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For some people, clothing is purely utilitarian, such as a means for keeping warm in the wintertime or for wicking sweat in the summertime; for others, it's a form of artistic expression.¹ The fashion industry creates trends based on economics, politics, climate considerations, and even current events like the COVID-19 pandemic.² Trends are not chosen by a committee, nor the accredited musings of god-like designers. Instead, trends evolve through an undirected process of copying, referencing, and reworking, coupled with communication with key retailers and commentary in the press.³ These trends get introduced on the fashion show catwalk, rise with trendsetters, peak when they have reached all consumers, decline when the market is oversaturated, and reach obsolescence when it is no longer fashionable.⁴

As of 2022, fashion—encompassing designing, manufacturing, and consuming— is a \$1.7 trillion worldwide enterprise.⁵ However, the measure of success for the industry focuses on the monetary gains for all— not just on independent designers and the individual impacts of knockoffs and counterfeits.⁶ In fact, the success of the industry would not be as great without the proliferation of the copycat culture.⁷

Despite the overwhelming importance of the fashion industry, intellectual property laws of the United States afford fewer protections to the creations

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¹ Tiffany din Fagel Tse, *Coco Way Before Chanel: Protecting Independent Fashion Designers' Intellectual Property Against Fast-Fashion Retailers*, 24 CATH. U.J.L. & TECH. 401, 424 (2016).

² *How Do Fashion Trends Start*, Glam Observer, (Dec. 13, 2022), <https://glamobserver.com/how-do-fashion-trends-start/>.

³ Kal Raustiala & Christopher Sprigman, *THE KNOCKOFF ECONOMY: HOW IMITATION SPARKS INNOVATION* 48-49 (Oxford University Press, 1st ed. 2012).

⁴ Glam Observer, *supra* note 3.

⁵ Sky Ariella, *28 Dazzling Fashion Industry Statistics [2022]: How Much is the Fashion Industry Worth*, ZIPPAA (Oct. 3, 2022), <http://www.zippia.com/advice/fashion-industry-statistics/>.

⁶ National Public Radio, *Why Knockoffs are Good for the Fashion Industry* (Sep. 12, 2012), <https://www.npr.org/2012/09/10/160746195/why-knockoffs-are-good-for-the-fashion-industry>.

⁷ *Id.*

of fashion designers than it does for other inventors and creators.⁸ That being said, looser protections in fashion have made budget friendly knockoffs of high-end items possible, creating the increasingly popular fast fashion subindustry.⁹ Prior to the industrial revolution, clothing was made by hand, and the market for “ready-to-wear” apparel — which today is essentially all clothes purchased in the United States — was very small.¹⁰ Today, with the exception of the small market devoted to couture and custom suits in menswear, over the course of the twentieth century, handmade clothing essentially died out in North America.¹¹ The rise of standardized sizing of ready-to-wear clothing made by mass production and fast fashion meant cheaper apparel.¹²

Nowadays, the time between the initial creation by the designer to the knockoff productions has significantly decreased; influencers on platforms like Instagram and TikTok creating daily fashion content featuring hauls, try-ons, and sponsored content have played a huge role in the growth of fast fashion, especially in retailers like SheIn, Fashion Nova, Zaful, Boohoo, Zara, and Amazon.¹³ Fast fashion is cheap, trendy clothing that samples ideas from the fashion show catwalk or celebrity culture and turns them into garments sold in everyday stores at breakneck speed to meet consumer demand.¹⁴ This whole fast fashion process occurs within weeks of the original designer’s runway show.¹⁵ A Bottega Veneta Mini Jodie bag is sold on their website for \$2,650, but a knockoff can be found on Amazon for

⁸ Leigh Willey, *Fashion Design & Intellectual Property*, 55 N.H. B.J., 6 (2014); *See also* Anne Theodore Briggs, *Hung Out to Dry: Clothing Design Protection Pitfalls in the United States*, 24 HASTINGS COMM. & ENT. L.J. 169, 171-200 (2002).

⁹ Coco Kahn, *Are Knock-Off Fashion ‘Dupes’ Unethical? We Ask an Expert*, THE GUARDIAN, (May 20, 2022), <https://www.theguardian.com/lifeandstyle/2022/may/20/are-knock-off-fashion-dupes-unethical-we-ask-an-expert>.

¹⁰ Raustiala & Sprigman, *supra* note 4, at 22.

¹¹ *Id.*

¹² *Id.* at 23.

¹³ India Brown, *The Promotion of Fast Fashion from Influencers is Problematic and Unsustainable*, THE DAILY UTAH CHRONICLE (June 18, 2021), <https://dailyutahchronicle.com/2021/06/18/the-promotion-of-fast-fashion-from-influencers-is-problematic-and-unsustainable/>.

¹⁴ Solene Rauturier, *What is Fast Fashion and Why is It So Bad?*, Good On You, (Apr. 1, 2022), <https://goodonyou.eco/what-is-fast-fashion/>.

¹⁵ *Id.*

under \$40.¹⁶ Luxury brands stay relevant and high-demand by being exquisite, expensive, and exclusive.¹⁷ This is just one example that illustrates the benefits of fast fashion for the average consumer: simplicity, efficacy, convenience, affordability, and accessibility.¹⁸

The terms “counterfeit” and “knockoff” are commonly used as synonyms.¹⁹ However, they are two very different concepts.²⁰ A counterfeit is an unauthorized lookalike of an original that is “substantially indistinguishable”²¹ from the original—including using the original’s trademark— and seeks to exploit the goodwill of the original designer.²² A knockoff, on the other hand, is a copy of an original design intended to be sold at a lower price than the original.²³ A knockoff may have subtle differences from the original but is only copying the unprotectable parts of the original design.

Although in everyday conversation the terms “knockoff” and “counterfeit” are used synonymously, they are two very different concepts with different impacts on the fashion industry. Knockoffs are the natural progression of the fashion industry, from the catwalk to the department store. Additionally, knockoffs are not intended to pass off as the original, only

¹⁶ Bottega Veneta, https://www.bottegaveneta.com/en-us/mini-jodie-parakeet-809940571.html?gclid=CjwKCAiA5Y6eBhAbEiwA_ZZWlcvRDtHIU4EaeSP5Bo_Jk2ZZtdciQLIHVmUzJSqB-8oB9nXZr3tBoRoC3hkQAvD_BwE&gclsrc=aw.ds (last visited Jan. 15, 2023); Amazon, https://www.amazon.com/Handbag-Knotted-Leather-Fashion-Shoulder/dp/B0B4SFSQMC/ref=sr_1_7?crd=3TG9VVMTSPCDD&keywords=bottega+veneta+jodie+dupe&qid=1673808730&sprefix=bottega+veneta+jodie+dupe%2Caps%2C123&sr=8-7 (last visited Jan. 15, 2023).

¹⁷ Joseph DeAcetis, *The Perfect Balance: How Luxury Brands Can Maintain Exclusivity and Still Be Relatable Online*, Forbes, (Oct. 24, 2020), <https://www.forbes.com/sites/josephdeacetis/2020/10/24/the-perfect-balance-how-luxury-brands-can-maintain-exclusivity-and-still-be-relatable-online/?sh=3e17faea7e44>.

¹⁸ Alex Assoune, *Top Ten Reasons Why Fast Fashion is So Popular*, PANAPRIUM, (last visited Jan. 14, 2023), <https://www.panaprium.com/blogs/i/fast-fashion-popular>.

¹⁹ Richard Stim, *Will You Get in Trouble for Selling Counterfeit Goods?*, NOLO, (last visited Jan. 14, 2023), <https://www.nolo.com/legal-encyclopedia/what-counterfeiting.html>.

²⁰ Richard Stim, *Will You Get in Trouble for Selling Counterfeit Goods?*, NOLO, (last visited Jan. 14, 2023), <https://www.nolo.com/legal-encyclopedia/what-counterfeiting.html>.

²¹ 15 U.S.C. §1127.

²² *Id.*

²³ Willey, *supra* note 12 at 7.

copying unprotectable elements of a design. Knockoffs promote social inclusivity of fashion by making trends more affordable and universal. Counterfeits, on the other hand, have a bad impact on the fashion industry, exploit the goodwill of other designers, and steal trademarks of other brands.