

# Inspiration vs. Imitation: When Fashion Designs Infringe on Intellectual Property Rights

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## Introduction

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## Unpacking Shein's RICO Charge

At the heart of the fast fashion frenzy are multi-talented designers and big brands. One of these brands is the multinational company Shein, which now finds itself entangled in a legal storm. Allegedly, the organization systematically steals from small businesses, an action so common that many designers view it as a "rite of passage". Recent developments have seen Shein, the largest fashion retailer in the world, facing a RICO (Racketeer Influenced and Corrupt Organizations Act) charge.



This 'rite of passage' is rife in fast fashion, and it is usually perpetuated by big fashion brands. In an attempt to keep up with trends and provide a wider selection for their growing purchasers, multi-million-dollar corporations release thousands of new designs on a daily basis, with a significant amount of them being stark replicates of copyrightable graphics by smaller designers.

As the line blurs between inspiration and imitation, it underscores the challenges posed by the fast fashion industry and also raises vital questions about the protection of intellectual property and the impact of such practices on the creative ecosystem.

## Intellectual Property Infringement in the Fashion Industry

Intellectual property protection empowers creators with the exclusive rights to their original works. This legal construct encompasses a spectrum of rights, including the authority to reproduce, distribute, publicly display, and create derivative works stemming from an original creation. The infringement then arises when an individual employs, duplicates, or disseminates protected material without the necessary authorization, thereby infringing on the creator's exclusive prerogatives.



Fashion, as an art form, is equally entitled to intellectual property protection, as trademarks, brand names, original clothing designs, fabric patterns, graphics used on clothes, fashion illustrations, and even innovative jewelry and accessories are all fruits of a person's intellectual activity, and equally fall under the umbrella of intellectual property. However, while discussions on iconic runway collections and trend forecasts dominate headlines, the intricacies of intellectual property rights within the fashion industry receive comparatively scant attention.

Nigerians fashion brands are not immune from the ripple effect of this phenomenon as recent incidents demonstrate its global impact. An example presents in the case of Shein allegedly replicating the work of a Nigerian crochet designer, Elexiay, and selling one of their \$330 sweater designs for just \$17. This demonstrates that the pervasive issue of intellectual property infringement transcends geographical boundaries.



## Protecting Fashion Designs from Infringement

In the dynamic arena of commerce, small businesses often find themselves pitted against industry giants, particularly when it comes to safeguarding their intellectual property rights. While it may seem like a “David and Goliath” scenario, there are strategic maneuvers that smaller players can employ to shield their innovative assets.

Intellectual property rights protect a creator’s designs in the world of fashion. Intellectual property laws protect goods or fashion designs from unauthorized reproduction. Copyright laws protect fashion designs with creative elements, such as adire or batik. Trademark registration protects fashion items on which protected logos or marks are displayed. Additionally, an aspect of trademark law known as ‘trade dress’ recognizes the visual appearance of a fashion design that signifies the source of that design to the consumers. To benefit under trade dress, the design should be such that distinguishes the visual and physical aspects of a product and traces its sources. By and large, the majority of intellectual property protection available to fashion designers is Patents. The fashion item must, however, satisfy the requirement of novelty.



Considering the dynamic nature of the fashion world, fashion brands are encouraged to employ smart use of their intellectual property rights. This can be done by identifying, developing, and registering intellectual property rights that are connected with the fashion brand. Registration of intellectual property rights is particularly important as it limits disputes and ambiguities.

Additionally, fashion designers should be vigilant in detecting and addressing intellectual property infringements promptly. Once these infringements are detected, small business owners should not remain complacent as there are a number of remedies legally available to them.



## Conclusion

It is crucial for other small business owners in the fashion industry to take a leaf out of the book of the independent designers who have instituted infringement actions. Irrespective of how intimidating it may seem, by taking swift action, independent fashion entrepreneurs can assert their rights, deter further infringements, and be duly compensated for any form of intellectual property infringement. Beyond forestalling infringement, by promoting and protecting the intellectual property of a business, the brand witnesses an improved overall growth in revenue and reputation, as well as global recognition. The brand is equally perceived to be more reliable and genuine.

