



INTRODUCTION

Fashion design is a tough business. As a designer, you are required to focus on details while simultaneously tending to the “big picture.” And all the while, it feels as though the details and larger vision are tightening around your finances.

This book has been prepared under the auspices of the ABA to serve the fashion designer who has skill, talent, and a proclivity for being in the right place at the right time. Whether you wish to expand an existing business, or just embarked into the fray of the fashion industry, we have written this book to provide you a legal and business foundation for better-informed, more efficient decisions.

» WHO NEEDS TO READ THIS BOOK?

This book will help you frame some of the legal and business challenges of being a fashion designer. After all, you have likely spent years developing skills in the art and execution of apparel. As an experienced designer, you may look at your colleagues attempting an intricate new shape or struggling to tailor a glove-like

fit and think, “I can’t believe there was a time when I didn’t know that!” At the moment of that thought, it is definitely time to develop your business and legal knowledge.

Moreover, you should push yourself to continue learning the business and legal side of your trade *at least* until you look at your colleagues attempting to form a business entity or license their trademark and think, “I can’t believe there was a time when I didn’t know that!” This book is intended to give you strong momentum in that very direction.

» HOW TO USE THIS BOOK

Our goal in writing this book is to give our readers a competitive edge such that it becomes required for the library of every fashion designer. This is our contribution back to an industry that has been a meaningful and rewarding part of our practices, whether a solo practitioner or “Big Law” firm.

That said, this book is *not* intended as a substitute for hiring a lawyer. Nor does any statement in this book constitute any legal advice in any capacity. In terms of legal advice, consider this book “one-size-fits-none.” Nevertheless, in addition to effecting better informed, more efficient decisions within the fashion industry, this book can do the same should you need to retain your own legal counsel. The more you know, the better you and your lawyer will get along, the further your legal dollars will stretch, and the happier everyone will be.

Identifying Your Intellectual Property

The first part of this book covers your intellectual property, that is, your trademarks, copyrights, and patents. Trademark law is a good place to start, as it is implicated in the majority of transactions of an entrepreneurial fashion designer. Developing your mark will expand your brand in many ways, even in your use of a single color (such as the red sole of a shoe) or other aspects that acquire protectable distinction in your market sector. And once you have created a viable brand, you will want to protect it from counterfeiters. This requires knowledge of specific steps for policing and enforcing against a variety of infringements.

If someone has pirated or “knocked off” your work, however, you will not have protection for the silhouette of the garment. This makes it all the more important to learn about the copyright protection provided for design patterns (or textile patterns), as well as pictorial, sculptural, or other graphic elements that can be separated from a shirt, bag, dress, etc.

Finally, to maximize protection, a design patent should always be considered. This might apply to a fastening device, a particular waistband, or innumerable items on a shoe. Design patents are among the most valuable intellectual prop-

erty a fashion designer can own, so it is not surprising that they can be the most challenging (and expensive) to obtain.

Establishing an Ongoing Business

Almost as soon as any designer has intellectual property in his or her apparel, accessories, or footwear, that designer has a website to publicize, market, and maybe even sell those items. Of course, engaging in e-commerce invites tremendous potential for both opportunity and vulnerability. Beyond posting an accurate, enforceable Privacy Policy or Terms of Use, a designer needs to be aware of sales taxes for different regions, the implications of social media, etc.

At some point between creating your intellectual property and establishing a steady income stream from your designs, you should strongly consider upgrading from the default position of “sole proprietor” to a formal business structure. In some instances, a corporation might be advisable; in other instances, you might choose to be a limited liability company or limited partnership. Your choice of business entity depends on a variety of considerations such as the tax laws of your state and the source of your company’s initial capital.

Of course, the lifeblood of every start-up and ongoing concern is capital. And the fashion industry has developed its own solution to the problem of maintaining cash flow between the time your customer signs a purchase order and you deliver the manufactured garments to the store. Factors provide the cash necessary to purchase materials and assemble them into apparel and accessories for your customers. To understand why factors operate as they do, you must first understand the nature of “risk” as related to investors, banks, and others.

Internal Concerns

While you will need a support staff almost immediately, the day will come when you can actually *afford* one. And when that day comes, you will need to address a number of issues such as whether you have hired an employee or independent contractor, the enforceability of non-compete clauses, discrimination, overtime pay, and more.

The runway show, in particular, involves issues beyond employment. The preparation of appropriate contracts is imperative, whether this be the designer’s own purchase order and terms and conditions of sale, or other relevant contracts with modeling agencies, performing rights organizations (for music), production companies, service providers, sponsors, and/or venues.

External Concerns

It is essential that you choose your manufacturer carefully in terms of a company that will protect your work and be efficiently priced. Additionally, you need to

know how to instruct your manufacturer in labeling requirements, product safety issues, and other legal compliance issues.

In tandem with manufacturing comes the idea of licensing, which is “renting” intellectual property. There might be times that a major label offers to rent its trademark to your collection and other times when you want to expand your brand by renting your mark to a designer of items outside of your realm of expertise. Either way, it is important to understand the significance of a written contract and the basics of all the essential obligations, whether they be the geographic scope of the license, inspection rights over product, or other material provisions.

» WHERE TO GO FROM HERE

Some things in here might be beyond your grasp upon first reading. Other things will seem quite simple. Still, you should come back to this book and re-read the various chapters as specific issues arise in your professional life. You will grasp new ideas; other concepts that seemed simple will appear surprisingly ambiguous, perhaps even complex. This is an ongoing process, parallel to but different from the development of creating apparel.

The most important point to consider right now is that you’re already headed toward the winner’s circle. The most successful people in life are those that continue to grow. The fact that you have this book in your hand now puts you in that realm. It’s not how much you know that counts, but how much you are willing to learn.