicas to subtly inspired designs. This in-depth chapter meticulously examines the multifaceted aspects of imitation and copying within the dynamic realm of fashion, with a specific focus on the controversial concept of knock-offs, the meteoric rise of fast fashion, the deliberate pace of the contrasting slow fashion movement, and the intricate nuances of close copying. Each section further examines the legal complexities, economic implications, and significant ethical issues associated with

³¹ Monseau, Susanna: *Protecting Creativity in Fashion Design*, Rothledge & CRC Press, 2023, p.39

these practices in a systematic manner. Additionally, the chapter scrutinizes the broader impact of such practices on both the elite high-end fashion echelons and the more widely accessible brands, revealing the complex interplay between innovation, creativity, and consumerism in the fashion industry. This exploration not only sheds light on the immediate effects but also ponders the long-term implications for the industry's sustainability and ethical standards.

A. Knock-Off

The concept of knock-off refers to the similarity between the fashion designs that have been produced. This similarity may be similar or precisely the identical copies that were revealed with the intention of producing fake products; there may also be versions that have been produced and released using an already existing design.³²

In this regard, there is an advocating view that for a product to be considered knock-off, the buyer must know that he has received a counterfeit product.³³ On the other hand, within the complex tapestry of the fashion industry, the concept of a knock-off manifests not only in the stark form of an exact replica but also in the subtle guise of producing items that bear a striking resemblance to the original. The most prevalent scenario observed in the industry involves the iconic designs of prestigious high-end brands showcased in the glitzy ambiance of runway shows. These original creations are often swiftly mimicked by mid-tier brands, which skillfully craft versions that capture the essence of the high-fashion pieces. These knock-offs are then strategically marketed to and consumed by a demographic that craves designer aesthetics but at a more accessible price point. This practice, while democratizing fashion, raises critical questions about creativity, authenticity, and the fine line between inspiration and outright copying. As such, it reflects the intricate interplay of

³² Beyreli, Elif: *Sınai Mülkiyet Boyutuyla Moda Hukuku*, Yetkin, 2022, p. 42

³³ *ibid*, p.43

innovation and imitation in an industry perpetually balancing between exclusivity and accessibility.

AMIRI, a rising Los Angeles-based fashion brand, has filed a lawsuit against Zara, accusing the Spanish fast-fashion giant of copying its distinctive MX2 biker jeans. AMIRI's jeans, priced over \$1,150 and popular among celebrities, feature unique design elements such as pleated leather panels, zippered pockets, and a skinny fit³⁴. The complaint, lodged in a California federal court, claims that Zara's similar jeans infringe on AMIRI's trade dress, which includes specific features like the stretch denim and hand-distressed detailing that have become associated with the AMIRI brand.

The lawsuit emphasizes that trade dress, a subset of trademark law, protects distinctive product designs that have acquired a secondary meaning, making them identifiable to a particular source by consumers. AMIRI argues that its jeans' design, widely recognized due to celebrity endorsement and media coverage, meets these criteria. However, Zara, known for its lower-priced garments, allegedly produced a knockoff that mimics every key aspect of the AMIRI jeans, thus potentially confusing customers and diluting the AMIRI brand's exclusivity and reputation.³⁵

Knock-offs, while often seen as an affordable alternative to high-end fashion items, pose significant challenges to original designers and the broader industry. These imitations can undermine the market for genuine articles by saturating it with lower-cost alternatives that mimic the original's design but not its quality or craftsmanship. This not only affects the economic health of fashion brands but also dilutes their brand identity and the perceived value

³⁴ *Atelier Luxury Group, LLC v. Zara USA, Inc.* (2:20-cv-00675) District Court, C.D. California <https://www.courtlistener.com/docket/16742444/idb/atelier-luxury-group-llc-v-zara-usa-inc/> (accessed:15.12.2024)

³⁵ The Fashion Law, *AMIRI Names Zara in \$3 Million Lawsuit for Allegedly Copying its Pricey Biker Jeans*, 23.01.2020 <https://www.thefashionlaw.com/amiri-names-zara-in-3-million-lawsuit-for-allegedly-copying-its-pricey-biker-jeans/> (accessed: 15.12.2024)

of their products. The proliferation of knock-offs also raises ethical concerns about intellectual property rights and the sustainability of creativity in fashion, prompting ongoing legal battles and discussions about the balance between innovation, competition, and protection within the industry.



Figure 6. AMIRI MX2 Jeans and Zara Skinny Biker Jeans

B. Fast Fashion

With the advent of industrialization and the burgeoning capabilities of mass production, the production lines within the fashion sector have dramatically expanded. This growth, coupled with the streamlined processes of import and export, has empowered brands to showcase and vend their creations on a global stage. The advent of advanced technology has not only hastened production rates but has also instigated an increasingly rapid consumer culture. In this context, fashion has adeptly kept pace with the quickening rhythm of the modern world. Contemporary fashion designs are now produced, disseminated, and normalized at a pace far surpassing that of previous eras. This cycle of swift creation and

consumption is perpetually followed by fresh productions, reflecting an ever-evolving industry.

Historically, high-end brands have adhered to the biannual production cycles of spring-summer and autumn-winter collections, establishing a rhythm that has dictated fashion trends for decades. However, the rise of fast fashion has significantly disrupted this traditional perception of seasons. Numerous financially accessible brands have obliterated the conventional seasonal framework, opting instead for continuous production cycles that cater to immediate consumer demands. This shift has not only altered the temporal landscape of fashion but has also reshaped consumer expectations, making fashion both instant and incessantly accessible. Collections are produced seasonally, and in some periods, different collections can be seen even during the season.³⁶

C. Slow Fashion

The concept of slow fashion, a philosophy rooted in sustainability and environmental stewardship, champions the creation of garments that are designed to transcend the ephemeral nature of seasonal trends. This approach encourages productions that are not only timeless but also crafted to endure through years of use. Slow fashion advocates for a departure from the relentless cycle of fast fashion, promoting instead the crafting of garments that offer versatility and durability over disposability. In brands that embody this ethos in their production practices, one does not find collections that mimic the fleeting whims of popular culture. Instead, these brands focus on essential, high-quality pieces—garments that stand the test of time and can be effortlessly integrated into any wardrobe, irrespective of the current fashion climate.

³⁶ Cabrera, Alfredo and Frederick, Matthew: *101 Things I Learned in Fashion School.*, Optimist, İstanbul, 2015, p.89

This deliberate focus on longevity and resistance to the fast-paced changes in the industry not only conserves resources but also nurtures a deeper appreciation for craftsmanship. The slow fashion movement encourages consumers to invest in well-made pieces that can be worn season after season, fostering a more thoughtful consumption pattern. As a result, brands that adhere to slow fashion principles are not just selling clothes; they are offering a philosophy of mindful, ethical consumption aimed at reducing the environmental impact of the industry and enhancing the consumer's relationship with their wardrobe. This concept includes collections for longer-term use by reducing water consumption, especially in the fashion sector, which is incompatible with environmentalism in terms of water consumption.³⁷

D. Close Copying

Products created in an effort to copy and keep up with seasonal fashions or trends may not always be copies. It is a different concept that a product is produced with the intention of being copied directly. On the other hand, it can be inspired by an already existing work, or a similar design can be put forward knowingly or unknowingly, using the inspiration it gives. In this regard, it is not possible to evaluate every copy in the same way. Intention is the most important element.

The subtle yet critical distinction between the concepts of close copying and knock-offs primarily hinges on the element of distinctiveness. This crucial factor's presence, or lack thereof, significantly determines the legality and ethicality of a fashion piece that borrows heavily from another's design. Close copying, while it closely mimics the original, often maintains just enough unique features to differentiate it from being a direct replica, thus straddling the fine line between homage and theft. On the other hand, a knock-off is typically

³⁷ Stefko, Robert / Steffek, Vladimira: "Key Issues in Slow Fashion: Current Challenges and Future Perspectives", *Sustainability*, 2018, p.2-5

a straightforward imitation that lacks the original's distinctive traits and is created to capitalize on the original's market success without due creativity or respect.

This nuanced difference elevates copying to a somewhat more acceptable practice within the industry compared to knock-offs. Copying might incorporate elements of the original inspiration, perhaps in tribute or as a baseline for further innovation, whereas knock-offs do not aspire to such ethical considerations. Such practices often result in a compromise of both quality and integrity, primarily aiming to mislead consumers and undermine the original creator. The debate over these practices is not just a legal issue but also a moral one, reflecting the ongoing struggle within the fashion industry to balance inspiration with innovation while respecting intellectual property rights.

Susan Scafidi, a prominent legal scholar in the United States, is known for her expertise in intellectual property law, especially as it pertains to fashion law. She is a pioneer in the field, being the first professor ever to offer a course in Fashion Law, and she defined this issue in the evaluations she made. Close copying is Prada as Prado or Vuitton as Vuition. She stated that this was illegal and said that it was an unauthorized use of distinguishing signs.

For knock-offs, she called it a replica and said that it could not be considered within the scope of inspiration. She stated that legal violations of knock-offs are, therefore, difficult to detect and that a limitation on the evaluation of replicas is required by law in this regard.³⁸ In the fashion industry, knock-offs have been recognized as an element of the industry, although the evaluation of knock-offs for a non-fashion industry is different. Although close copying is not welcomed on the grounds that it harms the image of the product and is a legal violation, knock-off is considered an inspiration.

³⁸ Gyben, Emily “Knock-offs and Counterfeits: What’s the Difference?”, *Fashionetc*, 04.04.2011, <http://fashionetc.com/news/fashion/1346-knockoffs-counterfeits-difference> (01.01.2025)

When the designs of the leading brands of the fast fashion movement are examined, it is seen that these designs are given a new interpretation, and when appropriate, the high-end brand, which is the primary right holder of the design, reveals these designs together with its own designers.³⁹

In another situation, brands can also copy directly. The Gucci brand has a unique blue-red-blue and green-red-green stripe design. This design has been used by the brand for more than half a century. A lawsuit was filed on the grounds that Forever 21, the frequently used and preferred brand of America, used these strips in their own designs, and the lawsuit was concluded in favor of Forever 21.⁴⁰



Figure 7. Gucci sweater and Forever 21 sweater

Forever 21 has filed a lawsuit requesting the cancellation of at least nine of Gucci's trademark registrations and any related pending applications. This action aims to eliminate any potential trademark infringement claims from Gucci against Forever 21. The retailer argues that the designs in question, notably striped patterns used by multiple brands, should

³⁹ Beyreli, p.55

⁴⁰ *Forever 21 Inc v. Gucci America Inc, et al*, 2017, :<https://casetext.com/brief/217-cv-04706-126-forever-21-inc-v-gucci-america-inc-et-al> (accessed:15.12.2024)

not be monopolized by Gucci and should be available for public use. Despite these claims, a judge has expressed skepticism regarding Forever 21's arguments, particularly questioning whether they have adequately demonstrated the grounds for cancellation based on issues like lack of secondary meaning, aesthetic functionality, and genericism. As a result, the court has yet to decide in favor of Forever 21's request to invalidate Gucci's trademark registrations.⁴¹

It is understood from this that the limits of inspiration are uncertain. In this context, it becomes imperative to emphasize the importance of protection, particularly for emerging and smaller designers. This safeguard is crucial because these burgeoning talents face a significantly higher risk of fading into obscurity within the highly competitive fashion industry. The vulnerability of these designers to being overshadowed or directly copied by larger, more established entities makes the need for legal and market protections not just beneficial but essential for their survival and growth. It is also said that the protection on this issue needs to be expanded in order to prevent this and enable it to expand and change.⁴² After this, parties settled, and settlement details hadn't been shared with the public.⁴³

⁴¹ The Fashion Law, "Warring Over Stripes, Forever 21 Wins This Round in Gucci Battle", 13.02.2018 <https://www.thefashionlaw.com/forever-21-wins-this-round-in-gucci-stripe-battle/> (accessed: 15.12.2024)

⁴² Beyreli, p.47

⁴³ The Fashion Law, "Gucci, Forever 21 Settle Battle Over Stripes", 21.11.2018, <https://www.thefashionlaw.com/gucci-forever-21-settle-battle-over-stripes/> (accessed: 15.12.2024)

CHAPTER 2

PROTECTION of FASHION DESIGN UNDER INDUSTRIAL PROPERTY LAW

This chapter explores the legal protection of fashion design through various mechanisms that safeguard creative works in the fashion industry. Fashion designs may be protected through multiple legal instruments, each offering distinct advantages and limitations. Given the multifaceted nature of legal protection in the fashion industry, it is essential to distinguish between the available forms of protection and understand the specific contexts in which each applies. Among these, industrial property rights—including design rights, trademarks, and patents—play a particularly significant role in safeguarding the tangible and brand-oriented aspects of fashion creations.

Chapter 2 offers a detailed examination of design protection, trademark rights, and patents—three core components of industrial property—while reserving the analysis of copyright protection for Chapter 3. Design protection serves as a fundamental mechanism for safeguarding fashion creations, whether through registered or unregistered rights. This protection extends to the visual aspects of products, including their shape, pattern, color, and ornamentation. The chapter examines both the theoretical framework and practical applications of design protection, particularly emphasizing its relevance for fast-fashion items that require rapid market entry and short-term protection. Beyond design protection, trademark law plays a crucial role in safeguarding brand identities and distinctive features in fashion. This includes traditional trademark protection for logos and brand names, as well as more specialized protections such as three-dimensional trademarks and trade dress. The

chapter also explores how different jurisdictions regulate these protections, comparing the United States system with European and Turkish framework.

I. DESIGN

Design protection represents a crucial aspect of intellectual property rights within modern legal systems. A design is defined as the appearance of the whole or a part of a product, or the ornamentation applied to it, resulting from features such as lines, shapes, forms, colors, materials, or surface textures.⁴⁴ While the term “industrial design” was once commonly used in legal discourse, the simplified term “design” has now become the prevailing standard.

As a category of intellectual property, design protection safeguards the visual appearance of products through specific legal mechanisms. To qualify for protection, a design must satisfy several essential criteria. The primary requirement is novelty: the design must not have been made available to the public prior to the application date.⁴⁵ This ensures that protection is granted only to genuinely new designs. In addition, the design must possess individual character, meaning it must produce a distinct overall impression on an informed user when compared to existing designs.⁴⁶ This requirement prevents the protection of designs that differ from prior works only in minor or insignificant ways.

A crucial aspect of design protection is the visibility requirement: protected design features must be visible during the normal use of the product. Internal mechanisms or hidden

⁴⁴ Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs, Article 3(a); see also Turkish Industrial Property Code No. 6769, Article 55

⁴⁵ Council Regulation (EC) No 6/2002, Art. 5; Turkish Industrial Property Code No. 6769, Art. 56

⁴⁶ Council Regulation (EC) No 6/2002, Art. 6; Turkish Industrial Property Code No. 6769, Art. 57

features are generally excluded from the scope of protection. Design protection specifically encompasses the visual appearance of a product, including its shape, patterns, colors, and ornamentation. However, it is important to note that features dictated solely by the product's technical function cannot be protected. This reflects the necessity for aesthetic elements beyond pure utility. Furthermore, the design must be capable of industrial application, meaning it can be manufactured or reproduced consistently. This criterion distinguishes design protection from copyright, which may extend to one-off artistic works.⁴⁷

Different jurisdictions may impose additional specific requirements and provide varying durations of protection. For instance, the European Union grants protection through Registered Community Designs, whereas the United States relies on the design patent system. As a result, the application process, examination criteria, and duration of protection can vary considerably across legal systems.⁴⁸

Design is defined as the marriage of form and function as a concept, but in Turkish law, design protection is only about external appearance and protects the shape of the product. And design protection protects the reflection of the idea on the product. The product is protected under property law.⁴⁹ According to one view, design is defined as “design is the appearance of various elements or features that can be perceived by human senses, such as line, shape, color, form, texture, the flexibility of the material and/or ornamentation of a whole or a part of a product,” according to another view it is defined as “design is briefly

⁴⁷ Kılıçoğlu, p.8-9

⁴⁸ Council Regulation (EC) No 6/2002 on Community Designs, Art. 1–2; 35 U.S. Code § 171 – United States Design Patents

⁴⁹ Suluk, Cahit: *Tasarım Hukuku (Karşılaştırmalı Endüstriyel Tasarım, Marka, Patent ve Faydalı Model Koruması)*, 2003, Seçkin, p.75

described as the decorative or aesthetic appearance of a product that can be noticed by the eye or the senses.”⁵⁰

A design constitutes any visual innovation that exhibits originality and distinctive features, whether applied to two-dimensional or three-dimensional products. If the design is registered through an application to the Turkish Patent and Trademark Office, it is considered a “registered design.” If it is disclosed to the public for the first time in Türkiye without registration, it is protected as an “unregistered design.” The protection period for unregistered designs is three years, while the protection period for registered designs is five years, renewable every five years up to a maximum of twenty-five years.⁵¹

In order to qualify for protection, a design must first comply with the legal definitions of "design" and "product" and must meet the criteria of novelty and distinctive character.

Novelty means that an identical design has not been made available to the public anywhere in the world before the application or priority date for registered designs, or before the date of first public disclosure for unregistered designs.⁵²

Distinctive character refers to the difference between the overall impression that a design makes on the informed user and that made by any previously disclosed design before the relevant date.

These are outside the scope of protection:

⁵⁰ Bozbel, Savaş: *Fikri Mülkiyet Hukuku*, 12 Levha Yayınları, İstanbul, 2015, p.602

⁵¹ Turkish Industrial Property Code No. 6769, Articles 63–64; Council Regulation (EC) No 6/2002, Article 11

⁵² Council Regulation (EC) No 6/2002, Article 5; Turkish Industrial Property Code No. 6769, Article 56

- Designs that do not comply with the design and product description,
- New and non-distinctive designs,
- Designs against public order or general morality,
- Designs with appearance features necessitated by the technical function of the product.
- Designs in which the product in which the design is used or applied must be produced in specific shapes and sizes in order to be mechanically mounted or connected to another product.
- Designs that include the inappropriate use of signs, coats of arms, insignia, or denominations, which are not included in this scope with the symbols of sovereignty but which have become public in terms of religious, historical, and cultural values of public interest and for which the relevant authorities have not given registration permission.⁵³

A significant case illustrating these principles is the decision of the Turkish courts in *Vakko Holding A.Ş. v. İmaj Ltd. Şti.*, which holds importance in the context of design law. Vakko created a fabric design based on anonymous 16th–17th century Ottoman patterns, applying a technique called *devoré*. These motifs, commonly encountered in museum collections, were registered by Vakko under its own name.

In the expert report, the technical expert criticized the registration, describing it as unfair due to the public domain nature of the patterns. However, it was acknowledged that the registration of the *design resulting from the application of these patterns to fabric using the devoré technique* could be accepted. Distinctiveness was thus said to arise from the

⁵³ Türk Patent Kurumu: *Tasarım Koruması Nasıl Elde Edilir?* <https://www.turkpatent.gov.tr/tasarim> (accessed: 07.12.2024)

combination of traditional patterns with this particular application method. The decision highlighted that deferability applies to the fabric design itself rather than to the pattern alone.

In the legal evaluation section, academic opinion by Suluk was referenced, arguing that the use of a different technique does not remove the anonymity of the original design. Suluk states that transferring a traditional pattern from a vase to fabric does not in itself constitute novelty or innovation.⁵⁴

The case highlighted the crucial distinction between pattern ownership and technique application, ultimately contributing to the jurisprudence on design originality. The court's decision, referencing Suluk's opinion, established that merely transferring a historical pattern using a different technique does not constitute an innovation in design law, thereby setting an important precedent for similar cases.

A. Sui Generis Design Protection

The evolution of specialized protection for fashion design represents a significant development in intellectual property law. Sui generis protection emerged as a response to the unique challenges faced by the fashion industry, where traditional intellectual property frameworks proved inadequate. This specialized form of protection aims to address the distinctive characteristics of fashion design, which combines artistic expression with utilitarian function.

Historical attempts to implement sui generis protection, particularly in the United States, demonstrate the complexities of developing appropriate legal frameworks. The proposed Title II of the 1976 Copyright Act represented a significant milestone in these efforts, suggesting a five-year protection period for ornamental designs of helpful articles.

⁵⁴ Beyreli, p.140-141; Suluk, p.65

This proposal recognized the need to protect both two-dimensional and three-dimensional design elements while acknowledging the importance of distinguishing between purely functional aspects and ornamental features.⁵⁵

The success of *sui generis* protection in related fields, such as architecture and boat hull designs, provides a valuable precedent for fashion design protection. These examples demonstrate how specialized protection can effectively address industry-specific needs while maintaining appropriate boundaries between protected and public domain elements. The Architectural Works Copyright Protection Act of 1990 and the Vessel Hull Protection Act of 1998 established frameworks that could inform similar protection for fashion design. A key consideration in developing *sui generis* protection for fashion designs lies in balancing adequate protection with the industry's need for creative freedom. The fashion industry's reliance on trend cycles and creative reinterpretation requires careful calibration of protection scope and duration. Short-term protection periods reflect the seasonal nature of fashion, while specific criteria for originality help distinguish between protected designs and common elements available for public use. The implementation of *sui generis* protection must also address the industry's rapid innovation cycle. Protection systems need to accommodate both the fast-paced nature of fashion design and the industry's global character. This includes consideration of registration processes, enforcement mechanisms, and international harmonization of protection standards.⁵⁶

The interaction between *sui generis* protection and existing intellectual property regimes warrants careful analysis. While trademark law provides a degree of protection for fashion designs—particularly with respect to brand identity and distinctive visual elements—

⁵⁵ Monseau, 2023, p. 60

⁵⁶ Monseau, 2023, p. 61

sui generis protection could offer more comprehensive coverage for design aspects that fall beyond the scope of traditional intellectual property doctrines.

1. Registered Design Protection

Registered design protection serves as a crucial mechanism for safeguarding the visual appearance of products, including their shape, configuration, pattern, and ornamentation.⁵⁷ This form of protection differs from other intellectual property rights by explicitly focusing on the aesthetic aspects of industrial and commercial designs. The protection framework typically requires designs to meet two fundamental criteria: novelty and individual character. Novelty demands that no identical design has been made available to the public before the filing date, while individual character requires that the overall impression produced by an informed user differs from existing designs.⁵⁸

Registration systems vary across jurisdictions but generally offer protection for a limited period, typically renewable in five-year increments up to a maximum of 25 years. The European Union's harmonized approach through the Community Design system provides both registered and unregistered protection, offering flexibility for different industry needs.⁵⁹ The scope of protection extends to designs that create similar overall impressions on informed users. This assessment considers the degree of freedom available to designers in developing their design, the nature of the product, and the sector's characteristics.⁶⁰ The protection grants rights holders the exclusive right to use the design and prevent unauthorized copying or

⁵⁷ Cook, Trevor: *EU Design Law: A Guide to Registered and Unregistered Community Design Rights*, Oxford: Oxford University Press, 2021

⁵⁸ Derclaye, Estelle: "The Protection of Designs in EU Law", *Journal of Intellectual Property Law & Practice*, 14(3), 2019, p. 178-192

⁵⁹ Schovsbo, Jens and Riis, Thomas: "Design Protection: Current Challenges and Future Perspectives", *IIC - International Review of Intellectual Property and Competition Law*, 51(2), 2020, p. 185-210

⁶⁰ World Intellectual Property Organization: *Industrial Designs and The Hague Agreement: A Guide for Users*, <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-857-2023-en-industrial-designs-and-the-hague-agreement-a-guide-for-users.pdf> (accessed: 01.01.2025)

imitation. The registration process typically involves a formal examination of applications, though some jurisdictions also conduct substantive examinations for novelty and individual character.⁶¹ This system balances the need to protect innovative designs while ensuring sufficient freedom for competition and further design development in the market.⁶²

Recent developments in design protection reflect the challenges of digital design and the increasing importance of user interfaces. Courts have adapted their interpretation of design protection to accommodate these evolving forms of design while maintaining the fundamental principles of protecting visual appearance.

2. Unregistered Design Protection

With industrial property law, unregistered designs have also been protected since 2017. This protection is introduced for designs with a short market lifespan or commercial relevance and, therefore, need protection that will be active quickly. In this respect, the regulation provides a beneficial protection, especially for the fast fashion products described above. In the period before this regulation, designs with fast circulation, such as fashion designs, were protected by unfair competition or copyrights if the conditions deemed appropriate by the law were met.⁶³

Article 55/4 of the Industrial Property Law No.6769 (SMK) states that "the design... is protected as an unregistered design if it is presented to the public for the first time in Türkiye." Accordingly, the law seeks two conditions for unregistered design protection. One is that it is presented to the public for the first time, and the second is that this presentation was made in Türkiye. The principle of territoriality is also added here.

⁶¹ Monseau, 2012, p.530

⁶² Reichman, Jerome H. , "Design Protection in Domestic and Foreign Copyright Law: From the Berne Revision of 1948 to the Copyright Act of 1976", *Duke Law Journal* 67, no. 1, 2018, 1-94

⁶³ Schovsbo / Riis, p. 200

According to Article 69/2, “the protection period of unregistered designs is determined as three years from the date the design for which protection is requested is first presented to the public.” In this sense, an important distinction is found in the second paragraph of Article 59 of the SMK. Pursuant to this provision, the owner of an unregistered design acquires its rights only if copying the same of the protected design or a similar one that is indistinguishable in terms of general impression. Therefore, pursuant to this provision, the owner of the unregistered design can only take action against identical or indistinguishably similar designs, i.e., copied designs.⁶⁴ It is expected that the most significant impact of the new provisions providing the relevant protections will be in the fashion industry, as mentioned in the preamble of the law.

Accordingly, the need for the protection of unregistered designs can be considered to have arisen due to the brutal change in the fashion industry. With this legal protection, designers can protect their designs, which can be a burden in terms of both material and time and may lose their value within weeks without going through the registration process.

Today, with the acceleration of everything facilitated by advances in technology, such as the rapid spread of information on social media, even one of the most dynamic industries, such as fashion, must meet the demands for access to the latest trends. So much so that the concept of “fast fashion” is developing thanks to the retail chains that immediately catch and produce the newest design presented to the public during the fashion week, and these chains offer the current style to the customers at affordable prices. With this change, legal regulations continue to develop to keep up with the fashion industry. Accordingly, the need for the protection of unregistered designs can be considered to have arisen due to the rapid and transformative change in the fashion industry. With this legal protection, designers can

⁶⁴ Aktekin, Uğur / Doğan Alkan, Güldeniz: *Moda Endüstrisi ve Tescilsiz Tasarımlar*. <https://gun.av.tr/tr/goruslerimiz/makaleler/moda-endustrisi-ve-tescilsiz-tasarimlar#top>, (02.04.2024)

protect their designs, which can be a burden in terms of both material and time and may lose their value within weeks without going through the registration process.⁶⁵

B. Design Patent

In the United States, one of the most relevant legal tools for protecting fashion designs is the design patent. This form of protection applies to the ornamental aspects of a product that are both new and original. A design patent safeguards the appearance of a product and prevents others from replicating that visual design. The term of protection is 15 years from the date of grant.⁶⁶ However, the application process is often costly and time-consuming, and the design must not have been publicly disclosed or patented prior to filing.

In France, fashion designs can be protected under the “dessins et modèles” regime, which provides registered design protection rather than patent protection.⁶⁷ For a fashion design to be eligible, it must be new and possess individual character. Applications are filed through the French National Institute of Industrial Property (INPI). Protection is initially granted for five years and can be renewed in five-year increments up to 25 years. During this time, unauthorized reproduction or commercial use is prohibited. Unlike copyright, this protection extends to both the visual appeal and the industrial applicability of the design, offering comprehensive coverage for designers.

A notable U.S. case in this context is *In re Bottega Veneta International S.a.r.l.*, which concerned the registrability of the brand’s signature weave pattern on handbags as a trademark.⁶⁸ The primary legal issue was whether the design was functional or aesthetically

⁶⁵ Derclaye, p.180.

⁶⁶ 35 U.S. Code § 173 – Term of design patents in the United States.

⁶⁷ Code de la propriété intellectuelle, Articles L511-1 to L511-8

⁶⁸ *In re Bottega Veneta Int’l S.a.r.l.*, Serial No. 85036990, 2015 WL 4464557 (TTAB July 15, 2015)

functional under U.S. trademark law. The United States Patent and Trademark Office (USPTO) initially rejected the application, asserting that the weave enhanced durability and contributed to the aesthetic appeal, thereby providing a competitive advantage.

However, the Trademark Trial and Appeal Board (TTAB) reversed the decision, ruling in favor of Bottega Veneta. It found that the weave design, although it might confer incidental functional benefits, primarily served as a source identifier. The Board held that the design had acquired distinctiveness and was not essential for competitors to use, thus qualifying for trademark protection.

This decision holds significance in fashion law, as it confirms that certain design elements may receive trademark protection when they serve to indicate the source of goods, rather than providing purely functional or aesthetic utility.

II. TRADEMARK

Trademark law enables the identification and distinction of products or services in commerce.⁶⁹ In the fashion industry, trademarks serve as a primary tool for brand protection. A fashion brand's name, logo, signature pattern, or even specific color combinations can be registered as trademarks.⁷⁰ This form of protection ensures the commercial exclusivity of distinctive brand elements and prevents unauthorized use or imitation.

Trade dress, which refers to the overall visual appearance of a product—including packaging, labeling, or distinctive design elements—can also be protected under trademark law, provided that the appearance is both non-functional and capable of indicating source.

⁶⁹ World Intellectual Property Organization (WIPO), "What is a Trademark?", WIPO Official Website, <https://www.wipo.int> (accessed: 05.01.2025)

⁷⁰ Qualitex Co. V Jacobson Prods. Co., 514 U.S. 159, 162 (1995), <https://supreme.justia.com/cases/federal/us/514/159/> (accessed: 01.01.2025)

However, trade dress protection is generally more difficult to obtain, as functional aspects of a product are excluded from trademark eligibility.⁷¹

Trademark protection lasts for ten years from the date of registration and may be renewed indefinitely, making it a durable and cost-effective option for fashion brands. Legal action can be taken against any unauthorized use, thereby reinforcing brand recognition and market value.

The legal basis for trademark protection in the United States is established under the Lanham Act. Section 45 defines a trademark as “any word, name, symbol, or device, or any combination thereof, used to identify and distinguish goods or services from those manufactured or sold by others, and to indicate the source of the goods.”⁷²

Unlike other intellectual property regimes that may impose originality or artistic standards, trademarks are not limited by aesthetic or functional thresholds. This makes them particularly advantageous for fashion brands seeking long-term protection of their market identity.⁷³

If this protection has a distinctive element, it allows protection as a company name or brand. In some cases, this right can be used for 10 years and further extended for another 10 years. In the fashion industry, we see that designers generally use their surnames as brand names. Such use may be made possible by license or resale of the trademark. One of the most important elements of the trademark is detectability by a standard consumer.⁷⁴

⁷¹ TrafFix Devices, Inc. v. Marketing Displays, Inc., 532 U.S. 23 (2001)

⁷² 15 U.S.C. § 1127 – Definitions: Trademark

⁷³ Jimenez, Guillermo C. / Kolsun, Barbara: *Fashion Law: A Guide for Designers, Fashion Executives, and Attorneys*, Bloomsbury Publishing Inc., 2014, p.423

⁷⁴ Sreepada, Sunila: *The New Black: Trademark Protection for Color Marks in the Fashion Industry*, Fordham Intell. Prop Media, p.19

Turkish law regulations show parallelism with European law. According to SMK, a trademark distinguishes between the goods and services of enterprises. In m.4/1, it appears that elements that can be trademarked are not subject to the principle of *numerus clausus*. It is possible to reproduce them.

The functions of the trademark are mentioned as a reference and guarantee. *L'oreal SA v. With the Bellure NV* case, communication, advertising, and investment were added to these functions.⁷⁵

Pursuant to Article 5 of the Turkish Industrial Property Code (SMK), certain signs are excluded from trademark registration on the grounds of absolute refusal.⁷⁶ These include signs that lack distinctiveness, fall outside the scope of Article 4, or merely indicate characteristics of the goods or services—such as type, quality, quantity, purpose, value, geographical origin, or time of production or provision. Additionally, signs that are commonly used in trade or are descriptive of a specific profession, craft, or trade group cannot be registered as trademarks.

Other signs excluded from registration include those that consist exclusively of elements necessary to obtain a technical result, or those that give the product its essential value. Signs that are misleading in terms of the nature, quality, or geographical origin of the goods or services, or those contrary to public order or morality, are also not eligible for registration. Furthermore, signs consisting of registered geographical indications or signs protected under the Paris Convention—such as state emblems, religious symbols, and other signs deemed to be of public interest—may not be registered without the consent of competent authorities.⁷⁷

⁷⁵ Pak, Irina: “The Expansion of Trademark Rights in Europe”, *IP Theory*, Spring 2013, p.163-164

⁷⁶ Industrial Property Code No. 6769, Article 5 (Sınai Mülkiyet Kanunu m.5)

⁷⁷ Paris Convention for the Protection of Industrial Property, Article 6ter

In Türkiye, trademark applications are submitted to the Turkish Patent and Trademark Office (TPMK), which conducts an ex officio review based on the absolute refusal grounds listed under SMK Article 5.

The registrability of color trademarks depends on the specific legal framework of each jurisdiction. For instance, in lawsuits brought by Christian Louboutin in various countries, the brand asserted that the red color of shoe soles functions as a distinctive trademark. While certain legal systems have accepted the registration of a single color as a trademark, under Turkish law, single-color marks are generally not registrable.⁷⁸ However, color combinations may be registered, provided they meet the distinctiveness requirement under SMK.⁷⁹

In accordance with Article 15 of the TRIPS agreement, the parties must accept the color combination registration. According to Tekinalp, colors are "signs that can be displayed by drawing or expressed in a similar way, that can be spread and reproduced by printing."⁸⁰

The main issue in the case between *Already v. Nike*⁸¹ was whether Nike's covenant not to sue *Already* for trademark infringement rendered the case moot, thus eliminating the need for federal court jurisdiction under Article III of the U.S. Constitution. Nike had initially sued *Already* for trademark infringement and dilution, claiming that *Already*'s "Sugarpak" and "Soulja Boy" sneakers infringed on the Air Force 1 trademark. *Already* responded with a counterclaim, seeking a declaration that Nike's trademark was invalid. Nike then issued a covenant not to sue, promising not to pursue any legal action against *Already* for its current or future products that might resemble Nike's design.

⁷⁸ Christian Louboutin v. Van Haren Schoenen BV, C-163/16, CJEU, 2018

⁷⁹ Yıldırım, Köse Mutlu / Tınaz, Canan / Atlı, Tuğçe: "Geleneksel Olmayan Markalar", *FMR Fikri Mülkiyet ve Rekabet Hukuku Dergisi*, 2014/2, p.92

⁸⁰ Tekinalp, Ünal: *Fikri Mülkiyet Hukuku, Temel Bilgiler, Uluslararası Sözleşmeler, Fikir ve Sanat Eserleri, Markalar ve Patentler*, Beta, İstanbul, 1999, p.336

⁸¹ *Already, LLC v. Nike, Inc.*, 568 U.S. 85 (2013), <https://supreme.justia.com/cases/federal/us/568/85/>, 01.01.2025

The U.S. Supreme Court ruled that Nike’s covenant made the case moot, as it eliminated any possibility of an ongoing legal dispute. Since the covenant covered both existing and future similar designs, the Court found there was no “concrete” or “actual injury” that could justify the lawsuit continuing. This decision highlights how covenants not to sue can be used in trademark cases to resolve disputes and protect smaller companies from future litigation.

A. Three-Dimensional Trademark Protection

A three-dimensional trademark refers to a mark that consists of the shape or configuration of a product or its packaging, provided it possesses sufficient distinctiveness. While such marks are subject to the general requirements of trademark law, they must also demonstrate a unique and non-obvious distinctiveness that is not commonly perceived by consumers.⁸²

Key requirements for a three-dimensional trademark application include:

- Clearly indicating in the application that the mark is three-dimensional;
- Uploading a representation of the sign, design, or packaging that is clearly visible from at least one angle;
- Optionally submitting up to six different views of the sign to ensure clarity and maintain the integrity of the brand representation.

However, certain three-dimensional shapes are excluded from trademark protection based on absolute grounds for refusal. These include shapes that:

- Result from the nature of the product itself;

⁸² Mercan, Buse: *Üç Boyutlu Markalar*, 03.04.2023, <https://cukurpartners.com/tr/uc-boyutlu-markalar/> (accessed: 16.12.2024)

- Are necessary to obtain a technical result;
- Give substantial value to the product.

Three-dimensional signs may be registered both as trademarks and as designs. Trademark registration generally provides broader protection, as it can be renewed indefinitely every ten years, whereas design protection must be renewed every five years and is limited to a maximum of 25 years.

Under the former Decree-Law on Trademarks (in force prior to 2017), Turkish practice followed the Continental European model, which distinguished between two-dimensional and three-dimensional designs. This distinction has been removed under the current Industrial Property Code (Law No. 6769).⁸³

However, the current legislation does not allow for the protection of three-dimensional ornamental elements or embossed fabric patterns that appear through repeated applications.⁸⁴ In fashion design, both two-dimensional and three-dimensional elements are commonly used. If such designs are capable of indicating the commercial origin of a product or service, they may qualify for trademark protection.⁸⁵

When the originality requirement—namely, the need for a distinctive characteristic—under three-dimensional trademark protection is evaluated in the context of fashion design, it becomes evident that certain features are not eligible for registration. This interpretation aligns with Ernst Hirsch’s view on the matter. For instance, the essential components of a standard shirt are well established. In order for any modifications or additions to be eligible for legal protection, they must incorporate a sufficiently distinctive element. While a plain

⁸³ Beyreli, p.146

⁸⁴ Suluk, Cahit / Karasu, Rauf / Nal, Temel: *Fikri Mülkiyet Hukuku*, Seçkin, Ankara, 2021, p.312

⁸⁵ Oytaç, Kutlu: *Karşılaştırmalı Markalar Hukuku, Endüstriyel Tasarımlar İçerikli*, 2nd Edition, Nobel Kitabevi, 2002, p.38

white shirt cannot typically be protected as a trademark, this may change if the shirt prominently displays a distinctive pattern uniquely associated with a particular brand.

B. Trade Dress

Under U.S. law, the concept of trade dress is not explicitly defined by statute, but is instead shaped through case law. Trade dress generally refers to the total image and overall appearance of a product, including its packaging, design, and other visual features that serve to identify and distinguish a product's source in the minds of consumers.⁸⁶ Initially limited to packaging, the scope of trade dress protection has expanded to include certain aspects of product design. However, in order to qualify for protection, the trade dress must either be inherently distinctive or must have acquired distinctiveness through secondary meaning—that is, consumers must associate the appearance with a single source.⁸⁷

Importantly, trade dress protection is constrained by the functionality doctrine. According to this principle, any feature that is essential to the use or purpose of the product, or affects its cost or quality, is considered functional and therefore not eligible for trademark protection. This rule was reaffirmed by the U.S. Supreme Court in *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23 (2001)⁸⁸

U.S. courts have categorized trade dress into the following groups:

1. A device or feature capable of conveying source-identifying meaning;⁸⁹
2. Product packaging and external design⁹⁰

⁸⁶ Terakura, Karina: *Insufficiency of Trade Dress Protection: Lack of Guidance for Trade Dress Infringement Litigation in the Fashion Design Industry*, Hawaii, 2000, p.569

⁸⁷ Misthal, Mark: "Trademarks and Trade Dress", *Fashion Law*, Bloomsbury Publishing, 2014 p.36

⁸⁸ *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23 (2001)

⁸⁹ *Qualitex Co. v. Jacobson Products Co.*, 514 U.S. 159

⁹⁰ *Standard Terry Mills, Inc v ShenMfg. Co.*, 803 F.2d 778 (3d Cir. 1986)
<https://casetext.com/case/standard-terry-mills-inc-v-shen-mfg-co> (accessed: 01.01.2025);

3. The total image and overall commercial impression of the product⁹¹
4. Product Configuration⁹²

While trade dress and design patent protection may overlap in certain instances, they differ significantly in scope and legal requirements. A design patent requires novelty and non-obviousness and grants protection for a limited term—15 years in the United States. In contrast, trade dress protection can potentially last indefinitely, provided the mark remains distinctive and in use. However, unlike design patents, trade dress cannot protect utilitarian or functional aspects.⁹³

III. PATENT

Patent protection requires that inventions in any field of technology meet three fundamental criteria: novelty, inventive step (non-obviousness), and industrial applicability. Under Turkish law, specifically Article 82 of the Industrial Property Code No. 6769, aesthetic creations are explicitly excluded from patent protection. As a result, fashion designs—which are primarily characterized by their aesthetic appeal—do not qualify for patent protection in Türkiye.

In contrast, the United States allows for a specific form of protection called the “design patent,” which covers the ornamental features of a functional article. Although design patents offer limited protection in scope and duration, they have been increasingly utilized in the fashion industry, especially in cases where copyright and trademark law do not provide

Harlequin Enterprises Ltd v Gulf&W. Co. 946, <https://law.justia.com/cases/federal/district-courts/FSupp/503/647/1466778/> accessed: 01.01.2025

⁹¹ John H. Harland Co. V Clarke Checks, Inc. 428 F. Supp. 689 (N.D. Ga. 1977), <https://casetext.com/case/john-h-harland-co-v-clarke-checks-inc> (accessed: 01.01.2025)

⁹² Lesportsac, Inc v K Mart Corp., 754 F.2d 71,75 (2d Cir 1985), <https://casetext.com/case/lesportsac-inc-v-k-mart-corp-3> (accessed: 01.01.2025)

⁹³ U.S. Code Title 35 § 171 – Patents for Designs

sufficient safeguards. However, the process of obtaining a design patent remains time-consuming and costly, often deterring smaller designers from pursuing this option.⁹⁴

An illustrative example from the fashion industry is Louis Vuitton Malletier's strategic use of design and patent protection to safeguard its distinctive packaging and visual branding elements. The company has obtained design patents and trademark registrations for key features of its packaging, including the iconic brown-and-gold color scheme, structured box shapes, and the use of its well-known monogram pattern. These elements, while primarily aesthetic, also serve a functional role in reinforcing brand identity and consumer recognition. By securing patent rights in addition to traditional trademark protections, Louis Vuitton has been able to prevent the unauthorized replication of its packaging design by competitors and counterfeiters. This approach demonstrates how overlapping intellectual property regimes can be leveraged in fashion trade to ensure comprehensive protection of both the product and its presentation.⁹⁵

In the field of cosmetics, patent protection of formulations is encountered. An important example of this is Elizabeth Arden's protection of her long-lasting and gloss-effective lipstick under the name "long-wearing lipstick." Protection is provided by both the European Patent Office⁹⁶ and the United States Patent Office⁹⁷.

⁹⁴ Beyreli, p.60

⁹⁵ Werchulz, Patricia / Holtzman, Sandra: "The Latest Fashion in Fashion Patents" *New York Law Journal*, <https://www.law.com/newyorklawjournal/2018/09/05/the-latest-fashion-in-fashion-patents/?slreturn=20230306043910>, (accessed: 01.01.2025)

⁹⁶ European Patent Office, EP0797976B1: <https://patents.google.com/patent/EP0797976B1/en>, (accessed: 01.01.2025)

⁹⁷ United States Patent Office, US5667770A: <https://patents.google.com/patent/US5667770A/en>, (accessed: 01.01.2025)

IV. COMPARISON OF PROTECTION METHODS

Applying for a design patent in the United States is both costly and time-consuming. The process can require several thousand dollars in legal and administrative fees and typically takes over a year to complete. Given the rapid turnover and short life cycles of fashion collections, such delays and expenses are often impractical for designers and fashion houses. Moreover, to be eligible for a design patent, the design must be entirely new and must not have been publicly disclosed prior to the application. However, in the fashion industry, new collections often draw inspiration from past designs, reinterpret traditional motifs, or update existing styles—making it difficult to satisfy the strict novelty requirement under patent law.

A landmark case that highlights the limitations of intellectual property protection for fashion design is *Cheney Brothers v. Doris Silk Corp.*⁹⁸ In this case, Cheney Brothers, a manufacturer of seasonal silk patterns, sought to enjoin Doris Silk Corp. from copying one of its commercially successful textile designs. However, Cheney Brothers had not secured patent or copyright protection for the design in question. The Second Circuit Court of Appeals, in a decision authored by Judge Learned Hand, ruled in favor of Doris Silk. The court held that in the absence of formal protection under copyright or patent law, Cheney Brothers had no legal grounds to prevent copying of its textile pattern. The court emphasized that intellectual property rights must be grounded in statutory law, and in this case, protection extended only to the tangible products, not the design itself.

This ruling illustrates the persistent challenges faced by the fashion industry in securing effective legal protection for creative works. Despite advancements in intellectual property law, fashion designs—including fabric patterns—remain largely outside the scope of

⁹⁸ Cheney Brothers v. Doris Silk Corp. 35 F.2d 279 (1929): <https://law.justia.com/cases/federal/appellate-courts/F2/35/279/1488347/> (accessed: 23.12.2024)

copyright protection in many jurisdictions. *Cheney Brothers* thus serves as a foundational case in ongoing debates surrounding the need for specialized legal mechanisms to protect fashion design.

While trademark and trade dress law offer some avenues for protection, their application in the fashion sector remains limited. To qualify for trade dress protection, a design must acquire distinctiveness and be recognized by consumers as indicating the source of the goods.⁹⁹ This often requires extensive and prolonged commercial use, making it an ineffective tool for protecting new or seasonal designs. Furthermore, trademark law typically only prevents the unauthorized use of a brand name or logo; it does not extend to the overall appearance or aesthetic of a design. As a result, fashion designers often find themselves without adequate legal recourse against imitation of their work.¹⁰⁰

⁹⁹ Cook, p. 157

¹⁰⁰ Chon, Margaret. "Slow Logo: Brand Citizenship in Global Value Networks." *UC Davis Law Review* 47, no. 3 (2014): 935-968. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2379758 (accessed: 23.12.2024)

CHAPTER 3

PROTECTION of FASHION DESIGN UNDER COPYRIGHT LAW

I. COPYRIGHT PROTECTION FRAMEWORK

The protection of copyrights at the international level is primarily governed by a framework of treaties and conventions aimed at standardizing legal principles and fostering global cooperation. These agreements, such as the Berne Convention¹⁰¹, the TRIPS Agreement, and the WIPO Copyright Treaty, establish minimum protection standards for intellectual works and promote harmonization across national jurisdictions.

International copyright instruments serve two key purposes: first, to ensure consistent protection for authors and rightsholders across borders; and second, to encourage the adoption of compatible legal frameworks within member states. These instruments require signatory countries to incorporate specific provisions into their national legislation, thereby aligning domestic copyright laws with internationally accepted norms.¹⁰²

Moreover, international organizations such as WIPO play a central role in raising awareness of copyright issues and educating the public and stakeholders on the permitted uses of copyrighted material. These efforts are particularly crucial in the digital era, where unauthorized reproduction and distribution have become increasingly prevalent.

¹⁰¹ Berne Convention for the Protection of Literary and Artistic Works
<https://www.wipo.int/treaties/en/ip/berne/> (accessed: 01.01.2025)

¹⁰² Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Part II, Section 1

Overall, the international copyright system provides a foundational legal structure that not only safeguards the rights of creators but also promotes legal certainty and cooperation in the global marketplace.

Another implication is cross-border protection. There are legal arrangements to control cross-border copyright infringement and enhance the protection of copyright at a global level. An additional implications are obligations and rights. These are afforded legal redress and legal rights to copyright proprietors and other associated rights holders against piracy of copyright works. It also controls matters such as the use and the issuance of licenses concerning works.¹⁰³

In copyright law, there is the Principle of Territoriality, which means that each country enforces and protects its own copyright laws within its borders.¹⁰⁴ Due to national sovereignty, each country has the right to determine its own laws and policies. Copyright law is a part of this sovereign right. Countries regulate their copyright laws based on their cultural and economic needs. As a result, each country may have different copyright laws within its territory. The legal diversity found among countries around the world stems from their different historical, cultural, and economic backgrounds, leading to variations in copyright laws from country to country. For example, some countries may have stricter regulations on copyright, while others may be more flexible. This diversity reflects each country's unique needs and values.¹⁰⁵

Copyright infringements are resolved by local courts with jurisdiction. Therefore, each country enforces and protects copyright laws that are valid within its own borders. A

¹⁰³ Lewinski, Silke von: *International Copyright Law and Policy*, Oxford, 2008, p.41

¹⁰⁴ Kaplan, Yavuz: *İnternet Ortamında Fikri Hakların Korunmasına Uygulanacak Hukuk*, 1. Bası, Ankara 2004, p.171.

¹⁰⁵ Kaplan, s.172

country's copyright laws can only be applied in cases under its jurisdiction. There are various international agreements (such as the Berne Convention) for the protection of copyright on a global scale. These agreements set minimum standards among countries. However, these standards are applied and adapted according to each country's own laws. In other words, even though there is an international agreement, each country applies it within its own legal framework.

Each country's cultural and economic structure is different, which affects how copyright is regulated. For example, one country may implement stronger copyright laws to protect its creative industries, while another may adopt a more flexible approach to increase access to information. For these reasons, the principle of territoriality is valid in copyright law. This principle ensures that copyright protection is shaped according to each country's legal system and needs.

A. Evaluation of Copyright

The emergence of copyrights in the world has a chronology of development with the impact of culture and has been marked by social, technological, and economic factors. This process began with the protection of the writings and then went further to the protection of artistic and scientific productions. In the Ancient Period, there was no equivalent of the copyright law found in ancient Greek and Roman societies. A particular measure of admiration for the authors was paid, as well as some measures of protection on certain occasions. There was not any formal law of copyright during this period, and that entails that there was no legal provision for ownership or authority to dispose of the works.

In the Middle Ages, only the church and the state were able to control the content of the works. Books, in general, were in the hands of the church, and the copying of the same was restricted. In most cases, writing was done for the sake of the soul, as a community

service to educate the population. Therefore, ideas such as property ownership have yet to be invented. During the Iron and Steel period, the need for protection of the work, namely copyright, was encountered. It is worth noting that, with the innovation of the printing press by Johannes Gutenberg in the 15th century¹⁰⁶, produced written material reproduction became much more straightforward. It raised the requirement for authors and publishers to seek a way to protect their content. With the invention of the printing press, the reproduction and dissemination of written works gained great speed. This situation created the need to protect the rights of the authors. However, there were no regulations similar to copyright during this period.

Italy, especially during the Renaissance, was a center where important works in the fields of art, literature, and science were created. During this period, there were some local regulations for the protection of the works of artists and writers, but these regulations were far from providing copyright protection in the modern sense. In 1474, the Republic of Venice passed a law that provided protection similar to patent rights and aimed to protect inventions. This law is considered one of the first steps for intellectual property protection in Europe. However, this regulation was more related to patents and inventions and did not introduce any regulation on copyright.

Initially, there was no transparent copyright system in the Ottoman Empire regarding the protection of written works. Works were generally reproduced and disseminated through manuscripts. During this period, authors were generally protected through sultanic decrees or the foundation system.

¹⁰⁶ Mark, Joshua J.: *Johannes Gutenberg*, https://www.worldhistory.org/Johannes_Gutenberg/, access date: 11.09.2024

The legal foundations of copyright in England were laid with the "Statute of Anne" accepted in 1710.¹⁰⁷ This law is the first official regulation of the copyright system in England. The Statute of Anne granted authors the right to reproduce and disseminate their works without permission and initially provided protection for 14 years.¹⁰⁸ This period could be extended for another 14 years after the author's death. This law stated that copyrights were the rights of authors and provided author-centered protection for the first time. Publishers, on the other hand, could only be rights holders for a certain period.

With the establishment of the printing house in Ottoman lands by İbrahim Müteferrika in 1727, the reproduction and dissemination of written works accelerated. However, during this period, copyright protection in the modern sense had not yet developed.

Copyright protection came to America in 1790. The young country, the United States of America, was the first to adopt copyright law, even though the idea was born in France. With this act, an author or assigns of the author are protected for 14 years. This protection only includes registered maps, charts, or books.¹⁰⁹ Eventually, after the French Revolution era, two acts of the French legislature of 1791 and 1793 stipulated that authors had full proprietary rights to their works and that the laws governing copyright should be those of the state.¹¹⁰ The scope of this protection was later expanded. France was a leader in the fashion world in the 18th and 19th centuries. During this period, the concept of copyright began to develop with the aim of protecting artistic works. Although the first copyright laws did not directly cover fashion designs, they laid a foundation by protecting works of art and literature.

¹⁰⁷ Statue of Ann: The First Copyright Statue, <https://www.historyofinformation.com/detail.php?entryid=3389> (accessed:01.01.2025)

¹⁰⁸ Gorman, Robert A. / Ginsburg Jane C.: *Copyright: Cases and Materials; 7th Edition*, Foundation Press, 2006, p.1

¹⁰⁹ Gorman / Ginsburg, p. 5-6

Industrialization, which began with the invention of the steam engine, brought with it standardization. Developing trade between countries brought with it internationalization. The theory of expanding operations was born internationally while carrying out standardization in operational procedures to ensure that standards meet the customer's expectations.

In the 19th century, the amendments made in 1831 in the USA included musical works in the scope of copyright protection. This amendment provided protection to music composers and songwriters. In addition, the copyright period was extended to 28 years, and an extension was made for another 14 years, providing a total protection period of 42 years.¹¹¹

In the UK, copyright law began to include publishers' rights. In particular, publishers' rights over the reproduction and distribution of the work were expanded. The "Design Copyright Act," adopted in 1839, determined the copyright period as 42 years after the author's death, and with an additional 7 years, this period became 49 years in total.¹¹²

The first legal regulation regarding copyrights in the Ottoman Empire was made in 1857 under the name of "Copyright Regulation." This regulation aimed to prevent the unauthorized reproduction and distribution of books. The regulation is considered the first legal regulation that granted the author certain rights over his/her work. The Copyright Regulation granted the author a 5-year protection period. This period could be extended up to 10 years upon the author's request. The regulation covered printed works and was only valid in Ottoman territory. During this period, there was no specific protection for other branches of art.¹¹³

¹¹¹ U.S. Copyright Office, *Copyright Law of the United States*, Historical Overview Section

¹¹² L. Bently & B. Sherman, *Intellectual Property Law*, Oxford University Press, 5th ed., 2018.

¹¹³ Halil Arslanlı, *Fikir ve Sanat Eserleri Hukuku*, İstanbul Üniversitesi Yayınları, 1955

After the unification of Italy in 1861, it became necessary to establish a copyright system that would be valid throughout the country. During this period, as in other countries in Europe, a more systematic approach was adopted to protect the works of writers, artists, and other creative individuals. Italy's first civil code was enacted in 1865 and included some basic regulations regarding copyright. This law aimed to protect the works of writers and artists.¹¹⁴

In 1870, copyright registration procedures were transferred to the U.S. Copyright Office. This gave the federal government greater authority to manage and monitor copyrights. This law also included other creative works such as sculptures, paintings, drawings, and works of art under copyright protection. Towards the end of the 19th century, the USA's copyright law was further refined to make it more comprehensive, and the period of copyright protection was extended.¹¹⁵

During the last part of the century, the necessity of an international acknowledgment and protection of the books' copyrights appeared. In this regard, "The Bern Convention for the Protection of Literary and Artistic Works," commonly known as the Bern Convention, was adopted in Bern, Switzerland, in 1886. This convention is the first significant treaty that offered international safeguarding of works and life rights, plus fifty years of protection for the authors. Has to be noted that the USA signed the Bern Convention in 1989 after years of outside pressure.¹¹⁶

In 1882, the first modern copyright law was enacted in Italy. This law provided protection for literary and artistic works and granted exclusive rights to creative authors. The 1882 law provided authors with a 40-year protection period from the publication of their

¹¹⁴ Ghidini, Gustavo: *Intellectual Property and Competition Law: The Innovation Nexus*, Edward Elgar Publishing, 2010.

¹¹⁵ U.S. Copyright Office, "A Brief Introduction and History," <https://www.copyright.gov> (accessed: 01.01.2025)

¹¹⁶ Berne Convention for the Protection of Literary and Artistic Works (1886)

works. This period continued after the author's death. The law covered books, musical works, theatrical works, and other literary and artistic works.

Italy acceded to the Berne Convention in 1887. This international agreement aims to ensure the international recognition and protection of copyrights. The Berne Convention obliges member countries to protect authors in other member countries. The Bern Convention played an important role in aligning Italian copyright laws with international standards.

In the early twentieth century, copyright law was also more liberal than the earlier scope of protecting literary and artistic work from the new media. With the technological evaluations in areas such as musical work, motion picture, radio and television broadcast.¹¹⁷

Italy's Copyright Reform of 1925 expanded the scope of copyright protection and extended its duration. In addition, new types of creative works, such as works of art, films, and photographs, were also protected during this period. These reforms were made during the fascist regime of Benito Mussolini and focused on protecting works that supported the regime's ideological propaganda.

The Copyright Law "Legge sul Diritto d'Autore" (LDA), adopted on 22 April 1941, forms the basis of the modern copyright system in Italy. This law replaced the 1925 law and established most of today's Italian copyright regulations. The 1941 law set the copyright protection period as the lifetime of the author and 50 years after his/her death. (This period was increased to 70 years in 1995 to comply with European Union directives.) This law covers literary works, music, films, paintings, sculptures, architectural works, and software. The law also includes exclusive rights such as translation, adaptation, and distribution of the

¹¹⁷ Musso, Pierre: *La Politique de la Culture en Italie*, CNRS, 1998

work. The law grants authors not only economic rights but also moral rights. Moral rights include the right to mention the author's name and protect the integrity of the work.¹¹⁸

In 1902, "La Chambre Syndicale de la Couture Parisienne" was founded, representing Parisian fashion houses. This organization played an important role in the legal protection of fashion designs and in preventing them from being copied. In the early 20th century, original designs created in the Parisian fashion world began to be protected through this organization.¹¹⁹

The Copyright Act of 1909 laid the foundation for the modern copyright system in the United States. This law set the term of protection at 28 years, which could be extended for another 28 years, providing a total of 56 years of protection. The law protected more creative works such as literary works, musical works, dramatic works, photographs, and paintings.

Modern Copyright Law of Ottoman Empire The "Copyright Law" enacted in 1910 is considered the first comprehensive copyright law in the modern sense. This law protected written works as well as other artistic and scientific works. The law provided protection for the life of the author and for 30 years after his/her death. In addition, unauthorized reproduction, distribution, and commercial use of the work were prohibited. The Copyright Law covers a wide range of artistic and literary works such as books, musical works, theater plays, paintings, sculptures, and architectural works.¹²⁰

With the establishment of the Republic of Türkiye in 1923, the Copyright Law inherited from the Ottoman period was taken over by the new administration and continued to be implemented. However, in line with changing conditions and needs, various innovations

¹¹⁸ Zaghi, Carlo: Copyright and Propaganda in Fascist Italy.” *Italian Studies*, 2004

¹¹⁹ Skov, Lise: “Fashion Nation: A History of the Chambre Syndicale.” *Fashion Theory*, Vol. 10, No. 1 (2006)

¹²⁰ Mardin, Şerif. “Telif Hakkının Osmanlı’daki Gelişimi.” *Osmanlı Araştırmaları Dergisi*, 1971

and regulations were made during this period. The Law on Intellectual and Artistic Works “Fikir ve Sanat Eserleri Kanunu (FSEK) numbered 5846, adopted in 1951, is a radical reform in terms of copyright in Türkiye. This law is the fundamental copyright law still in force and has been amended many times. Law No. 5846 on Intellectual and Artistic Works covers a wide range of areas, including literary works, works of fine art, musical works, cinema works, scientific works, computer programs, and compilations. Although the principle of *numerus clausus* for intellectual property rights¹²¹, the scope of rights that are limited with new inventions, such as nanotechnological inventions, or traditional information, such as folkloric items, is expanding day by day.¹²²

The law provides protection for the life of the author and for 70 years after his/her death, which aligns with the European Union copyright directives.¹²³ FSEK grants authors both financial and moral rights.¹²⁴ Economic rights cover the rights arising from the commercial use of the work, while moral rights include the copyright of the author on his/her work and the right to protect the integrity of the work. Türkiye joined the international copyright system by acceding to the Berne Convention in 1952, thereby committing to provide international protection to its copyright owners.

In France, the Copyright Law (Code de la propriété intellectuelle)¹²⁵, adopted in 1957, protected fashion designs as well as works of art and literature, ensuring that original fashion creations were also eligible for copyright protection. WIPO was founded in 1967 as a specialized agency of the United Nations to promote the global use and enforcement of

¹²¹ Kılıçoğlu, p.5

¹²² Suluk / Karasu / Nal, p.1

¹²³ Law No. 5846 on Intellectual and Artistic Works (FSEK), Article 27

¹²⁴ FSEK, Articles 20–25

¹²⁵ Code de la propriété intellectuelle (1957), Article L111-1

intellectual property rights. Since its establishment, WIPO has worked to harmonize copyright protection internationally and encourage the expansion of copyright awareness.

The Copyright Act of 1976 in the United States restructured the national copyright regime and laid the foundation for modern U.S. copyright law.¹²⁶ With this law, the term of protection was established as the author's lifetime plus 50 years, which was extended to 70 years in 1998 through the Sonny Bono Copyright Term Extension Act.¹²⁷ The 1976 Act abolished the registration requirement for copyright protection and granted automatic protection upon creation. It also introduced the "fair use" doctrine, allowing limited use of copyrighted works for purposes such as education, research, criticism, and journalism.

In the United Kingdom, the Copyright, Designs and Patents Act 1988 marked a significant modernization in national copyright law.¹²⁸ It set the term of copyright as 70 years post mortem auctoris and expanded the law's scope to cover digital works, including computer programs, databases, and other digital content. Similarly, the United States joined the Berne Convention in 1988, significantly strengthening international copyright enforcement by adopting the Convention's minimum standards.¹²⁹

In 1989, France adopted the European Community Design Directive, which introduced a harmonized system for the legal protection of industrial designs, including those in fashion.¹³⁰ Italy followed in the 1990s by revising its copyright laws to align with European Union directives, extending the term of protection to 70 years after the author's death.¹³¹

¹²⁶ Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541

¹²⁷ Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, 112 Stat. 2827 (1998)

¹²⁸ Copyright, Designs and Patents Act 1988, c. 48 (UK)

¹²⁹ USA Berne Convention Implementation Act of 1988, Pub. L. No. 100-568

¹³⁰ Council Directive 98/71/EC of the European Parliament on the legal protection of designs.

¹³¹ Italian Copyright Law amendments, in accordance with EU Directive 93/98/EEC

At the multilateral level, the TRIPS Agreement, signed in 1995 under the framework of the World Trade Organization, established binding international standards for the protection and enforcement of copyright.¹³² This was followed by further global instruments such as the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, both adopted in 1996, which responded to the challenges posed by digital technologies.¹³³ These developments emphasized that the effective enforcement of copyright law increasingly depends on international coordination and legal harmonization.

In 1998, the United States enacted two major statutes: the Sonny Bono Copyright Term Extension Act, which increased the term of protection for corporate works to 95 years from publication,¹³⁴ and the Digital Millennium Copyright Act (DMCA), which introduced new legal mechanisms to combat digital piracy and clarified the liability of internet service providers in cases of copyright infringement.¹³⁵ The DMCA marked a turning point in digital copyright regulation and reinforced the United States' commitment to international standards in the digital environment.

In the 21st century, most states have offered specific changes to the legislation to meet the requirements of innovations in the sphere of copyright protection. The European Union has also promulgated a detailed reform on the sharing of content on the internet and the rights of the authors with the Copyright Directive it passed in 2019.¹³⁶

In the 2000s, Italy updated its legal framework to take stricter measures against digital copyright infringements. Issues such as the protection of digital content, combating

¹³² TRIPS Agreement, Part II, Section 1

¹³³ WIPO Copyright Treaty (WCT), WIPO Performances and Phonograms Treaty (WPPT), 1996

¹³⁴ Sonny Bono Copyright Term Extension Act (supra note 8)

¹³⁵ Digital Millennium Copyright Act (DMCA), Pub. L. No. 105–304 (1998)

¹³⁶ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, <https://eur-lex.europa.eu/eli/dir/2019/790/oj> (accessed:01.01.2025)

piracy, and unauthorized use of online works came to the fore. Italian Authors and Publishers Association “Società Italiana degli Autori ed Editori (SIAE)” plays an important role in the protection of copyright in Italy. SIAE, an institution that protects the rights of Italian artists and manages copyright revenues, has also been an important factor in the management of copyrights in the digital age.

In the 2000s, with the increase in digitalization, new regulations were made for the protection of copyrights in the digital environment. With the amendments made to FSEK in 2001, digital works were protected and Digital Rights Management (DRM) systems were introduced. In 2002, the Community Design system introduced a more comprehensive framework for the protection of fashion designs across the European Union. In France, designs can be protected both nationally and EU-wide through this system.¹³⁷

The growth of copyright reflects its expansion from the protection of written works to a wider range of artistic and scientific content. Copyright issues have evolved dynamically due to technological advances, digital transformation, and globalization.¹³⁸ As technology progresses and global cooperation intensifies, new challenges are expected to emerge in copyright enforcement, especially concerning cross-border cultural and scientific works.

The UK harmonized its copyright system with EU directives during its EU membership.¹³⁹ After Brexit, the UK began to follow its own regulatory path. In recent years, the rise in digital content and online platforms has necessitated the modernization and alignment of copyright laws.¹⁴⁰ Among contemporary legal discussions, whether artificial

¹³⁷ Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community designs.

¹³⁸ Geiger, Christophe. “Copyright and the Digital Challenge: An International Perspective.” *IIC*, Vol. 46, No. 7 (2015)

¹³⁹ Copyright and Related Rights Regulations 2003 (UK implementation of EU directives)

¹⁴⁰ UK Intellectual Property Office, “Post-Brexit Copyright Policy Briefing,” 2021

intelligence-generated content qualifies for copyright protection remains a critical question. It is expected that the UK will implement specific regulations in this area in the near future.

Copyright law in the UK has undergone a complex historical evolution. Starting with the Statute of Anne in 1710, it expanded throughout the 19th century, adapted to international treaties in the 20th century, and continues to be shaped by issues such as digital content and AI today.¹⁴¹ The UK remains committed to revising its national framework in alignment with international standards.

Similarly, copyright in the United States has been shaped by numerous legislative milestones, beginning with the Constitution and continuing into the digital age. In Italy, the development of copyright law was driven by the need to preserve its rich artistic and literary heritage, and the system evolved in tandem with EU norms.¹⁴² France's copyright law, governed by the Code de la propriété intellectuelle, strongly upholds both economic (droits patrimoniaux) and moral (droits moraux) rights.¹⁴³ Economic rights allow authors to commercially exploit their work for the duration of their life plus 70 years, while moral rights—such as attribution and integrity—are perpetual and inalienable.

In Turkey, the historical development of copyright began during the Ottoman Empire and took modern form during the Republican period. The evolution of FSEK reflects Turkey's efforts to harmonize with international treaties and EU copyright directives.¹⁰ Regular amendments have been introduced to reflect digital age developments and international expectations.

¹⁴¹ Patterson, L. Ray, and Stanley W. Lindberg. *The Nature of Copyright: A Law of Users' Rights*. University of Georgia Press, 1991

¹⁴² Senese, Maria Teresa. "Evolution of Copyright Law in Italy." *European Intellectual Property Review*, 2006

¹⁴³ Code de la propriété intellectuelle, Arts. L111-1, L121-1

Contemporary copyright issues are intricately tied to the dynamics of globalization. The internet and digital technologies have introduced significant challenges, such as piracy and unauthorized distribution of music, films, software, and games.¹⁴⁴ To address these, legal mechanisms like Digital Rights Management have been implemented.¹⁴⁵ Additionally, new licensing models such as Creative Commons and open access have emerged, although their effectiveness in protecting authorial rights remains debated.

The digital age has also prompted further regulation to protect works on the internet. Whether AI-generated content can be protected under current copyright laws remains unresolved, and future legislation is likely to address this legal uncertainty.¹⁴⁶

B. Requirements for Protection of Fashion Designs with Copyright

Fashion designs are legally protected through various intellectual property rights, including copyright, industrial design registration, and trademark law. This section first examines the protection of fashion designs through copyright within a comparative legal framework. Subsequently, other complementary forms of protection will be briefly outlined.

The term "copyright" broadly refers to intellectual rights¹⁴⁷ and, more specifically, denotes the economic and moral rights of the author arising from the creation of a work. These rights, as well as licensing and transfer mechanisms, fall within the scope of copyright

¹⁴⁴ Yu, Peter K. "Digital Copyright and the Challenges of Piracy." *Fordham Law Review*, Vol. 76, 2007

¹⁴⁵ "What is Digital Rights Management?", Digital Guardian, <https://www.digitalguardian.com/blog/what-digital-rights-management> (accessed: 11.09.2024)

¹⁴⁶ Samuelson, Pamela. "AI and Copyright: Emerging Legal Questions." *Harvard Journal of Law & Technology*, Vol. 34, No. 1, 2021

¹⁴⁷ Suluk, p.1

law. Although the term is often used interchangeably with intellectual property, in a strict legal sense, it refers to the author's economic rights related to the work.¹⁴⁸

In the field of fashion, Italy has historically been a source of innovation; however, today, France is regarded as a global leader in fashion design and its legal protection. France's comprehensive legal framework and cultural influence have played an essential role in establishing robust protections for fashion design. French law protects fashion designs through various instruments, including copyright (*droit d'auteur*), trademark (*marque de commerce*), and registered design (*modèle déposé*). The development and implementation of these mechanisms have greatly contributed to the international recognition of French fashion.

In the United States, copyright protection for fashion designs is limited. According to the U.S. Supreme Court ruling in *Mazer v. Stein*¹⁴⁹, copyright protection extends to original pictorial, graphic, and sculptural works that may be applied to useful articles, provided the artistic elements are conceptually or physically separable. For instance, in the Christian Louboutin red sole case, the red sole was ultimately granted trademark protection, not copyright, due to its utilitarian function.¹⁵⁰

In the European Union, copyright protection for fashion designs varies among member states. Nevertheless, the *Infopaq*¹⁵¹ decision by the European Court of Justice clarified that "originality"—defined as the author's own intellectual creation—is the required threshold.

France offers strong copyright protection for fashion designs, classifying them as artistic and literary works. Designs are protected from the moment of creation without requiring

¹⁴⁸ Kılıçoğlu, p.18

¹⁴⁹ *Mazer v. Stein*, 347 U.S. 201 (1954): <https://supreme.justia.com/cases/federal/us/347/201> (accessed: 01.01.2025)

¹⁵⁰ Guehenno, Claire: Color War: The Louboutin Decision and Single Color Marks in the Fashion Industry, *Harvard JSEL*, p.226-251

¹⁵¹ Case C-5/08 *Infopaq Int. A/S v Danske Dagblades Forening*, 2009 ECLI: EU: C: 2009:465 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62008CJ0005_SUM&from=FR (accessed: 01.01.2025)

registration, as long as they demonstrate originality. Protection lasts for the life of the designer and 70 years post mortem.¹⁵²

In European jurisdictions such as France, Italy, and the United Kingdom, copyright protection for fashion designs is contingent upon the presence of originality and artistic expression. In all three countries, functional aspects of garments—such as shape, structure, or practical elements—are generally excluded from protection, whereas aesthetic components like patterns, prints, and decorative features may qualify.¹⁵³ Copyright arises automatically upon creation in each jurisdiction and does not require registration, provided the work meets the originality threshold.¹⁵⁴ While France and Italy adopt civil law approaches that emphasize the creator's intellectual imprint, the UK—though a common law system—applies a similar standard of artistic merit and creative input.¹⁵⁵ Notably, neither mass production nor commercialization precludes protection in Italy, reflecting a more inclusive interpretation compared to the UK's traditionally stricter assessment of applied art.¹⁵⁶

For Türkiye, fashion designs that have aesthetic beauty can be protected by copyright by the Law on Intellectual and Artistic Works No. 5846. This period of protection will continue throughout the author's life and for 70 years after his death. Apart from this, fashion designs that are not dominant in terms of aesthetic value and in cases where it is impossible to establish copyright due to multiple production lines caused by industrialization may also be protected by trademark design and patent.

¹⁵² Goldstein, Paul: *International Copyright: Principles, Law, and Practice*, 2010

¹⁵³ European Union Directive 2001/29/EC on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society

¹⁵⁴ Codice della Proprietà Industriale (Italy), Code de la propriété intellectuelle (France), Copyright, Designs and Patents Act 1988 (UK)

¹⁵⁵ Derclaye, Estelle: *The Legal Protection of Designs in Europe: A Comparative Analysis*, Edward Elgar Publishing, 2010

¹⁵⁶ Lena, Jennifer, "Fashion Law in the European Union: Protection of Design and Copyright," *Journal of Intellectual Property Law & Practice*, Vol. 15, No. 9, 2020, pp. 721–729

The Law on Intellectual and Artistic Works No. 5846, FSEK can protect fashion designs as “works of fine art” or “compiled works.” Fashion designs can benefit from copyright protection, provided that they have a certain aesthetic and artistic value. For fashion designs to be protected under the FSEK, they must be “original.” This means that the design must reflect the creator's personal contribution and creative idea. For example, a completely new dress model or an original pattern may be eligible for copyright protection. Copyright protection lasts for the designer's lifetime and for 70 years after their death. During this period, unauthorized use, copying, or modification of the design is prohibited.

The designer has the authority to use their moral rights (e.g., the right to name and protect the integrity of the work) and economic rights (e.g., income from commercial use of the work) on their work.

Here, it is necessary to mention Kılıçoğlu's important distinction that separates copyright from industrial rights. According to Kılıçoğlu, "Unlike industrial rights, intellectual rights are the rights on the work created by the owner of the work. There is no purpose in using this created work in industry, trade, or industry, as in industrial rights."¹⁵⁷

Copyright protection does not require registration. Therefore, the ownership of the work can be proven by any kind of Evidence. Even if it is not for the birth of the work, it can be determined by the notary for the ownership of the work. There is no obligation to use the work for copyright. The only exception here is the public domain, according to FSEK Articles 46-47. These rights are divided into financial and moral rights, and the protection period is 70 years from the death of the author.

Economic rights are; the right of production, the right of reproduction, the right of distribution, the right of representation, the right of publication (the right to transmit to the

¹⁵⁷ Kılıçoğlu, p.17

public utilizing signal, sound, and image transmission), the right to demand a share of the sales price of fine artworks.¹⁵⁸

Moral rights are the authority of public offering, the right of the owner to be mentioned, the authority to prohibit changes in the work, the right to access the work, the prohibition of destroying the work, the prohibition of harming the owner of the work, the right to temporarily take the work. The *Jovani Fashion, Ltd. v. Fiesta Fashions*¹⁵⁹ case is significant for highlighting the limitations of copyright protection for fashion designs under U.S. law, particularly for clothing, which is considered a "useful article." *Jovani Fashion* claimed its prom dress design, featuring decorative elements like sequins and ruching, was eligible for copyright protection. *Fiesta Fashions* argued that clothing is a useful article, and *Jovani's* copyright covered only the two-dimensional images in its catalogs, not the dresses themselves. The district court ruled in favor of *Fiesta Fashions*, stating that the decorative elements were not separable from the functional aspects of the dress. The court found:

-Physical Separability: This criterion refers to whether a decorative element can be physically removed from the functional article without affecting its utility. In the context of the *Jovani* case, features such as sequins and ruching were determined to be integral to the dress's construction and could not be detached without compromising the dress's intended purpose—namely, its structure, fit, or wearability. Therefore, these elements failed the test of physical separability.

-Conceptual Separability: This principle examines whether the artistic aspects of a design can be conceptually distinguished from its utilitarian function, even if they cannot be physically

¹⁵⁸ Kılıçoğlu, p.18

¹⁵⁹ *Jovani Fashion, Ltd. v. Cinderella Divine, Inc.*, 10 Civ. 7085 (JGK) (S.D.N.Y. Oct. 24, 2011), access date: <https://casetext.com/case/jovani-fashion-ltd-v-cinderella-divine> (accessed: 23.12.2024)

separated. A feature may be conceptually separable if it reflects a creative expression that exists independently of the object's functional aspects. However, in this case, the court held that the design elements—while aesthetically pleasing—were inherently connected to the dress's functional purpose and commercial appeal. As such, they did not exhibit an independent artistic concept that could warrant copyright protection.

The Second Circuit upheld this decision, reinforcing that fashion designs are generally not protectable under copyright unless decorative elements are separable from the garment's functionality. This case emphasizes the limits of copyright protection in fashion, requiring designers to rely on other legal tools like trademarks or design patents to protect their creations.

The *Omega S.A. v. Costco Wholesale Corp.*¹⁶⁰ case centers on the first-sale doctrine and its application to imported goods. Costco sold Omega Seamaster watches purchased through the gray market, featuring a copyrighted Globe Design on the back. Omega claimed the resale in the U.S. violated its copyright. The issue was whether the first-sale doctrine, which allows the resale of copyrighted items, applied to goods first sold outside the U.S. Omega argued that it should not apply to foreign-manufactured goods. The district court sided with Costco, applying the first-sale doctrine. However, the Ninth Circuit reversed, stating the doctrine did not apply to goods made and sold abroad. The Supreme Court later clarified in *Kirtsaeng v. John Wiley & Sons*¹⁶¹ that the first-sale doctrine does apply to goods sold abroad, leading the Ninth Circuit to reaffirm Costco's right to sell the watches. This case demonstrates the global reach of the first-sale doctrine, allowing resale of imported goods and limiting

¹⁶⁰ *The Omega S.A. v. Costco Wholesale Corp.*, <https://casetext.com/case/omega-sa-v-costco-wholesale-corp-4> (accessed: 23.12.2024)

¹⁶¹ *Kirtsaeng v. John Wiley & Sons*, 654 F. 3d 210,, <https://www.law.cornell.edu/supremecourt/text/11-697> (accessed: 23.12.2024)

copyright holders' control over foreign-sold products. It promotes competition but reduces copyright holders' control over distribution and pricing.

The *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*¹⁶² case addresses the validity of copyright registrations when legal errors occur during the registration process. The case focused on whether an inadvertent legal mistake in a copyright registration application, such as misunderstanding the legal definition of "publication," could invalidate the registration. H&M argued that Unicolors' registration was invalid due to errors in grouping patterns sold at different times. The Supreme Court overturned the Ninth Circuit's decision, ruling that unintentional legal mistakes do not invalidate a copyright registration if the error was not made knowingly. The Court emphasized the safe harbor provision in the Copyright Act, protecting registrants from unintentional errors. This ruling is significant for the fashion industry and creative sectors, as it lowers the threshold for invalidating copyrights due to technical errors, making it harder for infringers to escape liability. It ensures that smaller creators can protect their designs despite minor legal missteps in registration. The decision reinforces the importance of copyright protection for creative industries, allowing them to rely on copyright law to safeguard their intellectual property, even in the face of registration errors.

In addition, there are related rights arising from ownership rights.¹⁶³ These are the rights of performing artists, the rights of phonogram producers, the rights of radio and television organizations over their broadcasts, and the rights of filmmakers. The right to use these rights can be transferred by license or license agreements. It is possible to benefit from these protections depending on the content of the legal dispute.

¹⁶² *The Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.* No. 20–915, 24.02. 2022 https://www.supremecourt.gov/opinions/21pdf/20-915_pol1.pdf (accessed: 23.12.2024)

¹⁶³ Slotkin, Jason: '*Monkey Selfie*' Lawsuit ends with Settlement Between PETA, Photographer, NPR, 12.09.2017, <https://www.npr.org/sections/thetwo-way/2017/09/12/550417823/-animal-rights-advocates-photographer-compromise-over-ownership-of-monkey-selfie>. (accessed: 01.01.2025)

II. CONDITIONS of PROTECTION of WORK

A. Originality

Originality remains one of the most fundamental and yet most debated prerequisites in copyright law. Since the enactment of the *Statute of Anne* in 1710, originality has been a cornerstone concept distinguishing protected works from mere ideas or functional items. In theory, global treaties such as the Berne Convention and EU Directives aim to harmonize the legal meaning of originality; however, in practice, its interpretation varies significantly across legal systems.¹⁶⁴

While originality is universally required for copyright protection, its substantive definition differs. Civil law countries, such as France and Germany, adopt a more demanding understanding, requiring the personal imprint of the author and creative choices that reflect individuality.¹⁶⁵ In contrast, common law countries like the United States, United Kingdom, Canada, and Australia prefer a broader approach, focusing merely on independent creation and a minimal degree of creativity.¹⁶⁶

One of the clearest illustrations of this divergence is found in the U.S. Supreme Court case *Feist Publications, Inc. v. Rural Telephone Service Co.*¹⁶⁷ In that case, the Court held that telephone directories containing mere factual compilations are not protectable unless the selection or arrangement is sufficiently original. The Court emphasized that copyright does not protect facts per se but only the original manner of their expression. The “sweat of the

¹⁶⁴ Gendreau, Ysolde: *The Concept of Originality in Copyright Law*, 2002

¹⁶⁵ Gervais, Daniel J. , *Feist Goes Global: A Comparative Analysis of the Notion of Originality in Copyright Law*, *Journal of the Copyright Society of the U.S.A.* 49, no. 4 (2002), p. 949-981

¹⁶⁶ Goldstein / Hugelholtz p. 17

¹⁶⁷ *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991)
<https://supreme.justia.com/cases/federal/us/499/340/> (accessed: 01.01.2025)

brow” doctrine, once used to justify protection based on effort or labor, was expressly rejected.

In Europe, the landmark *Infopaq* decision by the Court of Justice of the European Union clarified that originality—defined as the author’s own intellectual creation—is the required threshold.¹⁶⁸ This was a move to standardize the fragmented approach across EU member states, although national interpretations and enforcement practices still vary, particularly regarding applied art such as fashion designs.

In France, the originality requirement implies that the work must bear the mark of the author's personality, which in the context of fashion, includes creative decisions related to cut, silhouette, texture, and ornamentation.¹⁶⁹ Unlike the U.S., French courts are more willing to recognize copyright protection for artistic fashion designs, even in mass-produced forms, particularly through the cumulative protection principle (*cumul de protection*).¹⁷⁰

In contrast, U.S. law¹⁷¹ applies the separability doctrine—most recently refined in *Star Athletica v. Varsity Brands*¹⁷²—to determine whether the artistic elements of a fashion article can be distinguished from its utilitarian function.¹⁷³ If separability exists, the artistic features may receive copyright protection. However, this test has proven to be complex and inconsistently applied, often resulting in uncertainty for designers seeking protection for garments or accessories.

¹⁶⁸ *Infopaq International A/S v. Danske Dagblades Forening*, Case C-5/08, ECJ

¹⁶⁹ Lucas, André. *Droit d’auteur et droits voisins*, 2006

¹⁷⁰ Pouillet, Eugène. *Traité théorique et pratique de la propriété littéraire et artistique*, 1908

¹⁷¹ Perlmutter, Shira: "Participation in the International Copyright System as a Means to Promote the Progress of Science and Useful Arts." *Loyola of Los Angeles Law Review* 36, no. 1, 2002, p. 323-335

¹⁷² *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002 (2017)

¹⁷³ Lewinski, p.55

The statutory articulation of originality also plays a role. The U.S. Copyright Act provides a relatively clear framework, yet the requirement of a “modicum of creativity” still leaves room for judicial discretion. On the other hand, many civil law statutes contain vague definitions of originality, relying heavily on jurisprudence and academic doctrine to clarify their meaning. This creates legal uncertainty and may empower courts with excessive discretion, risking both under- and over-protection.¹⁷⁴

Despite international agreements such as the Berne Convention aiming to establish minimum standards, they allow wide latitude to member states in determining what constitutes a “work” and how originality is interpreted.¹⁷⁵ This results in a paradox: while international copyright norms suggest uniformity, local implementations create fragmentation. For example, EU directives mandate certain protections, but national enforcement still reflects domestic legal culture, as seen in the differing interpretations of originality among member states¹¹.

Another emerging challenge is the rise of AI-generated works. These creations blur the boundary of authorship and originality. Can a non-human entity generate an “intellectual creation”? If originality depends on the intentional and autonomous choices of a natural person, as many systems currently require, then AI-generated fashion designs may fall outside protection. Scholars argue that the originality threshold may need to be revisited in light of these technological developments.¹⁷⁶

A comparative analysis of originality also reveals underlying cultural values. Civil law systems, with their philosophical roots in authorial moral rights, place great emphasis on

¹⁷⁴ Ginsburg, Jane C. “The Concept of Originality,” *Revue Internationale du Droit d’Auteur*, 1990

¹⁷⁵ Ricketson, Sam, and Ginsburg, Jane C. *International Copyright and Neighbouring Rights*, 2006

¹⁷⁶ Rosati, Eleonora. *Copyright and the Court of Justice of the European Union*, 2019

the personal and intellectual contribution of the creator. In contrast, common law systems, prioritizing the incentive theory, focus more on protecting economic interests and ensuring public access to information.¹⁷⁷

In summary, originality is not only a legal criterion but a concept shaped by history, policy priorities, and evolving creative practices. While harmonization efforts continue—particularly in Europe—originality remains a flexible and jurisdiction-sensitive concept. For fashion design, where aesthetic expression intersects with utility, the originality debate becomes even more critical. The current global framework is better at setting principles than at delivering uniform outcomes. Nevertheless, understanding this diversity helps designers, scholars, and policymakers navigate the complex terrain of intellectual property protection in creative industries.¹⁷⁸

1. Creativity Balance

While legal protections are essential, overly rigid restrictions may have adverse effects on commercial creativity. The fashion industry, characterized by rapid trend cycles, thrives on constant innovation. These innovations can manifest either as entirely novel designs or as reinterpretations of previously favored styles. Fashion emerges from the intersection of artistic expression and a fast-paced marketplace, and excessive legal constraints on usage may inhibit creative output.

In this context, long-term intellectual property protections may not always be suitable for fashion. For example, the Hermès Kelly handbag has acquired enduring symbolic value and cultural significance, making it a suitable candidate for long-term trademark or design

¹⁷⁷ Hugenholtz, Bernt. “Authorship Revisited: AI and the Future of Creativity.” *European Intellectual Property Review*, 2023

¹⁷⁸ Davies, Gillian: *Copyright and the Public Interest*, 2002

protection in Europe.¹⁷⁹ Such protection helps preserve not only the market value of the product but also the cultural identity it represents. By contrast, seasonal mini bags, which gained immense popularity over the past two years, have already faded from mainstream use. Extending prolonged protection to such short-lived items may unnecessarily limit innovation. A more flexible, short-term protection model could better stimulate creativity by allowing designers to respond freely to emerging trends.¹⁸⁰

The case of Maria Solange Ferrarini, a Brazilian bikini designer, is a primary example of the consequences of weak copyright protections for fashion designs. Ferrarini's unique crocheted bikinis were copied by Ipek Irgit, the founder of Kiini, LLC,¹⁸¹ who sold mass-produced versions of Ferrarini's design.¹⁸² Despite clear evidence of copying, Ferrarini struggled to obtain legal recourse under U.S. copyright law, as the functional nature of bikinis prevented them from being classified as copyrightable works.¹⁸³ Ferrarini's case demonstrates how small designers can lose out when larger entities exploit their creative work.

¹⁷⁹ European Union Intellectual Property Office (EUIPO), *Design protection in the fashion industry: A guide for designers and businesses*, 2021, available at: <https://euipo.europa.eu/ohimportal/en/design-protection-fashion>

¹⁸⁰ Hemphill, C. Scott & Suk, Jeannie, "The Law, Culture, and Economics of Fashion", *Stanford Law Review*, Vol. 61, No. 5 (2009), pp. 1147–1199

¹⁸¹ *Ferrarini v. Irgit*, 21-597-cv (31.03.2022) <https://casetext.com/case/ferrarini-v-irgit-5> (accessed: 01.01.2025)

¹⁸² Elizabeth Paton, "Bikini or Not, Designer Fights for Recognition," *The New York Times*, 10 July 2018, available at: <https://www.nytimes.com/2018/07/10/fashion/kiini-bikini-lawsuit.html> (accessed: 01.01.2025)

¹⁸³ U.S. Copyright Office, *Copyright and Useful Articles*, Circular 33 (2021), available at: <https://www.copyright.gov/circs/circ33.pdf> (accessed: 01.01.2025)



Figure 8. Ferrarini’s bikini (left) & KIINI’s bikini (İpek Irgit) (right)

The case of *Andy Warhol Foundation v. Goldsmith* demonstrates the ongoing uncertainty in the legal treatment of appropriated art, particularly within the context of fashion. Such inconsistencies have led to a chilling effect on creativity. In this regard, the fashion industry—where reinterpretation and recontextualization are intrinsic—would benefit from a more coherent and liberal interpretation of the fair use doctrine based on the Richard Prince paintings.¹⁸⁴

¹⁸⁴ *Andy Warhol Foundation For The Visual Arts, Inc. v. Goldsmith Et Al.*, No. 21–869. (18.05. 2023) https://www.supremecourt.gov/opinions/22pdf/21-869_87ad.pdf (accessed: 01.01.2025)



Figure 9. Richard Prince and Painting of Andy Warhol

Transformative practices, which involve infusing existing works with new meaning, purpose, or aesthetic character, align with the constitutional purpose of copyright law: the promotion of progress in the arts. Nevertheless, fashion designers are often penalized for drawing inspiration from preexisting works, while visual artists working under similar frameworks are afforded broader protections. This disparity undermines innovation within the fashion industry and calls for legal reform to ensure consistent protection across creative fields.¹⁸⁵

The *Warhol v. Goldsmith* ruling clarified that transformative use must involve not only new expression but also a distinct purpose. Furthermore, the decision emphasized that

¹⁸⁵ Greene, Kevin Jerome. "Intellectual Property Expansion: The Good, the Bad, and the Right of Publicity." *Chapman Law Review*, vol. 11, no. 3, 2008

commercial intent can weigh heavily against a fair use finding, even when the work introduces new elements. This reasoning has significant implications for creators whose work is situated at the intersection of art and commerce.¹⁸⁶

As seen in the Warhol case and similar disputes involving Richard Prince, an inconsistent or overly rigid application of copyright doctrines may deter innovation. Given fashion's inherently derivative yet inventive nature, narrow interpretations of fair use risk suppressing the very creativity that copyright law seeks to incentivize.¹⁸⁷ Consequently, any proposed reform must strike a balance between protecting original creators and enabling fashion designers to participate in transformative artistic expression.

2. Innovation and Competition Balance

Fashion is inherently tied to innovation, driven by differentiation and flocking—two key behaviors in fashion trends.¹⁸⁸ Designers strive to create unique styles that differentiate them from others, while consumers often follow trends to stay in fashion. This dynamic creates a constant cycle of new designs and innovations. However, fast fashion companies, which quickly produce low-cost copies of high-end designs, disrupt this cycle by reducing the incentives for designers to innovate.¹⁸⁹

The authors argue that fashion trends are more than just exact copies; they are built on inspiration, homage, and interpretation. Designers often reference past trends and reinterpret classic styles, creating new designs that are part of larger fashion movements

¹⁸⁶ Ginsburg, Jane C. "Fair Use for Free, or Permitted but Paid?" *Columbia Journal of Law & the Arts*, vol. 29, no. 4, 2006

¹⁸⁷ Scafidi, Susan. *Who Owns Culture? Appropriation and Authenticity in American Law*. New Brunswick, NJ: Rutgers University Press, 2005

¹⁸⁸ Hemphill, Scott, Suk, p. 1151

¹⁸⁹ Raustiala, Kal / Christopher Sprigman: "The piracy paradox: Innovation and intellectual property in fashion design." *Virginia Law Review* 2006, p. 1687-1777.

without being direct copies.¹⁹⁰ This process drives innovation and pushes fashion forward. One of the key issues addressed is the impact of fast fashion on innovation. Fast-fashion brands, like Forever 21, produce cheap, rapidly-made versions of high-end designs, undermining the market for the originals.¹⁹¹ The authors differentiate between close copying (exact or near-exact replicas) and participation in trends (borrowing style elements without direct copying). While the latter encourages innovation, close copying can have harmful effects on small and independent designers, as it reduces their ability to profit from their original creations.¹⁹²

The piracy paradox—the idea that copying accelerates innovation by forcing designers to continuously create new trends—is explored.¹⁹³ Some scholars argue that copying can stimulate innovation by creating a faster fashion cycle. Still, Hemphill and Suk contend that close copying discourages innovation by reducing the economic incentive for designers to create new, original designs.¹⁹⁴ The authors propose tailored legal protection for fashion designs to address the challenges posed by fast fashion and unregulated copying.¹⁹⁵ This would involve copyright-like protection to original designs while allowing for loose copying and inspiration. The goal is to strike a balance between protecting designers' original creativity and allowing for the free flow of trends and ideas essential to fashion innovation.

¹⁹⁰ Barnett, Jonathan M., et al. "The fashion lottery: Cooperative innovation in stochastic markets." *The Journal of Legal Studies* 39.1, 2010 p. 159-200

¹⁹¹ Cline, Elizabeth L.: *Overdressed: The shockingly high cost of cheap fashion*. Penguin, 2012.

¹⁹² Lieber, Robert / Robert Weisberg: "Globalization, culture, and identities in crisis." *International Journal of Politics, Culture, and Society* 16, 2002, p. 273–296 <https://doi.org/10.1023/A:10205811147> (accessed:01.01.2025)

¹⁹³ Raustiala, Kal / Christopher Sprigman. "The piracy paradox revisited." *Stanford Law Review* (2009): 1201-1245

¹⁹⁴ Hemphill, C. Scott / Jeannie Suk. "The Fashion Originators' Guild of America: Self-help at the edge of IP and antitrust." *Intellectual Property at the Edge: The Contested Contours of IP* (2013): 159-186

¹⁹⁵ Eguchi, Hikarin / Peter J. Kahn: "Towards a More Rational Approach to Regulating Fashion Designs" *The University of Pennsylvania Law Review Online*, 165, 2016, p.11-28.

The proposed protection would target close copies substantially similar to the original design without preventing the broader participation in fashion trends that help drive the industry forward. This protection would ensure that independent and smaller designers are not disproportionately harmed by fast-fashion copyists while allowing larger fashion houses to compete in a healthy, innovation-driven market.¹⁹⁶

In the EU, design protection does not require a product to be purely aesthetic; both functional and aesthetic designs are eligible for protection as long as their function does not solely dictate their appearance.¹⁹⁷ As clothing serves the functional purpose of covering the body, it does not prevent protection under EU law.

In the US, the separability test determines whether a design element can be protected by copyright. For a design to qualify, its artistic aspects must be physically or conceptually separable from its utilitarian function.¹⁹⁸ However, the application of this test has been inconsistent, and most fashion designs fail to meet the standard. US courts have occasionally granted copyright protection to designs whose artistic elements are distinct from their function, such as novelty slippers or sculptural belt buckles, but these are rare.¹⁹⁹

3. Aethetical Value

Before 1995, the law sought the feature of carrying beauty for fine artworks, including fashion designs. Still, with the amendment made, this expression has been replaced by the expression of aesthetic value. The expression of aesthetic value is synonymous with bedii and

¹⁹⁶ King, M.: *Fashion industry and consumer protection*, Global Encyclopedia of Public Administration, Public Policy, and Governance 2017, p.1-8

¹⁹⁷ Tsai, Julie. "Fashioning protection: A note on the protection of fashion designs in the United States." *Lewis & Clark L. Rev.* 9 (2005): 447.

¹⁹⁸ Keyes, Benjamin. "Alive and well: The (still) ongoing debate surrounding conceptual separability in American copyright law." *Journal of Intellectual Property Law* 14 (2006): 2.

¹⁹⁹ Sahlsten, Janni. "I'm a little treepot: Conceptual separability and affording copyright protection to useful articles." *Florida Law Review* 67 (2015): p.941

is defined in the dictionary as “conforming to the criteria of beauty, pleasing the eye and being admired.” In the doctrine, there is a divergence regarding the meaning of the expression of the concept of aesthetic value. As also suggested in doctrine that, a fine art work should be unique, rare, beautiful, and pleasant.

On the other hand, it may result that these features limit the concept of aesthetics and reveal a personal evaluation. Therefore, such an approach does not comply with the aesthetic understanding of the majority, so it is not possible to benefit from copyright protection. In order to avoid this, it is the opinion advocated by Suluk and Nal that it is necessary to include the concept of arousing aesthetic feeling, which is the feature of the work sought in German law. In this way, the criterion of liking will not be sought in terms of aesthetics.²⁰⁰

According to this view, it will be prevented that the expression of aesthetic value is affected by periodical movements, especially the concept of fashion, which is our subject. The fashion industry, which has a high circulation rate, is also affected by periodic trends. Compared to the 20th century, which is the closest century to the current period, fashion can change rapidly, and the aesthetic elements met by the concept of taste can also change bodies. In this respect, the German law-based "arousing aesthetic feeling" view determined by Suluk and Nal on this subject is an appropriate assessment for the fashion industry.

A different opinion on this issue belongs to Öztan.²⁰¹ According to Öztan, it is not possible for fashion models, cut shapes, or sketches to be works of art. This is because these studies were put forward within the framework of the fashion trend of that period. However, he did not define the concept of "real fashion work," although he stated that it is not possible to evaluate productions that contain material beauty as works of art and that the law acts with

²⁰⁰ Nal / Suluk / Karasu, p. 62

²⁰¹ Öztan, Fırat: *Fikir ve Sanat Eserleri Hukuku*. Ankara: Turhan Kitabevi, 2008

the intention of protecting "real fashion works" and that the aforementioned cannot be real fashion works.²⁰² As the definition of the concept of real fashion work, it has been suggested that fashion design can be made in the form of a work that can be the first of many designs that begin cyclical understanding and affect each other.²⁰³

In terms of aesthetic meaning, it is defined as the artist-specific area remaining from the qualifications required by functionality. The functionality doctrine that comes to the fore here comes from the aesthetic value feature and protection of copyrights. One of the important decisions on this issue is *Cofemel v. G-Star Raw*²⁰⁴ case. In this decision, it is stated that the scope of copyright protection cannot be interpreted broadly in the case of applied arts.

*"Paradoxically, the removal of the aesthetics criterion entails a risk of the extension of copyright protection to even commonplace designs. The aesthetics criterion demonstrates a struggle not to disturb competition by monopolizing functional aspects of the work and by extending copyright protection to commonplace designs. Taking aesthetics out of copyright carries a considerable risk of upsetting this balance, which has been carefully, if not uniformly, established by the national laws throughout the 20th century."*²⁰⁵

Along with this statement, Güven argues that this issue can be resolved with the originality criterion sought for copyrights. The criterion of originality states that aesthetic protection can be achieved if it is applied by excluding applied artworks, provided that they are both functional and ordinary.²⁰⁶

²⁰² Öztan, p.140

²⁰³ Beyreli, p. 55

²⁰⁴ Case C-683/17 *Cofemel- Sociedade de Vestuário SA v. G-Star Raw* CV EU:C:2019:721 <https://curia.europa.eu/juris/liste.jsf?num=C-683/17>, 12.04.2022

²⁰⁵ Güven, Koray: "Eliminating 'Aesthetics' from Copyright Law: The Aftermath of *Cofemel*", *GRUR International*, 71(3), Oxford, 2022, p.225

²⁰⁶ Güven, p.225

While examining the artistic value, the absence of the “integrity of art” principle in French law at the time had a significant impact. This raised the question of whether fashion designs should be regarded as works of art or mere designs. In response to this question, lawyer Eugene Pouillet proposed the following view due to the confusion created by this issue:

"Every literary and artistic work created with aesthetic concern should be legally protected. The subjective distinction made by judges in this regard is not fair for legal protection. Such a distinction between design and copyright is meaningless, and decorators and fashion designers should also be entitled to copyright, just like painters and sculptors."

In this way, Eugene Pouillet established the principle of cumulative protection (cumul de protection par le droit d’auteur et le droit de la propriété industrielle) between copyright law and industrial property law. With the principle of cumulative protection, on March 11, 1902, the Law on Sculptures and Ornament Designs (loi du à propos des sculptures et dessins d’ornement) introduced the phrase “regardless of the purpose of the work presented.” Thus, it was accepted that even if produced in an industrial environment, a product could benefit from protection as a work of art.

In the new Copyright Law of March 11, 1957, producers were granted the right to benefit from both the 1909 law and the 1957 law. This allowed types not protected under the first law of 1909 to be protected under the second law of 1957. With this regulation, French law began to protect fashion designs as industrial design products and as intellectual and artistic works.

This development continued with the French Intellectual Property Code, Law No. 92-597, dated 1992 (Code de la Propriété Intellectuelle). It contains the following provisions related to fashion designs. Article L112-2, paragraph 12, recognizes the creations of seasonal

clothing and decoration industries as intellectual works. Seasonal clothing is defined as follows:

“The industry that continuously renews the shape of its products in response to fashion demand, particularly for the production of garments, fur, lingerie, embroidery, fashion, footwear, gloves, leather goods, fabrics specially designed for the creation of garments with striking novelty or high-fashion quality, fashion shoes, and fabrics for upholstery products.”

In the *Cofemel – Sociedade de Vestuário SA v G-Star Raw CV*. In this case²⁰⁷, the CJEU rejected the application of any aesthetic significance as a condition for copyright protection. The Court ruled that copyright protection should be based solely on the originality of the work, defined as the author’s own intellectual creation. The decision rejected the idea that copyright could be contingent on a work’s artistic level or aesthetic merit, as such criteria were deemed subjective and incompatible with EU law. The CJEU emphasized that the EU originality criterion applies equally to all types of works, including applied art, without requiring additional aesthetic considerations.

This judgment marked a departure from the traditional approach in several national jurisdictions, particularly those that used aesthetic criteria to limit copyright protection. This principle was reinforced in *Brompton* case, where the court once again emphasized that the CJEU’s originality standard excludes functional aspects from protection and focuses solely on the author's creative freedom. Due to its characteristic of wearable art, fashion designs have gained the status of artistic works.

²⁰⁷ *Cofemel Sociedade de Vestuário SA v G-Star Raw CV*., 12.09.2019 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62017CJ0683> (accessed: 01.01.2025)

B. Fixation Requirements

Fixation requirements present a unique challenge in the context of fashion design copyright protection. Unlike traditional copyrightable works such as books or paintings, fashion designs exist in multiple forms throughout their creation process - from initial sketches to patterns, prototypes, and final garments. The requirement that a work be "fixed in a tangible medium of expression" becomes legally complex when applied to fashion designs.²⁰⁸

In many jurisdictions, the fixation requirement can be satisfied through various forms of documentation, including technical drawings, detailed sketches, or photographs of the completed garment. However, the three-dimensional nature of fashion designs often creates uncertainty about whether two-dimensional representations adequately fulfill the fixation requirement. This becomes especially relevant when considering the protection of design elements that may only be apparent in the finished, three-dimensional form of the garment.²⁰⁹

Moreover, the evolving iterative development of fashion designs during the creative process raises questions about when fixation occurs and what version of the design receives protection.²¹⁰ A design may undergo multiple iterations and modifications before reaching its final form, creating potential gaps in protection during the development process. This uncertainty has led some legal scholars to argue for a more flexible interpretation of fixation requirements tailored to the fashion industry's unique characteristics.²¹¹

²⁰⁸ Buccafusco, Christopher / Fromer, Jeanne: Fashion's Function in Intellectual Property Law, *Notre Dame Law Review*, 2017, p. 76

²⁰⁹ Buccafusco / Fromer, p. 78

²¹⁰ Raustiala, Kal / Sprigman, Christopher: "The Piracy Paradox: Innovation and Intellectual Property in Fashion Design", *Virginia Law Review*, 2006

²¹¹ Scafidi, Susan: "Intellectual Property and Fashion Design", *Intellectual Property and Information Wealth*, 2006

III. PROTECTION of ECONOMIC RIGHTS

Economic rights constitute a fundamental pillar of copyright protection for fashion designers. These rights grant creators exclusive authority over the commercial exploitation of their designs, ensuring both legal control and economic return.²¹² In the context of fashion designs, economic rights encompass several key elements:

1. **Right of Reproduction:** Fashion designers have the exclusive right to make copies of their designs.²¹³ This prevents unauthorized parties from reproducing and selling counterfeit versions of the designer's work.
2. **Right of Distribution:** Designers have the right to control how their designs are distributed in the market.²¹⁴ This includes the right to sell, rent, or lease the designs.
3. **Right of Adaptation:** The right of adaptation allows designers to create derivative works based on their original designs.²¹⁵ This is particularly relevant in the fashion industry, where designs are often inspired by or adapted from existing works.
4. **Right of Public Display:** Fashion designers have the right to control the public display of their designs.²¹⁶ This is important for fashion shows, exhibitions, and other events showcasing designs to the public.

Protecting these rights is vital for maintaining both creative control and economic sustainability. In their absence, designers—especially independent or emerging talents—would face greater exposure to unauthorized copying and exploitation.²¹⁷

²¹² Jimenez, Guillerma C. / Kolsun, Barbara: *Fashion Law: A Guide for Designers, Fashion Executives, and Attorneys*, A&C Black, 2014

²¹³ 17 U.S.C. § 106(1)

²¹⁴ 17 U.S.C. § 106(3)

²¹⁵ 17 U.S.C. § 106(2)

²¹⁶ 17 U.S.C. § 106(5)

A notable case that highlights the importance of economic rights in fashion design is *L.A. Printex Industries, Inc. v. Aeropostale, Inc.*²¹⁸ In this case, L.A. Printex, a fabric printing company, sued Aeropostale for copyright infringement of its floral fabric design. The court found that it was in favor of L.A. Printex, recognizing its exclusive right to reproduce and distribute the design.

IV. PROTECTION of MORAL RIGHTS

Moral rights represent the personal and non-economic dimension of copyright protection, centering on the creator's individual relationship with their work. Unlike economic rights—which allow authors to commercially exploit their creations—moral rights preserve the identity and personality of the author within the work. They are particularly essential in the fashion industry, where reputation and aesthetic identity are central to a designer's success.

The two principal moral rights are the right of attribution and the right of integrity. The right of attribution ensures that designers are correctly credited for their work, while the right of integrity protects their creations from distortion, mutilation, or unauthorized modification that could harm their reputation or dilute their artistic message.²¹⁹ These rights are non-transferable in many jurisdictions, although they may sometimes be waived by contract under common law systems.²²⁰

The origins of moral rights lie in the civil law traditions of continental Europe. Article 6bis of the Berne Convention enshrines these rights in international law, requiring signatory states to

²¹⁷ Zerbo, Julie: “Protecting fashion designs: The Inadequacies of copyright and patent law”, *Journal of Intellectual Property Law & Practice*, 13(11), 2018, p. 867-875

²¹⁸ *L.A. Printex Industries, Inc. v. Aeropostale, Inc.*, 676 F.3d 841 (9th Cir. 2012) <https://casetext.com/case/la-printex-indus-inc-v-aeropostale-inc-2> (accessed: 01.01.2025)

²¹⁹ Ginsburg, p. 290-295

²²⁰ Trimble, Marketa, “Attribution and Authorship in the Fashion Industry,” *Loyola of Los Angeles International and Comparative Law Review*, Vol. 33, No. 2 (2011), pp. 175–195

offer minimum protection.²²¹ The United Kingdom incorporated moral rights into domestic law through the Copyright, Designs and Patents Act 1988, though these are applied more restrictively and subject to formal assertion.²²²

In the United States, moral rights have only limited recognition. The Visual Artists Rights Act (VARA) of 1990 introduced moral rights protections, but these apply exclusively to visual art and exclude fashion design. Courts have sporadically attempted to extend some form of moral protection to fashion via the doctrine of “conceptual separability,” which allows artistic elements to be protected if they can be distinguished from utilitarian aspects. However, the application of this doctrine has proven to be narrow and inconsistent.²²³

In contrast, European Union law, particularly through the CJEU’s evolving case law, increasingly recognizes the moral dimension of design. Cases such as *Painer*, *Infopaq*, and *Cofemel* have established that the originality of a work—required for copyright protection—must arise from the author’s own intellectual creation, reflecting their personality and free creative choices.²²⁴ These decisions suggest that fashion design, when meeting the originality criterion, should be considered an expressive work eligible for full copyright protection, including moral rights.

The *Yves Saint Laurent v. Ralph Lauren* case illustrates the practical importance of attribution. In this instance, the court upheld the moral right of attribution by requiring Ralph

²²¹ Berne Convention for the Protection of Literary and Artistic Works, art. 6bis, 1971 Paris Act

²²² Bainbridge, David I., *Intellectual Property*, Pearson Education, 10th ed., 2018, pp. 196–198

²²³ Scafidi, Susan, *Who Owns Culture? Appropriation and Authenticity in American Law*, Rutgers University Press, 2005, pp. 73–90

²²⁴ Case C-145/10, *Painer* [2011] ECLI:EU:C:2011:798; Case C-683/17, *Cofemel* [2019] ECLI:EU:C:2019:721

Lauren to credit Yves Saint Laurent for a closely imitated design.²²⁵ This decision emphasized that misattribution can constitute a reputational harm, even in commercialized fashion contexts.

In practice, the fashion industry often deviates from legal norms regarding authorship. Large fashion houses typically attribute entire collections to a single "star designer," even when a team of anonymous creatives is involved. This hierarchical approach conflicts with legal frameworks that uphold the integrity and authorship rights of all contributing individuals.²²⁶

Emerging practices in digital fashion offer a potential solution to these tensions. By facilitating transparent crediting of collaborative creators, digital platforms have introduced a more egalitarian model of authorship. These platforms often document design contributions across the creative process, creating an auditable chain of attribution. Such practices align more closely with the moral rights regime found in civil law systems, suggesting that digital fashion may lead the way in reshaping authorship norms in the industry.

Ultimately, moral rights are indispensable for preserving artistic integrity in fashion. When paired with economic rights, they form a dual structure of protection that allows designers to not only benefit financially but also maintain authorship recognition and control over the presentation of their work. This duality is essential in safeguarding the creative dignity of fashion designers in an increasingly global and commercialized marketplace.

²²⁵ Vassilaki, Katerina: *Fashion Law: A Guide for Designers, Fashion Executives, and Attorneys*, Bloomsbury, 2020, pp. 147–149

²²⁶ Akanegbu, Anuli: *Fashion's Moral Dilemma: Exploring How a Lack of Moral Rights in the United States Disproportionality Harms Emerging Fashion Designers*, Washington DC, 2009

V. PROBLEMS ENCOUNTERED IN PRACTICE

Fashion designs, in order to be eligible for copyright or industrial design protection, must meet originality and aesthetic standards. However, the interpretation of these standards is often ambiguous, creating significant challenges for designers. This issue is exacerbated by the prevalence of counterfeit products and unauthorized use of fashion designs on digital platforms and social media, where enforcement is limited and often delayed.²²⁷

The problems encountered in the legal protection of fashion designs are quite diverse, and this causes designers to have difficulty protecting their works. In response to the lack of protection, the Innovative Design Protection Act (IDPA)²²⁸ was proposed in 2012 to extend copyright protection to fashion designs. This bill aimed to grant copyright protection for three years to original fashion designs that are not substantially identical to existing designs. While the IDPA was intended to curb counterfeiting and design infringement, the debate continues on whether such protection would benefit or harm the U.S. fashion industry. Some argue that it might contain paradox.²²⁹

A. Structural Weaknesses in Copyright Protection

Despite the global significance of fashion as a creative industry, copyright laws across jurisdictions reveal substantial differences in their ability to protect fashion designs. The United States exemplifies a more restrictive approach: under the "useful articles" doctrine, fashion designs are considered primarily functional and thus excluded from copyright protection unless they exhibit artistic elements that are conceptually and physically separable from their utilitarian features. This limitation was reaffirmed in *Star Athletica v. Varsity*

²²⁷ Scafidi, p.121

²²⁸ 3523 the Innovative Design Protection Act (IDPA) <https://www.congress.gov/bill/112th-congress/senate-bill/3523/text> (accessed: 23.12.2024)

²²⁹ Monseau, 2023, p.10

Brands, which established a high threshold that most garments cannot satisfy.²³⁰ In contrast, civil law systems such as France offer broader coverage under the cumulative protection principle, where a fashion design may simultaneously benefit from both copyright and industrial design law—without requiring separability between form and function.²³¹

The disparity becomes more pronounced when considering practical access to protection mechanisms. While design patents exist in both legal systems, obtaining them in the United States is often costly and time-consuming, frequently exceeding the commercial lifespan of the design. In France, however, the existence of pre-registered design databases and the ability to rely on copyright protection from the moment of creation provides designers with more immediate legal remedies. Furthermore, French courts have interpreted originality more generously, enabling even short-lived seasonal designs to qualify as works of authorship³. This comparative leniency contrasts with the U.S. system, where protection remains elusive for many contemporary designs, particularly those that do not exhibit overt artistic creativity independent of function.²³²

B. Procedural and Economic Challenges

Even when legal remedies are available, designers—particularly independent or emerging ones—face substantial barriers to enforcement. Legal proceedings are expensive, time-consuming, and require significant evidence, often including expert testimony to establish originality and prove infringement. Moreover, the evidentiary burden increases if the design has circulated publicly or if elements are inspired by common historical styles.²³³

²³⁰ *Star Athletica, LLC v. Varsity Brands, Inc.*, 580 U.S.

²³¹ Ginsburg, p. 158

²³² Scafidi, p. 15

²³³ Trimble, Marketa, “Secondary Liability and Fashion Infringement,” *Loyola Law Review*, 2013

These procedural hurdles discourage litigation and facilitate continued infringement by larger, well-funded fashion houses.

C. Lack of International Harmonization

Another critical problem is the lack of harmonized international protection. Rights granted in one jurisdiction typically do not extend beyond national borders. Designers must pursue separate applications in each country, a process that is both financially and administratively burdensome. For fast-moving industries like fashion, this leads to substantial protection gaps.²³⁴ Furthermore, the variation in how different legal systems interpret originality, functionality, and aesthetic value creates legal uncertainty and inconsistent enforcement.

The globalization of fashion through online marketplaces has outpaced the ability of domestic legal systems to adapt. In this context, international agreements and comparative harmonization efforts—particularly under WIPO or the TRIPS Agreement—may serve as potential vehicles for more coherent and effective legal protection.

²³⁴ WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, Report, 2019.

CONCLUSION

The legal protection of fashion designs significantly varies across jurisdictions such as the United States, European Union countries, the United Kingdom, and Türkiye. While all recognize the creative and economic value of fashion, the scope and mechanisms of protection diverge due to different legal traditions, approaches to functionality, and market structures.

In the United States, fashion design protection remains limited. Copyright protection is restricted to separable artistic elements, excluding most functional features. Design patents, though available, are often impractical due to lengthy and costly registration procedures. Trade dress protection requires the design to have acquired distinctiveness, which is a substantial hurdle for emerging designers. In contrast, countries such as France and Italy offer broader legal safeguards. France allows cumulative protection through both copyright and design law, and its parasitism doctrine enables enforcement even in the absence of consumer confusion. Italy, while following a similar model, adds the requirement of artistic value to originality, introducing interpretative uncertainty. Türkiye adopts a hybrid model aligned with the EU, offering copyright protection for applied arts, design registration, and unfair competition remedies. The United Kingdom, however, applies a narrower standard, limiting copyright protection to “artistic works” and enforcing a “clearly different” test that weakens the designer’s enforcement power.

The U.S. remains an outlier in its reluctance to grant comprehensive copyright protection to fashion designs. Legal tools available—such as design patents and trade dress—are either inaccessible to newcomers or unsuitable for fast-paced market cycles. In contrast, the EU model, especially in France and Italy, provides designers with a versatile and practical

system. The inclusion of applied arts in copyright protection and the recognition of moral and economic rights allow more holistic coverage. Türkiye largely follows this model, albeit with some procedural limitations. The UK's system, while offering some design rights, fails to fully address the practical needs of the fashion sector due to its limited scope and lack of strong unfair competition tools. A more harmonized legal framework is necessary to reduce the disparities in protection and enforcement globally. U.S. lawmakers could draw inspiration from the EU's cumulative protection model. Implementing targeted legislation that recognizes the hybrid nature of fashion designs—both artistic and functional—would enhance the legal certainty for designers.

Legal reform should also include wider recognition of moral rights such as attribution and integrity, which are essential for protecting the personal and artistic connection between designers and their works. The collaborative nature of fashion design also necessitates updated definitions of authorship that better reflect studio and collective creation environments. The globalization of the fashion industry has made it increasingly important to establish consistent, cross-border protection standards. Digital platforms enable rapid dissemination and copying of designs across jurisdictions, yet the existing legal protections remain fragmented. International coordination through treaties or model frameworks could help standardize basic protection thresholds, while allowing flexibility for local legal cultures.

Protecting fashion designs is no longer just a matter of safeguarding luxury or prestige; it is essential for supporting innovation, cultural expression, and the sustainability of creative industries. Ensuring accessible, timely, and meaningful legal protection—especially for emerging designers—is vital for the long-term vitality of global fashion. The legal system must evolve in step with fashion itself: dynamic, expressive, and always ahead of the curve.

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ÖZET

Bu tez, moda tasarımlarının koruma mekanizmalarını, Amerika Birleşik Devletleri, Avrupa Birliği (özellikle Fransa ve İtalya), Birleşik Krallık ve Türkiye'yi kapsayan çeşitli yargı sistemlerini karşılaştırarak incelemektedir. Çalışma, moda tasarımlarının nasıl korunduğu konusunda önemli farklılıklar ortaya koymakta ve tasarımların hem işlevsel hem de estetik yönlerinin farklı düzeylerde yasal koruma altında olduğunu göstermektedir.

Amerika Birleşik Devletleri'nde moda tasarımları, telif hakkı yasası kapsamında sınırlı koruma görmekte ve kıyafetlerin şekli veya kesimi gibi işlevsel unsurlar kapsam dışı bırakılmakta, bu da tasarımcıları taklide karşı savunmasız bırakmaktadır. Tasarım patentleri ve ticari görünüm bazı korumalar sağlasa da, uzun ve maliyetli süreçler bunları hızlı tempolu moda endüstrisinde pratik olmaktan çıkarmaktadır. Tasarım Korsanlığını Önleme Yasası gibi özel mevzuat girişimlerine rağmen, ABD'li tasarımcılar yaratımlarını koruma konusunda zorluklarla karşılaşmaya devam etmektedir.

Buna karşılık, Fransa ve İtalya gibi Avrupa ülkeleri daha güçlü korumalar sunmaktadır. Fransa'nın "sanat birliği" yaklaşımı, moda tasarımlarının hem telif hakkı hem de tasarım hukuku korumalarından yararlanmasına olanak tanımaktadır. Ayrıca, Fransa'nın parazitizm yasası, tüketici karışıklığı olmasa bile basit taklide karşı benzersiz bir koruma katmanı sağlayarak, tasarımcılara haksız rekabete karşı geniş yasal başvuru imkanları sunmaktadır. İtalya da benzer bir çerçeveyi takip etmekte, ancak moda tasarımlarının koruma almaya hak kazanması için sanatsal değer standartlarını karşılaması gerektiği ek şartını getirmektedir.

Birleşik Krallık daha kısıtlayıcı bir tablo sunmakta, telif hakkı kapsamında yalnızca "sanatsal eserler" korunmakta ve bu da çoğu moda tasarımını kapsamlı koruma dışında bırakmaktadır. Tasarım hakları mevcut olsa da, işlevsel unsurlara uzanmamakta ve "açıkça

farklı" standardı ihlal iddiasını kanıtlamayı zorlaştırmaktadır. Ayrıca, Birleşik Krallık'ta Fransa'nın parazitizm doktrini gibi güçlü haksız rekabet yasaları bulunmaması, taklit ile karşılaşan tasarımcıların kullanabileceği araçları sınırlamaktadır.

Türkiye daha çok Avrupa standartlarına yakın durarak, moda tasarımlarını uygulamalı sanatlar olarak telif hakkı yoluyla ve ayrıca tasarım tescili ve haksız rekabet yasaları aracılığıyla koruma sağlamaktadır. Ancak İtalya gibi Türkiye de haksız rekabet iddialarında tüketici karışıklığı kanıtı gerektirmekte, bu da yasal çerçevesini Fransa'ninkine göre biraz daha kısıtlayıcı hale getirmektedir.

Tez, ABD'nin moda tasarımı koruması konusunda bir istisna olmaya devam ettiği ve Avrupa ve Türkiye'de bulunan daha kapsamlı yaklaşımlara kıyasla sınırlı ve parçalı araçlar sunduğu sonucuna varmaktadır. Moda endüstrisi, özellikle tasarımların kolayca kopyalanıp küresel olarak dağıtılabildiği dijital çağda gelişmeye devam ederken, daha tek tip ve güçlü koruma mekanizmalarına duyulan ihtiyaç giderek belirginleşmektedir. Küresel moda tasarımı korumasının uyumlu hale getirilmesi, dünya çapındaki tasarımcıların yararına olacak şekilde daha fazla yaratıcılığı ve yeniliği teşvik edebilir.

Anahtar Kelimeler: moda tasarımları, marka, patent, tasarım, telif hakları, ekonomik haklar, manevi haklar, estetik değer, yaratıcılık dengesi

ABSTRACT

This thesis explores the protection mechanisms for fashion designs, comparing legal frameworks across multiple jurisdictions, including the United States, the European Union (specifically France and Italy), the United Kingdom, and Türkiye. The study reveals substantial differences in how fashion designs are protected, with varying levels of legal coverage for both functional and aesthetic aspects of designs.

In the United States, fashion designs receive limited protection under copyright law, which excludes functional elements like the shape or cut of clothing, leaving designers vulnerable to imitation. Design patents and trade dress provide some protection, but the lengthy and costly processes make them impractical in the fast-paced fashion industry. Despite efforts to introduce specialized legislation, such as the Design Piracy Prohibition Act, US designers continue to face challenges in safeguarding their creations.

In contrast, European countries like France and Italy offer more robust protections. France's "unity of art" approach allows fashion designs to benefit from both copyright and design law protections. In addition, France's parasitism law provides a unique layer of protection against mere imitation, even without consumer confusion, offering designers broad legal recourse against unfair competition. Italy also follows a similar framework, with the additional requirement that fashion designs must meet artistic value standards to qualify for protection.

The United Kingdom presents a more restrictive landscape, where only "artistic works" are protected under copyright, excluding most fashion designs from comprehensive coverage. Design rights exist but do not extend to functional elements, and the "clearly different" standard makes it difficult to prove infringement. Additionally, the UK lacks strong

unfair competition laws like France's parasitism doctrine, which limits the tools available to designers facing imitation.

Turkiye aligns more closely with European standards, protecting fashion designs through copyright as applied arts, as well as through design registration and unfair competition laws. However, like Italy, Turkiye requires evidence of consumer confusion in unfair competition claims, making its legal framework slightly more restrictive than France's.

The thesis concludes that the US remains an outlier in fashion design protection, offering limited and fragmented tools compared to the more comprehensive approaches found in Europe and Turkiye. As the fashion industry continues to evolve, particularly in the digital age where designs can be easily copied and distributed globally, the need for more uniform and robust protection mechanisms becomes increasingly evident. Harmonizing global fashion design protection could foster greater creativity and innovation, benefiting designers worldwide.

Key Words: fashion design, trademark, patent, design, copyright, economic rights, moral right, aesthetical value, creativity balance