

Pace I.P., Sports & Entertainment Law Forum

Volume 1
Issue 1 *Spring 2011*

Article 4

April 2011

Fashion Law – A Guide for Designers, Fashion Executives, and Attorneys

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Recommended Citation

Cory Greenberg, *Fashion Law – A Guide for Designers, Fashion Executives, and Attorneys*, 1 Pace. Intell. Prop. Sports & Ent. L.F. 71 (2011).

Available at: <http://digitalcommons.pace.edu/pipself/vol1/iss1/4>

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Fashion Law – A Guide for Designers, Fashion Executives, and Attorneys

Abstract

Cory Greenberg writes a comprehensive book review of *Fashion Law: A Guide for Designers, Fashion Executives, and Attorneys* by Guillermo C. Jimenez and Barbara Kolsun. *Fashion Law* is divided into four sections: Introduction, Intellectual Property Issues, Commercial Operations and Expansions, and International Aspects. Greenberg provides an objective review of each section of the book and comments on the growth of fashion in the legal world.

Cover Page Footnote

Cory Greenberg is the Director of Operations & Special Projects for Alvin Ailey American Dance Theater, as well as Ailey's in-house counsel. Cory received her undergraduate degree cum laude in Art History from Duke University and her law degree from New York University School of Law, where she was an Arthur Garfield Hays Civil Liberties Program Fellow and a recipient of the Vanderbilt Medal for Public Service. She serves on the boards of Tendu TV and the New York Neo-Futurists, and was recently named to the New York Steering Committee of the Association of Media and Entertainment Counsel.

Fashion Law – A Guide for Designers, Fashion Executives, and Attorneys

Edited by Guillermo C. Jimenez and Barbara Kolsun

Review by Cory Greenberg¹

When traveling to a new or foreign place, a good guidebook is essential; a book that provides you with a map of the important places, describes the culture of the land and its people, and provides you with important terms and phrases—and hopefully where to grab a decent meal. Now, whether you are an attorney representing clients in the fashion industry, an aspiring boutique owner, or a hopeful *Project Runway* contestant, there is finally a guidebook to help you—*Fashion Law*, edited by Guillermo C. Jimenez, a professor at the Fashion Institute of Technology and Barbara Kolsun, Executive Vice President and General Counsel for Stuart Weitzman LLC.

Fashion Law arrives at a time when there is growing interest in the United States in ways the legal world can better serve the fashion industry. At the end of last year, copyright protection for fashion design came closer to passage than it ever has before when Senate Bill 3728, the Innovative Design Protection and Piracy Prevention Act, was unanimously approved by the Senate Judiciary Committee.² In the realm of academia, there are law school courses devoted to

¹ Cory Greenberg is the Director of Operations & Special Projects for Alvin Ailey American Dance Theater, as well as Ailey's in-house counsel. Cory received her undergraduate degree cum laude in Art History from Duke University and her law degree from New York University School of Law, where she was an Arthur Garfield Hays Civil Liberties Program Fellow and a recipient of the Vanderbilt Medal for Public Service. She serves on the boards of Tendu TV and the New York Neo-Futurists, and was recently named to the New York Steering Committee of the Association of Media and Entertainment Counsel.

² The bill was not brought up for debate before the full Senate prior to the conclusion of the 111th Congress. It will likely be introduced again during the 112th Congress. For an explanation of what was in Bill 3728, see, *IDPPPA: Introducing the Innovative Design Protection and Piracy Prevention Act*, COUNTERFEIT CHIC.COM, (August 6, 2010), <http://www.counterfeitchic.com/2010/08/introducing-the-innovative-design-protection-and-piracy->

“Fashion Law” as well as panel discussions on the topic.³ This past September, Fordham Law School announced the establishment of a Fashion Law Institute created with the support of the Council of Fashion Designers of America, which “will provide legal services for design students and designers, train the fashion lawyers and designers of the future, and offer information and assistance on issues facing the fashion industry.”⁴

Why is now the time for fashion law? According to book’s introduction, there are four factors that have generated a need for lawyers who understand the specifics and nuances of the fashion industry. First, worldwide monetary and cultural significance: the fashion industry accounts for over \$1 trillion dollars of the world’s gross income and fashion has risen to a “level of social importance” demonstrated by an interest in fashion as entertainment and the purchasing of apparel and accessories as status symbols.⁵ Second, in the past decade there has been a trend where the larger fashion companies are “expand[ing] and absorb[ing] smaller ones.” This

prevention-act.html (last visited March 31, 2011).

<http://cardozo.yu.edu/MemberContentDisplay.aspx?ccmd=ContentDisplay&ucmd=UserDisplay&userid=10354&contentid=18352&folderid=0><http://www.brooklaw.edu/academics/curriculum/coursedescriptions/course.aspx?id=257>http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/events<http://blogs.law.nyu.edu/docket/student-organizations/nyu-ipels-art-law-committee-presents-refashioning-ip-law-the-future-of-protection-for-fashion-design/2593><http://www.brooklaw.edu/newsandevents/news/2010/11-09-2010.aspx>

³ Both Benjamin N. Cardozo School of Law and Brooklyn Law School had courses in Fashion Law during the 2010-2011 academic year:

See, Benjamin N. Cardozo School of Law, Office of the Registrar, (Nov. 16, 2010),

<http://cardozo.yu.edu/MemberContentDisplay.aspx?ccmd=ContentDisplay&ucmd=UserDisplay&userid=10354&contentid=18352&folderid=0> (last visited April 2, 2011).

See, Brooklyn Law School, Course Descriptions,

<http://www.brooklaw.edu/academics/curriculum/coursedescriptions/course.aspx?id=257> (last visited April 3, 2011).

Since 2009, New York Law School, Brooklyn Law School, and New York University Law School have each held public panels on discussing different issues in fashion law:

See, “Comprehensive Fashion Law Panel,” (November 16, 2009),

http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/iilp_events#Fall2009

See, “Refashioning IP Law – The Future of Protection for Fashion Design,” (April 19, 2010),

<http://blogs.law.nyu.edu/docket/student-organizations/nyu-ipels-art-law-committee-presents-refashioning-ip-law-the-future-of-protection-for-fashion-design/2593/>

See, “Representing the Fashion Client,” (November 19, 2010),

<http://www.brooklaw.edu/newsandevents/news/2010/11-09-2010.aspx>

⁴ Fordham Law Fashion Institute, <http://law.fordham.edu/fashion-law-institute/fashionlaw.htm> (last visited April 1, 2011).

⁵ GUILLERMO C. JIMENEZ & BARBARA KOLSUN, FASHION LAW: A GUIDE FOR DESIGNERS, FASHION EXECUTIVES AND ATTORNEYS 6 (2010).

consolidation has increased the need for lawyers in-house and outside who have an understanding of the industry.⁶ Third, the increasing need to look at what intellectual property protection is available to designers in the wake of “fast fashion” whereby today’s technology enables the quick production of “knock-offs” such that “an imitator will be even faster to market than the company that originated the design or style.”⁷ And, finally, lawyers with an understanding of the fashion world are needed to look at specific ethical concerns and develop codes of conduct related to the treatment of factory workers and other processes involved in the creation of products.⁸

Whether or not there needs to be a justification for “fashion law” to exist as a field of study, as a practicing lawyer, I most appreciated that early on, the authors explain that “one of the central arguments of this book is that the best legal advice comes from attorneys with a solid grasp of their clients’ businesses.”⁹ There have not been truer words. From a contract standpoint, because receiving (or providing) a contract is an opportunity to have a conversation about the nature and structure of a relationship, not just a piece of paper that needs to be signed so a payment can occur, a lawyer well-versed in the language of her client’s field will be better able to spot issues and help guide her client to a satisfactory outcome. *Fashion Law* does an excellent job in its introduction of providing lawyers with a thorough understanding of the

⁶ *Id.* at 7.

⁷ *Id.* at 8.

⁸ *Id.* at 8.

⁹ *Id.* at 12. I would emphasize this point even further and add that a successful lawyer is one who not only understands the law, but who takes the time to understand the world in which her client lives. At times, attorneys, especially attorneys early on in their legal careers, may try a one-size fits all approach when servicing clients—and it is true, there are legal tenets that must be addressed regardless of sector. Take, for instance, a contract between two parties where one party is providing services for the other; perhaps a motion picture production company is entering into agreements with various artists to create sets, costumes, a musical score, and other creative components. To be sure, each contract between the production company and any individual artist will have a standard laundry list of terms, but to truly help and protect their clients, the lawyers negotiating the contracts would be well served to have an understanding of the industry to make sure that they are asking their clients the right questions, and that the clients are having a thorough dialogue with each other. For example, in the case of a costume designer, in addition to “standard terms” it would be important for the contract to specify whether the materials to be used in constructing the designs must be machine washable—that fact alone may change how the designer creates the costumes.

business of fashion and the way aspects of the industry intersect with the law. Particularly fun and informative are the real-life examples provided to illustrate concepts (the “boxes” that recur throughout).

After the introduction, *Fashion Law* is divided into three sections, which are then further subdivided into chapters each authored by a different group of experts in the field. Section II concerns Intellectual Property Issues, including IP protection, licensing, and counterfeiting; Section III addresses Commercial Operations and Expansion with chapters on business structure, commercial agreements, employment law issues, marketing, advertising and promotion, and retail leasing; and Section IV covers International issues, including dealmaking with foreign entities and import and customs issues. The extended table of contents in the beginning of the book is very helpful in pointing the reader directly to the discrete issue she may be interested in learning about.

Not surprisingly, as with any book where each chapter is written by a different group of people, some sections and chapters are more successful than others and a few concepts are mentioned in more than one place. The task taken on by *Fashion Law*—to be an aid to both lawyers and non-lawyers is ambitious, and again, some chapters are more successful than others in speaking to these two audiences simultaneously.

Section II, and Chapter 2 in particular, which deals with the tricky and (in my opinion) fascinating intellectual property issues presented within the fashion industry is particularly clear and very thorough and speaks both to attorneys and to designers with ease, changing emphasis and giving practice tips with helpful checklists in a reader-friendly way. And, as in the introduction—and throughout the book—the “boxes” with examples from the “trenches” help the reader to relate to the material and make the legal constructs come alive.

Curiously, although the general tone and advice in Chapter 3 (Fashion and Apparel Licensing), encourages careful planning and the seeking of assistance from experienced counsel, it was surprising that the authors made a firm—and harsh—statement advocating against the use of a licensing agent.¹⁰ The authors’ go so far as to say “A better long-term choice . . . is to hire businesspeople expert in managing licensing relationships and to use an in-house licensing attorney or outside IP counsel.”¹¹ This stance is unfortunate, for there are some very reputable licensing agencies that have experience to help determine what brand extensions may be possible and have built up the relationships to help facilitate meetings between key players. Some licensors may not be able to afford to hire staff to identify and manage deals, and may want to keep their internal focus on their core business, not on the extensions. Other than this small point, the information, and especially the checklists and samples clauses in Chapter 3 are on point and helpful to the practitioner and client alike. Chapter 4 addresses the very serious issue of counterfeiting and provides plans on how to combat the “crime of the twenty-first century.”¹² At times, the first two chapters in Section III try to do too much and get bogged down in details. It is a situation where it becomes unclear who is the intended audience—lawyers, entrepreneurs, or seasoned professionals? The themes suggest a neophyte, but the writing lends itself to a more knowledgeable reader. More “boxes” with examples from real situations would help to demonstrate the issues being presented. The chapter on employment law provides a comprehensive overview of this very specialized area of the law, smartly spotting issues specific to the fashion industry and providing a variety of very helpful sample clauses for employment

¹⁰ *Id.* at page 84. “Licensing agents are not recommended unless the goals of the agent and the licensor are directly aligned. . . . [the agent] is less inclined to carefully approach a deal that would not make sense for the brand. . . .”

¹¹ *Id.* at 84.

¹² *Id.* at 107.

contracts. The highlight of Section III is Chapter 8 on marketing, advertising and promotion. Written to engage as well as educate, the authors lead attorneys and novices alike through the steps that go into the creation of an advertisement piece and the legal issues that may arise during the process. The checklist at the end of the chapter is artful and practical.

Section IV on “International Aspects” covers some of the same terrain as earlier chapters and seems to be tailored to a reader with a developed business. The “boxes” in Chapter 9 about L.L. Bean are particularly interesting and successful at highlighting issues that may arise in dealing with foreign markets. Chapter 10 tackles the complicated issues of customs and the importation of goods with a broad stroke and practical eye.

In the next edition of *Fashion Law*, it would be helpful to have a section with “places to learn more” types of reading lists tailored specifically each to lawyers and law students, designers and executives. A more rigorous index may also be helpful.

Fashion Law is a welcome—and very much needed—guide to navigating the legal seas of the fashion industry. The editors have created a comprehensive starting place for attorneys representing clients in the fashion world, designers who want to understand the legal implications and complications that may arise as they create a business, and business executives who want to ensure that they are spotting the legal issues effecting their business. In addition to bringing the very important legal issues in the fashion world to the forefront, *Fashion Law* is sure to significantly enhance the dialogue that occurs between designers and fashion executives and their counsel.