

Shoe Dupes Walk a Fine Line After Recent IP Infringement Case

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Karl Zielaznicki, a partner at Troutman Pepper Locke, discusses a Danish court's recent decision to uphold an injunction against popular U.S. shoe brand Steve Madden, after finding its shoe design infringed on the copyright of Danish brand, Ganni. This outcome is contrary to a German court's finding earlier this year that Birkenstock's well-known shoe design was not a work of art entitled to copyright protections, which Karl commented on in a recent NBC News Interview.

Dupes of original branded items present significant intellectual property (IP) challenges in the fashion industry. Not all fashion products are entitled to IP protection and perceived similarities between products do not always violate existing IP rights. This can make it difficult to prevent competitors from capitalizing on a brand's popularity by developing similar "dupe" products. However, companies that draw inspiration from popular brands can still find themselves in hot water if they aren't cognizant of when a dupe violates IP laws.

In light of latest outcome in Steve Madden's case, here are some key IP considerations for dupe products in the fashion industry:

- **Not All Fashion Products Are an Applied Art Subject to Copyright Protection.** In order to obtain copyright protection, a product must be a "work of art" under applicable copyright law. This can include a "work of applied art," which is when artistic elements are incorporated into a practical object and the artistic elements are separate from the object's functionality. For example, red soles on a pair of shoes or a monogram on a handbag.

However, what is original and creative enough to warrant copyright protection is often in the eye of the factfinder in the case at hand. In light of this subjectivity, brand owners should take steps to document their creative process and seek copyright registration to strengthen their copyright claims when seeking enforcement of their IP rights.

- **Consider Trade Dress Protections for Additional IP Coverage.** While copyright protections can have limitations, the overall look and feel of a fashion brand's product can potentially be protected under U.S. trademark law as trade dress. However, as we discussed in our last [article](#), if there is no likelihood of consumer confusion with a dupe product, then there can be no claim of trade dress infringement. This means brand recognition, the strength of a mark, and the possibility of confusion — particularly in other countries and regions —

is important to consider and document.

- **Multijurisdictional IP Rights Are Essential to IP Strategy.** In an ever-growing, global e-commerce market, brands are exposed to even greater risk of copycat products. It is essential to understand the how multijurisdictional IP rights will interact and how to effectively enforce them. Active monitoring and enforcement of IP rights in the U.S. and abroad is also essential to ensure there is no brand dilution that may undermine available IP protections.

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