

The Protection Dilemma and Institutional Reconstruction of Copyright in Fashion Design under the Fast Fashion Model

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Abstract. The rapid replication and iteration model of the fast fashion industry poses severe challenges to the traditional copyright protection system, leading to situations where original designs may be copied before obtaining legal protection. Under the fast fashion model, copyright infringement in fashion design has become increasingly complex, with diverse forms of plagiarism and high litigation costs, severely impacting the survival and development of original brands, innovation in the apparel industry, and the dissemination of fashion culture. The current Copyright Law exhibits significant deficiencies in addressing the unique characteristics of fast fashion, including ambiguities in defining protected subject matter, vague originality standards, ineffective infringement determination rules, and lagging relief mechanisms. Therefore, it is necessary to reconstruct the copyright protection system by introducing independent subject matter status for fashion designs, adopting a tiered protection framework, incorporating the "design space theory," and improving dynamic relief mechanisms. These measures aim to establish a copyright protection system that aligns with the rapid development of the fashion industry.

Keywords: Fast Fashion Model; Fashion Design; Copyright; Institutional Reconstruction.

1. Introduction

The fashion industry has long been central to design innovation. In the latter half of the 20th century, the post-war economic recovery in Europe and America spurred a surge in consumer demand. High-end custom fashion, with its prohibitive costs, became incompatible with socio-economic conditions, leading to the rise of ready-to-wear (RTW) production. The subsequent proliferation of synthetic fibers further facilitated mass production. Fast fashion brands, leveraging rapid supply chains and affordable pricing, quickly captured market share. While these brands have matured and integrated into daily life, their ultra-short production cycles, frequent product launches, and "micro-innovation" ("Micro innovation" mainly refers to that fast fashion brands only make some minor innovations and improvements on the basis of retaining the basic style, structure and function of the original clothing.) business models have severely challenged traditional copyright protection frameworks for fashion designs.

First, the inherent contradiction between the "speed" of fast fashion and the "slowness" of copyright protection is evident. Industry giants like Zara and H&M can complete the design-to-shelf process in as little as seven days, while copyright registration often takes weeks or longer. This lag allows original designs to be copied and marketed before legal protection is secured. Second, the sheer volume of new products exacerbates enforcement challenges. With fast fashion brands releasing tens of thousands of designs annually, conducting originality reviews for each item would impose unsustainable time and economic costs. Moreover, the "micro-innovation" strategy commonly employed by fast fashion brands blurs the legal standard for "substantial similarity," enabling imitative designs to evade liability. The root of this conflict lies in the misalignment between traditional copyright systems—which require "originality" and formal registration—and the fast fashion model, which thrives on rapid replication and iteration. To resolve this dilemma, the legal community must explore new protection mechanisms tailored to industry characteristics, balancing innovation incentives with market order maintenance.

2. Protection Challenges for Fashion Design Copyrights under the Fast Fashion Model

"The clothing industry is an industry with significant international competitive advantages in China" [1], and its healthy, orderly, legal and compliant development should be ensured. However, with the rapid development of the fast fashion industry, the copyright problem in the field of fashion design has become increasingly prominent. From the current industry situation, the fast fashion model has brought many thorny problems to the copyright protection of fashion design. In the fast fashion mode, the form of infringement is no longer limited to the traditional simple plagiarism, but presents a diversified and complex situation. At the same time, the consequences of infringement have become more and more serious, not only damaging the interests of original designers and brands at the economic level, but also causing incalculable damage to the innovation ecology of the fashion industry in the cultural dimension.

2.1 The Complexity of Infringement Forms of Clothing Design Copyright under the Fast Fashion Mode

Under the fast fashion mode, copyright infringement is very diverse and complex. These fast fashion brands take rapid imitation of high-end brand design as the core business model, and quickly introduce popular elements to the market through a low-cost and efficient way. This mode leads to a large number of designs being collaged, reorganized, or even copied directly, and at the same time, more problems to be solved will emerge. In 2016, Los Angeles illustrator Tuesday bassen publicly accused Zara of plagiarizing his original works on twitter, causing widespread concern. The 27-year-old artist showed several groups of contrast pictures, which showed that Zara's products directly appropriated her unique illustrative elements. The composition and style were almost the same, just a simple reorganization. Zara's response was chilling after the incident. The brand side not only claimed that these designs were "too common", but its lawyers also questioned the authenticity of bassen's copyright. This arrogant attitude exposed the hidden rule of the fast fashion industry: taking advantage of the weakness of the high cost of rights protection of independent creators to blatantly steal ideas. (See "Zara was boycotted by designers because of plagiarism, but is it afraid of taking infringement fees as copyright fees", <https://www.huxiu.com/article/157918.html> The last visit date is April 10, 2025.)

There are numerous similar cases, which deeply reflect the complexity trend of the form of copyright infringement of fashion design under the fast fashion mode. First, fast fashion brands only simplify the original works (such as reducing lines and adjusting colors), but retain the core composition and style features. This kind of plagiarism is difficult to meet the "substantial similarity" standard of copyright law due to "fine-tuning design". Second, the infringement of version transformation is also common. Fast fashion brands will fine tune the original clothing version, and modify the neckline radian, skirt length, waist line position, etc. on the surface, the version is different, but in fact, the core contour and structure are still based on the original design, and consumers' wearing effect is similar, which damages the original designer's version innovation rights and interests. Moreover, the litigation cost and time cost of original brands are huge, and it is difficult to safeguard rights. In the case of bassen v. Zara, even though Zara was eventually removed from the shelves due to public opinion, the event did not have a significant financial impact on Zara.

2.2 Serious Consequences of Copyright Infringement of Fashion Design under Fast Fashion Mode

In the wave of rapid development of the fast fashion industry, the phenomenon of copyright infringement of fashion design frequently appears, and its consequences are evolving towards a serious direction, which has had a far-reaching negative impact in many key areas. First, induce the survival crisis of original brands. For original designers and brands, infringement directly caused huge economic losses. The original brand has invested a lot of money in the establishment of design

team, market research, fabric R&D, production and other links, hoping to obtain returns in the market through unique design. However, the infringing products of fast fashion brands have seized a large number of market shares with the advantages of low price and rapid listing. As a result, the sales of original brands have fallen sharply, the initial investment is difficult to recover, and may even face a survival crisis due to the rupture of the capital chain. Second, restrain the development of clothing and related industries. The healthy development of the whole fashion industry depends on a perfect intellectual property protection system. When the infringement is not effectively curbed, the willingness of capital to invest in original design is reduced, and the vitality of industrial innovation is insufficient. This not only affects the scale expansion, upgrading and transformation of the fashion industry itself, but also affects upstream and downstream related industries such as textile, printing and dyeing, and auxiliary material manufacturing. For example, due to the reduction of original clothing design and the decline of textile enterprises' orders, they had to cut production capacity and lay off workers, which had a chain negative effect on regional economic development. Third, it hinders the innovative development of fashion culture. Original design is the core driving force for the inheritance and innovation of fashion culture. Every work that embodies the painstaking efforts and creativity of designers is a unique expression of current social trends and cultural aesthetics. When the infringement is rampant, the enthusiasm of the original designer suffers a heavy blow. The design research and development that they spend a lot of time and energy on may be copied and spread by fast fashion brands in an instant by means of infringement. This makes designers look forward and backward when creating, and dare not venture into innovation. In the long run, the source of fashion culture innovation will gradually dry up, and the whole fashion field will fall into the dilemma of lack of creativity and serious homogenization of works.

3. The Institutional Dilemma of Clothing Design Copyright Protection under The Fast Fashion Mode

At present, the fast fashion industry has occupied an important position in the global clothing market with its efficient replication ability and flexible market strategy. However, fashion design has its unique attributes, from creative conception to finished product presentation, the process is complex and diverse. The current copyright law has exposed a series of defects in responding to the fast fashion tide, and it is difficult to accurately adapt whether it is the object identification, the originality standard, or the infringement judgment rules and relief mechanism.

3.1 Obstacles in Identifying the Object of Costume Design Copyright

There are obvious obstacles in the identification of the object of fashion design in the current copyright law. The separation test method of aesthetic and functional is difficult to operate in practice. There are obstacles in the identification of the object of fashion design in the current copyright law, mainly reflected in the dispute over whether fashion design belongs to "art works" or "practical art works". Art works emphasize artistry, while product design drawings pay more attention to functionality. [2] However, fashion design is more like a combination, which not only contains artistic expression, but also has practical functions. Therefore, the court is easy to have differences in the determination, resulting in inconsistent judgments.

Taking the analogy problem in the "Lego building block case" as an example, the "Lego building block case" (See the civil judgment (2013) yzmcy No. 7 of Beijing first intermediate people's court and (2014) gmzzz No. 3451 of Beijing Higher People's court.) involves whether Lego building blocks are protected by copyright law. The court held that Lego blocks were both artistic and practical, and finally classified them as "practical works of art" and protected them. However, this determination raises the analogy problem. The first is the distinction between artistry and functionality. The artistry of Lego building blocks is reflected in their appearance design, while the functionality lies in their splicing function. The Court emphasized artistry in its judgment, but how to distinguish the two is still controversial. Secondly, by analogy to the dilemma faced by fashion design, fashion design is

also artistic and practical, but the artistic part is difficult to be completely separated from the functional part. If we refer to Lego building block case, the artistic part of fashion design may be protected, but how to define the scope of protection is still unclear. Although the Lego building block case provides a reference for the protection of practical art works, the problem of distinguishing artistry from functionality remains unresolved, leading to uncertainty in the analogy to fashion design.

3.2 The Originality Standard of Fashion Design is Fuzzy

The originality standard of fashion design is vague, which makes it difficult to accurately judge in judicial practice. Among them, the threshold dispute about the "creative height" of fashion design is more prominent. The core issue is: does the ready to wear design need to reach the artistic level of art works to be protected by copyright law? There are great differences in theory and Practice on this issue. According to the copyright law of the people's Republic of China, the premise for the protection of works is to have "originality", that is, to create independently and reflect certain intellectual creation. However, the law does not clearly stipulate the specific standard of "creative height", especially for works such as fashion design that contain both artistry (such as color, pattern and shape) and practicality (such as wearing function and comfort). In judicial practice, the court often requires the artistic part of fashion design to reach a certain height before it can be regarded as "art works" or "practical art works" and protected.

The view that supports the "high creative height" standard holds that fashion design is essentially a product design drawing. (See the people's Court of Nansha District, Guangzhou City, Guangdong Province (2013) Sui Nan FA Zhi min Chu Zi No. 423.) [3-5] If the protection threshold is too low, a large number of ordinary designs may flow into the scope of copyright protection and weaken the seriousness of the law. Some courts believe that fashion design must reach the artistic level of "art works", that is, it has high aesthetic value and originality, in order to be protected. In some cases, the court held that the design of ordinary ready-made clothes lacked sufficient artistry, so it was not protected. The view against the "high creative height" standard holds that the artistic parts (such as patterns and shapes) in fashion design should be protected, and the protection threshold should not be raised because of its combination with practicality. (See Chongqing pilot Free Trade Zone People's Court (2021) Yu 0192 min Chu No. 994; People's Court of Longgang District, Shenzhen City, Guangdong Province (2021) Yue 0307 Mingchu No. 12478; People's Court of Liwan District, Guangzhou City, Guangdong Province (2021) Yue 0103 min Chu No. 7161.) [6-8] Too high creative height requirements may hinder innovation, which is not conducive to the development of fashion design industry. Some courts also adopt relatively loose standards, holding that as long as the artistic part of fashion design is original, it can be protected without reaching the artistic level of art works.

Internationally, the protection of fashion design in the United States copyright law is relatively strict, which usually requires that the design has "separable artistry", that is, the artistry can exist independently of practicality. Ordinary ready to wear design is difficult to meet this standard. The protection of fashion design in the European Union is relatively loose. Many countries regard fashion design as "practical works of art", which can be protected as long as it is original and does not need to reach the height of art works. France has a low threshold for the protection of fashion design, emphasizing respect for designer creativity. Even ordinary ready-made clothing design can be protected by copyright law. At present, the trend of judicial practice in China is also gradually relaxed. With the rapid development of the fashion design industry, some courts have begun to adopt relatively loose standards. As long as the artistic part of fashion design is original, it can be protected. However, there are still differences. Due to the lack of clear legal provisions, the recognition standards of "creative height" in different courts are still inconsistent, leading to different judgments in similar cases.

3.3 Failure of the Current Copyright Infringement Judgment Rules

The current copyright infringement judgment rules are inadequate under the fast fashion mode, and there are obvious failures in dealing with the "details plagiarism" problem of fast fashion,

especially the limitations of consumer observation method and professional comparison method in practice. Consumer observation method refers to judging whether the alleged infringing product is substantially similar to the original design from the perspective of ordinary consumers. However, fast fashion brands often make minor changes to the details of original designs (such as adjusting colors, patterns or tailoring), making it difficult for consumers to detect their plagiarism. The consumer observation method relies on the overall impression, and it is difficult to identify such "details plagiarism".

If a fast fashion brand copied a dress of a high-end brand, but changed the fabric from silk to polyester, or changed the pattern from flowers to geometry. Consumers may think the two are different, but in fact, the latter obviously draws on the design essence of the former. Moreover, ordinary consumers lack professional knowledge of the details and originality of the design, and are easily attracted by the low price and popularity of fast fashion brands, ignoring their copying behavior. This also proves that the consumer observation method can not effectively deal with the infringement behavior of fast fashion brands by changing the details. Professional comparison method refers to the detailed comparison of designs from the perspective of professionals to determine whether there is plagiarism. Common methods include the "three-step test" (that is, the similarity, contact possibility and originality of the comparison design). [9] However, fashion design has a rapidly changing fashion cycle, and professional comparison methods often require a long time for detailed comparison, which is difficult to adapt to the fast pace of the fashion industry. For example, after a high-end brand launched a popular design, the fast fashion brand quickly copied and introduced to the market within a few weeks. When the professional comparison method completes the infringement determination, the design may be outdated. This largely reflects the lag of the professional comparison method, which makes it difficult to effectively deal with the rapid replication and dissemination of the fast fashion model. The professional comparison method may pay too much attention to the technical details and ignore the overall originality of the design.

3.4 The Current Copyright Infringement Relief Mechanism Lags Behind

In the fast fashion mode, the lag of the current copyright infringement relief mechanism is increasingly prominent. On the one hand, there is a serious imbalance between the legal compensation ceiling and the infringement income. According to the copyright law of the people's Republic of China, the legal compensation limit for copyright infringement is 5million yuan. This standard aims to provide certain relief for the obligee, but its actual effect is limited in the fast fashion mode. Because fast fashion brands can often obtain huge profits through mass production and sales of infringing products. Often, after the clothes designed by high-end brands are copied by fast fashion brands, the sales of infringing products reach hundreds of millions of yuan, while high-end brands only receive 5million yuan of compensation through litigation. There is a serious imbalance between the legal compensation limit and the infringement income, resulting in extremely low infringement costs, which is difficult to form an effective deterrent to fast fashion brands.

On the other hand, the temporary injunction system is idling in the protection of seasonal clothing. Temporary injunction is a temporary relief measure that the court orders the infringer to stop the infringement immediately according to the application of the obligee during the trial of the case. As we all know, the life cycle of seasonal clothing is short, usually only a few months. However, the application and trial cycle of temporary injunction is long, and it often takes several months. When the ban comes into effect, the infringing products may be out of season and lose market value. For example, a high-end brand launched a trench coat design in spring, which was copied by fast fashion brands and quickly listed. High end brands applied for temporary injunction, but the trial cycle was as long as 3 months. By the time the ban came into effect, spring had passed and the infringing products had been removed from the shelves. Therefore, the lag of the temporary injunction system makes it difficult to play a practical role in the protection of seasonal clothing.

4. Reconstruction of the Protection System of Fashion Design Copyright under the Fast Fashion Mode

Fast fashion brands quickly occupy market share by virtue of the advantages of quickly capturing trends, efficient production and distribution. However, some of the designs are suspected of plagiarizing and imitating original works, which seriously infringes the legitimate rights and interests of original designers. The traditional clothing design copyright protection system in the face of the impact of fast fashion mode, gradually revealed its limitations, unable to timely and effectively make up for the loss of the original. Therefore, it is necessary to reconstruct the clothing design copyright protection system under the fast fashion mode from the dimensions of object, originality, infringement judgment and relief mechanism, so as to promote the healthy development of the clothing design industry.

4.1 Add Clothing Design as an Independent Object

Fashion design is not clearly listed as an independent protection object in the copyright law, and is usually classified as "practical works of art" or "works of art", resulting in vague protection scope and different identification standards. However, "fashion design is an organic combination of style design, structure design and process design" [10], its originality and commercial value need to be specially protected, so adding "fashion design" as an independent object will help to clarify its legal status and protection scope. Referring to the legislative model of "audio-visual works", audio-visual works are clearly listed as independent objects in the revision of the copyright law, and the specific scope of protection and content of rights are specified. This model provides a reference for the legislation of fashion design. Add "fashion design" as an independent object in the copyright law to clarify its definition and protection scope. Stipulate the originality standard of fashion design, and emphasize the protectability of its artistic expression. Clarify the exclusive rights of the right holder of fashion design, including the right to copy, the right to distribute, the right to adapt, etc.

4.2 Establishing the Identification Standard of Originality Stratification

"Originality is the essential attribute of copyright works"[11], but the current law on the originality of fashion design is vague, and does not distinguish the originality degree of different design elements, resulting in unclear protection scope. Clothing design contains many elements (such as basic elements, combination design, and overall style), and its originality is different, so it needs to be identified by layers. For example, it can be built in the following way. The first layer: basic element - refers to a single design element, such as color, pattern, fabric, etc. The originality of basic elements is low, and they are generally not protected by copyright law, unless they are highly unique (such as iconic patterns); Layer 2: combination design refers to the combination of multiple basic elements, such as the matching of color and pattern, and the combination of tailoring and fabric. The combination design needs to reflect certain creative and aesthetic value in order to be protected; The third layer: the overall style refers to the overall visual effect and style of the design, such as minimalism, retro style, etc. The overall style needs to have significant aesthetic uniqueness and market recognition to be protected.

4.3 Infringement Judgment based on Design Space

Design space refers to the space range that designers can freely play when designing a certain type of products. The larger the design space, the higher the designer's creative freedom; The smaller the design space, the lower the designer's creative freedom. The concept of design space has been applied in the field of industrial design (such as apple v. Samsung) to determine whether the alleged infringing design falls within the protection scope of the original design. Some elements in fashion design (such as color, pattern, cutting) are limited by functionality or fashion trends, and the design space is small. If the infringement is judged only from the appearance similarity, it may lead to miscarriage of justice. Then the concept of design space can also be applied in fashion design. In the determination of

infringement, the size of design space in the design field involved should be evaluated first. For example, for thermal underwear design, due to functional limitations, the design space is small; For evening dress design, the design space is large. If the design space is large, it needs higher similarity to identify infringement; If the design space is small, the low similarity may constitute infringement.

4.4 Improve the Dynamic Tort Relief Mechanism

First, optimize the protection period of works. In the current copyright law, the term of protection for works is the author's life plus 50 years, which is difficult to adapt to the fashion cycle of rapid changes in fashion design. A fixed protection period may lead to excessive or insufficient protection. The dynamic protection period system can flexibly adjust the protection period according to the designed market life cycle. Therefore, a floating period of 1-3 years can be set according to the market cycle of the product. The protection period is calculated from the date of the first disclosure of the design. The obligee can apply for extension or reduction of the protection period according to the market demand. For designs with long-term market value (such as classic styles), you can apply for extension of the protection period; For the design with short popular cycle, the protection period can be automatically shortened.

Second, improve the rules of tort proof. In copyright infringement cases, it is often difficult for the right holder to prove the actual profits of the infringer, resulting in the low amount of compensation and unable to make up for the losses. In the current situation of the prevalence of fast fashion mode, fast fashion brands have made huge profits through mass production and sales of infringing products, but it is difficult for the obligee to obtain reasonable compensation due to the difficulty in providing evidence. The rule of "presumption of infringement income" is that in infringement cases, if the obligee can prove the existence of the infringement, but it is difficult to prove the actual profit of the infringer, the court can presume that the profit of the infringer is the loss of the obligee, and require the infringer to provide financial data to refute. This rule has been applied in the judicial interpretation of the patent law (See paragraph 2 , Article 20, the provisions of the Supreme People's Court of the people's Republic of China on the application of law to the trial of patent dispute cases: "the benefits gained by the infringer under Article 65 of the patent law from infringement can be calculated by multiplying the total number of infringing products sold on the market by the reasonable profit of each infringing product. The benefits gained by the infringer due to infringement are generally calculated according to the operating profit of the infringer, and for the infringer who is completely engaged in infringement, it can be calculated according to the sales profit.") to reduce the burden of proof of the obligee through the inversion of the burden of proof. When applying this rule in fashion design, the obligee needs to preliminarily prove the existence of infringement (such as design similarity, contact possibility, etc.). The court presumed that the profit of the infringer was the loss of the obligee, and required the infringer to provide financial data (such as sales, profits, etc.). If the infringer fails to provide financial data, the court may determine the amount of compensation based on the presumption. This rule reduces the burden of proof on the obligee and increases the cost of infringement. Through the presumption rule, the amount of compensation is closer to the actual profit of the infringer, and the legal deterrent is enhanced.

Third, the construction of punitive damages system. Fast fashion brands often make huge profits through repeated infringement, but the current compensation mechanism is difficult to effectively deter them. For malicious plagiarism (such as repeated infringement and large-scale copying), the court may impose punitive damages on the basis of compensatory damages. Punitive damages means that in addition to compensatory damages, the infringer is required to pay additional damages according to the malicious degree and consequences of the infringement. The amount of punitive damages can be determined according to the seriousness of the infringement, the subjective malice of the infringer and the infringement benefits, usually 1-3 times of compensatory damages, to play a role of punishment and deterrence. This can significantly increase the cost of infringement and curb malicious plagiarism.

5. Conclusion

The rise of fast fashion mode has brought unprecedented changes to the global garment industry, but it has also caused serious copyright protection problems. From the controversy over the fuzziness and originality standard of the identification of the object of fashion design, to the failure of the tort judgment rules and the lag of the relief mechanism, the current legal system seems to be inadequate under the fast fashion mode. The root of these problems lies in the deep conflict between the traditional copyright protection system and the rapid iteration, minimally invasive new strategy and large-scale replication of the fast fashion industry. In order to effectively reverse this institutional dilemma, we should build a copyright protection system suitable for the current rapid development of the clothing industry by adding independent objects, establishing an original layered identification standard, judging infringement according to the design space, and adopting a dynamic infringement relief mechanism. The protection of fashion design copyright under the fast fashion mode is not only related to the legitimate rights and interests of original designers, but also related to the innovation power and sustainable development of the entire fashion design industry. We should seek a balance between the protection of original design and the promotion of market competition through system reconstruction and technological innovation, and promote the fashion design industry towards a healthier and orderly future.

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