

protectyourself

Imitation may be the highest form of flattery, but it will do your business no favours. Here are some essential tools to protect your ideas and your business.

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Want Prada’s crystal-encrusted clutch or Balenciaga’s futuristic frock but can’t quite afford the ‘on application’ price tag? Well, you’re in luck. Price and prestige, it seems, are no longer distinguishing features of fashion. Nor is originality. In our age of information, instant internet communication and demanding consumers, the call for the accessible and affordable has never been louder. It’s a call received at chain stores around the country, and indeed the globe.

While copycat fashion designers may be good news for consumers wanting the latest and greatest runway looks on the cheap, low quality imitations are effectively undermining the creative minds that propel innovation and drive the industry forward.

Australian Intellectual Property (IP) rights provide a legal framework for the protection of innovative, distinctive and creative ideas, designs and products.

The rights encourage technological innovation and artistic expression and are integral in the building and expansion of Australian businesses.

IP rights apply to all business people, designers, artists, entrepreneurs and inventors, providing exclusive rights to use, control and profit from their work and ideas.

IP is one of the most valuable assets a business can have, effectively acknowledging distinctiveness and difference, enabling credit where credit is due and allowing the owner a competitive edge in the marketplace.

Up until recently, clothing designers relied on the copyright of dressmaking patterns to protect their designs from being ‘ripped-off’. However, while copyright protects the original expression of ideas, it doesn’t guard the actual ideas themselves. In the past, this has meant that once a unique garment was launched into the marketplace, competitor interpretations could, to a degree, safely mimic the original design.

This was due to the uncertainty surrounding the basis on which designers could sue over copyright, save for one-off or couture designs. Luckily, with the implementation of ‘design registration’ under the Designs Act 2003, designers now have the power to protect the way a garment looks in terms of its features, shape, configuration, pattern or ornamentation.

Your rights

In 2005, a well-known Australian women’s clothing label, Review, formally registered the design of a dress. The garment was distinctive in that its elements of style – capped sleeves, pleated skirt, floral print, high-waisted seams and lace detailing – were uniquely combined. So when a suspiciously similar dress appeared on the racks of a Charlie Brown store under the Lili label in 2006, Review’s co-founder and designer of the dress in question, Jayne Ellis, took immediate action. The matter went to court and after close examination, the judge ruled on the issue of damages for an infringement of a registered design.

It’s a reality that Grant Mackintosh of Draggin Jeans knows only too well. Mackintosh’s hugely successful range of jeans that offer the same level of protection as motorcycle leathers burst onto the market in 1997. The key to the Draggin design was an interior lining made from Dupont Knitted Kevlar resulting in a comfortable, breathable and protective garment that didn’t look like ‘bikie gear’.

“It’s so important that we have IP rights, including patent and trade mark protection,” says Mackintosh. “We’ve had a number of settled court cases and have removed a number of copycats.”

When you start your business make sure you understand that IP rights aren’t automatic. Formal steps need to be taken to register and obtain legal rights of ownership. Be aware that IP rights vary in the amount of protection they provide and more than one type could be necessary for full protection.

Ultimately, IP rights are about creating and maintaining your business wealth and because of this, strategies need to be in place. The most obvious and vital of these strategies is not talking about your idea or making it public too soon. If your idea gets out, you may just lose the rights to exclusive use of your IP. Once a brand or design is IP protected, any breach can be deemed as enforceable by law. The hard part can be catching copycats, although the internet has provided some innovative solutions to this problem.

You thought we wouldn’t notice. But we did.

youthoughtwewouldntnotice.com is an American-based, open blog dedicated to unmasking copycat designers and ‘unscrupulous

industry players’. Providing a forum in which designers and consumers alike can learn about safeguarding and protecting IP in design, youthoughtwewouldntnotice.com endorses the registration of design as the key to maintaining a competitive edge. One recent blog entry by a consumer points out a major mainstream Australian retailer as copying the designs of a well-known American t-shirt manufacturer, providing images of both the original and copycat designs as a case in point. This particular blog entry has provoked posts from around the world, with one anonymous identity stating that they visit the guilty retailer “purely to check out the latest rips. At first it angered me but now I find it funny ... obviously they aren’t going to stop doing it so there’s no point in being angry.”

Although there is an undeniable aversion to copycat design from the clued-in consumers on youthoughtwewouldntnotice.com, this breed of consumer remains a minority. Unfortunately, the ongoing demand for cheap and accessible style shows no sign of ceasing. This blog entry also raises issues of the reach of IP rights in an international context.

Be aware that IP rights in Australia do not give you international protection, and this is something that must be applied for separately. Global markets are the most competitive, and a unique edge can mean the difference between flourish and failure.

Jo Kellock, executive director of the Council of Textiles Fashion Industries of Australia and a strong supporter of IP rights, believes that the main issue lies in the fact that most business models in the fashion industry are built on widespread copying. The main culprit, she explains, are the overseas buying trips where samples are bought back to Australia to be reproduced or slightly altered, effectively absolving the copycat designer of any prosecution.

“You don’t think everyone comes up with the same idea all at once do you?” she asks. “In another sector, ‘trend’ could be called plagiarism!”

So what’s the solution? Kellock encourages an emphasis on original design, particularly on the design process and management principles to be adopted as new business models.

“There is a reason why it takes years of studying to become a designer. Buying and copying activity undervalues this,” she says. “Copying simply draws on other people’s knowledge up and down the supply chain – with the expectation that this knowledge can always be bought for the cost of a sample!”

strengthinnumbers

Combine the strategies below to maximise the protection (and potential) of your brand.

Commerical strategies:

Trade secrets, confidentiality agreements and rapid production and development.

Formally registered rights:

Patents, trade marks, industrial design, plant breeder’s rights and business, company and domain names.

Automatic rights:

Copyright and circuit layout rights.

What’s in a name?

A high-end Australian denim label that had done resoundingly well on the international market due to its edgy image and hilarious publicity stunts was sued in 2006 by an American company for breach of trade mark over the sharing of the first four letters of its distinctive and quirky name.

Obviously aware of the differences in international copyright laws, the American company registered its name in Australia in 1998 to establish what their lawyer called a ‘clear field’ in the marketplace. When the Australian company registered their name in 2000, no one predicted the ensuing battle of the brands.

The dispute was eventually settled out of court – the Australian company kept its original name in Australia and altered the first letter of their name for international use. The two-name approach proved to be a challenge in terms of global branding in such a fickle industry as fashion, where consumers often buy motivated by name alone. It is a stark reality that nationally-established brands face a potential spend of hundreds of thousands of dollars when it comes to having to re-register their trade mark and branding collateral.

The go-to guide

Want to find out more? Jump online for all you need to know about protecting your property.

Trade mark searching and watching:

- www.acromark.com.au
- www.completeip.com.au
- www.filament.com.au
- www.i-brands.com.au
- www.iporganisers.com.au
- www.patent-searcher.com
- www.searchmark.com.au

The Australian Copyright Council:

www.copyright.org.au

Federal Inventors’ Association of Australia:

www.inventors.asn.au

National Innovation:

www.innovation.gov.au

Australian Patent Attorney Directory:

www.patentattorney.org.au

Intellectual Property Research Institute of Australia:

www.ipria.org

IP Australia (the federal government agency responsible granting IP rights):

www.ipaustralia.gov.au