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**Legal Implications of Using the Designer's Name as a Trademark in the Fashion
Industry**

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I hereby declare that I have compiled the paper independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously been presented for grading.

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Abstract

This dissertation was written as part of the Bachelor (BA) of Arts in Social Sciences at Tallinn University of Technology.

This dissertation has an objective, to research the problem of using the designer's name as a trademark in the fashion industry, faced by many fashion designers in the world, and also, to propose the most effective solutions to protect the fashion designer and further their brand. This study aims to investigate these legal and practical issues by utilizing intellectual property law, specifically, trademark law, and case studies.

The fashion industry is a global enterprise, and it plays a significant role in Economics. The fashion industry is one of the most competitive and continuously changing industries globally, and fashion designers have, without a doubt, one of the highest profiles in the industry. Technology, social media, and buyer culture are evolving continuously, which is why intellectual property rights and their protection are likely to become even more crucial to the fashion industry.

Major fashion houses value their brand equity and most designers develop a bond with their customers through their brand names, and designers choose to protect their brand through registration of trademarks. A trademark is pivotal for the brand's success, because consumers are willing to pay extra for products they can easily recognize, hence the value of an evident and a unique logo. As a result, designers' personal name trademarks often become their most valuable assets. However, trademarks do not allow designers to obtain full protection. The problem is that fashion designers do not enjoy the same level of protection as other artists and the current legislation is insufficient in this area.

Special thanks to my supervisor Pawan Dutt, who supported me and provided guidance throughout my research.

Keywords: Intellectual Property, Trademark, Fashion Law, Fashion Industries, Fashion Designers

Introduction

“The consumer has a right to know the creator of a work.”¹

Christian Lacroix, Kate Spade, Paul Frank, Joseph Abboud, Elizabeth Emanuel, and Karen Millen are all well-known designers in the fashion world. However, they no longer own the right to use their personal names as their brands. Fashion designers often sell and refer to their designs and creations under a personal name, and, as a result, designers need to become aware of the legal consequences and risks if they ever wish to sell their interest in the company.² First of all, designers may encounter difficulties when clearing and attempting to register their personal names as trademarks in Europe and worldwide. In the future, if they decide to sell their companies, they could lose their right to use their personal names in future fashion ventures or as trademarks for similar products.³ This can result in expensive disputes, and with an international brand, these disputes can arise worldwide.

Despite these concerns, many designers still choose to use their personal names as their brands for many different reasons, one of them being that consumers may be more likely to purchase products from a brand that has a story or a personal identity, so the use of a designer’s own name and persona may contribute to sales and the overall value of the brand.⁴ Therefore, using your personal name as a trademark can have its advantages from a marketing perspective. For any prominent designer, achieving fame and widespread recognition may outweigh any potential concerns and risks since companies are willing to pay a large amount of money for successful and well-known fashion brands.

This thesis evaluates the effectiveness of the existing trademark protection for fashion designers and aims to present the fundamental issues faced by fashion designers that concern using personal names as brands in the fashion industry, such as selling, assigning, and licensing a designer’s name to someone else, along with the protection given under intellectual property,

¹ Sciarrino, G. C., & Asbell, M. D. (2017). The Designer Formerly Known as: Intellectual Property Issues Arising from Personal Names as Fashion Brands. *Trademark Rep.*, 107, 1160.

² Pitzer, A. B. (2010). Unfashionably Late: Protecting a Designer’s Identity after a Personal Name Becomes a Valuable Trademark. *S. Ill. ULJ*, 310.

³ Jimenez, G. C., & Kolsun, B. (Eds.). (2014). *Fashion law: A guide for designers, fashion executives, and attorneys*. A&C Black.

⁴ Bobila, M. (2015). Should Fashion Designers Name Labels After Themselves. *Fashionista*.

specifically, trademark law within Europe and the U.S. Moreover, this dissertation will discuss how designers can protect their own name as a trademark and what legal problems arise from designers using their own name as a trademark in fashion?

First we are going to take a brief look at the fashion industry, the different types of intellectual property rights and their applicability in the world of fashion. Then, we are taking a deeper look at trademarks and analyze the possibilities of registering a personal name trademark in the EU and U.S. After that, we are going to discuss unfair commercial practices, focusing on the concept of 'deceiving the public'. Finally, I will provide case law examples on how designers have dealt with the issues discussed earlier, compare EU and U.S. jurisdictions, and also, propose possible solutions.

1. The Fashion Industry

1.1 The Role of Intellectual Property Rights in the Fashion Business

There is a common consensus that the luxury fashion industry is driven by 'design content' and 'design turnover' considerations.⁵ Therefore, it might be justifiable to think that a legal thesis that addresses the luxury fashion industry would focus on design and copyright aspects of the law. However, the legal concerns of the fashion industry extend beyond these law issues. High-end fashion designers encounter legal problems that exceed the design protection, such as commercial sales, employment law, and most relevant to this thesis, trademark law.⁶ The lack of attention to these areas is problematic. Therefore, we have to take a look at this through the perspective of trademark law but also, emerging legal specialty, fashion law.

Fashion has achieved the status of a genuinely global industry. The fashion industry is characterized by its frequent innovations that form the fundamental basis of competition and the fundamentals of its structure.⁷ Despite the economic and cultural importance of the fashion industry, the legal profession was at first slow to develop specific tools and treatises to serve

⁵ Raustiala, K., & Sprigman, C. (2006). The piracy and paradox: Innovation and intellectual property in fashion design. *Va. L. Rev.*, 92, 1687.

⁶ Basma, D. (2016). *The nature, scope, and limits of modern trademark protection: A luxury fashion industry perspective*. The University of Manchester (United Kingdom), 48.

⁷ Wulf, A. (2016). A Comparative Approach to the Protection of Fashion Innovations. *UC Berkeley.*, 6.

its fashion clientele.⁸ However, with the arrival and rapid growth of the emerging branch of Fashion Law, this gap is now being filled.⁹ G. Jimenez defines Fashion Law as follows:

„Fashion law is the legal specialty that addresses the legal issues typically faced by fashion companies and fashion designers. As with other legal specialties at the intersection of business law and intellectual property, fashion law is actually a compilation of legal disciplines. Thus, fashion law incorporates relevant concepts from intellectual property, contracts, corporate law, commercial sales, real estate, employment, advertising law, and international trade and customs, among others.“¹⁰

The concept of fashion law has emerged in the past years, and academic institutions have started to focus on this legal specialty, for example by providing fashion law programmes at universities. The existence of a fashion industry is indisputable and the public awareness about fashion designers and their creations is at an all-time high.¹¹ Fashion law covers many different branches of law, inter alia, intellectual property law. However, fashion design is a very complex type of property compared to visual arts, music, film or dance.¹² For this reason, traditional intellectual property law does not necessarily work in favor of fashion designers. Fashion designers do not, in fact, benefit from the same level of protection as their artistic peers in visual arts, music, film or dance.¹³ This is what is extremely problematic in the world of fashion.

The most common legal issue typically faced by a fashion company is protecting its intellectual property (IP) rights, especially its brand name, logo, and other trademarks. One of the structural characteristics of today's fashion industry is a firm reliance on licensing. In licensing transactions, the owner of intellectual property enters into an agreement under which another party manufactures branded fashion items under the licensor's quality and design standards.¹⁴ Through licensing, a company that has

⁸ Jimenez, G.C., & Kolsun, B. (Eds.). (2014). *Fashion law: A guide for designers, fashion executives, and attorneys*. A&C Black., xxii.

⁹ *Ibid.*

¹⁰ *Ibid.*, 2.

¹¹ Buchalska, J. (2016). Fashion Law: A New Approach. *QMLJ*, 7, 13.

¹² Marshall, A. (2013). Free fashion. *Marq. Intell. Prop. L. Rev.*, 17, 126.

¹³ *Ibid.*

¹⁴ Jimenez, G. C., & Kolsun, B. (Eds.). (2014). *Fashion law: A guide for designers, fashion executives, and attorneys*. A&C Black., xxiii.

developed a famous brand name can exploit that value in various countries or industries where it might otherwise have lacked the capital to operate.¹⁵ Trademarks have become devices used to identify the source of consumer products in the fashion industry.¹⁶ Fashion designers within this industry rely on their intellectual property rights to protect their designs, creations, and innovations.¹⁷ We are going to take a look at this in the following chapter.

1.2 Different Forms of IP and their Applicability in Fashion

Your brand is the most profitable asset of your business. According to the Oxford American Dictionary, a “brand” is a composite of attributes, both tangible and intangible, symbolized by a trademark, which if managed properly, creates value and influence.¹⁸ Customers associate your brand with specific styles, quality, and experiences. Fashion designers invest a lot of time, effort, and money, in order to create a successful brand. Designers build relationships with their customers through their brand. For this reason, designers need to protect their business through trademark registration and its *assets* through copyright law. From both a legal and business perspective, brands are assets; the value of which is tremendous. Fashion designers should manage their intellectual property portfolios from the very beginning and plan for the day they may sell their assets. This reduces the risk of others stealing from your brand or using it in any other malicious way.

In order to investigate under which regimes designers’ personal name brands could be protected, we have to analyze first the different forms of intellectual property (IP) available in the fashion industry. Here is a brief insight into the various types of intellectual property and their applicability in fashion:

A. Trademark

¹⁵ *Ibid.*

¹⁶ Schwartz, E. S. (2012). Red With Envy: Why the Fashion Industry Should Embrace ADR as a Viable Solution to Resolving Trademark Disputes. *Cardozo J. Conflict Resol.*, 14, 282.

¹⁷ Raustiala, K., Sprigman, C., & Sprigman, C. J. (2012). *The knockoff economy: How imitation sparks innovation*. Oxford University Press., 20-21.

¹⁸ Oxford American Dictionary (Oxford University Press, 1980).

„A 'trade mark' may consist of any signs capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings; and being represented on the register in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.”¹⁹

Certain trademarks that fall within this broad definition are nevertheless refused registration. There are three essential requirements. First, there needs to be a sign. Second, the sign needs to be distinctive, and third, that sign needs to be capable of being represented on the Register of European Union trademarks in a manner that enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.²⁰ For example, the trademark “Chanel”, along with the two horizontal interlocking semicircles, identify the clothing, cosmetics, perfumes, costume jewellery, and leather goods made by Chanel and distinguish them from products made by other companies.

Trademark law protects a business name and other trademarks, such as a person’s name. Trademark law has always been thought to be closely equivalent to the right of publicity because both protect the name of a person, and both are forms of intellectual property placed within the legal sphere of unfair competition.²¹ The right of publicity protects against the misappropriation of a person’s name and gives people the right to control the use of their names and likeness for commercial purposes.²² Fashion companies often use celebrities and their own well-known designers to promote their brands. Therefore, the right of publicity also protects a designer’s interest in her name.

American legal doctrine has already developed case law and a legal framework allowing famous people to license and transfer their right of publicity freely. The EU countries

¹⁹ Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks, art 3.

²⁰ Pila, J., & Torremans, P. (2019). *European intellectual property law*. Oxford University Press, USA., 347.

²¹ Jackson, T. S. (2004). How Far Is Too Far-The Extension of the Right of Publicity to a Form of Intellectual Property Comparable to Trademark/Copyright. *Tul. J. Tech. & Intell. Prop.*, 6, 191.

²² Dogan, S. L., & Lemley, M. A. (2005). What the right of publicity can learn from trademark law. *Stan. L. Rev.*, 58, 1162.

have not developed a unique approach regarding the right of publicity.²³ Although trademark law and the right of publicity share many similarities, the two also have significant differences.²⁴ The primary purpose of trademark law is to prevent the consumer from being defrauded.²⁵ In contrast, the primary purpose of the right of publicity is to protect a person from the unwanted use of their identity and protect that person's property interest in that identity.²⁶ It could be argued, that the right of publicity is a more efficient way to protect one's personal name as a trademark.

B. Copyright

The Berne Convention imposes the minimal requirements for the national copyright laws of the Member States.²⁷ Copyright aims to protect creativity and further establish freedom of expression. Copyright law allows designers to protect their creations and designs. A copyright protects a piece of creative work, and therefore, it cannot be used for a brand name.²⁸ The most important element of copyright law is that it protects the expression of the idea, its materialization, and not the idea itself.²⁹

Copyright protection exists as soon as the work is created. A designer does not need to go through any formalities to be protected. The person who creates a work becomes its "author" and gains the protection of the law. The only prerequisite for copyright protection within the EU is that his creation must be original.

C. Industrial designs

²³ Moskalenko, K. (2015). The right of publicity in the USA, the EU, and Ukraine. *International Comparative Jurisprudence*, 1(2), 1.

²⁴ Dinwoodie, G. B., & Janis, M. D. (2013). Trademarks and Unfair Competition: Law and Policy. *Wolters Kluwer Law & Business*.

²⁵ Jackson, T. S. (2004). How Far Is Too Far-The Extension of the Right of Publicity to a Form of Intellectual Property Comparable to Trademark/Copyright. *Tul. J. Tech. & Intell. Prop.*, 6, 192.

²⁶ *Ibid.*

²⁷ Berne Convention for the Protection of Literary and Artistic Works, 09.09.1886, art. 5, 1-2.

²⁸ Brette, S. (2020). How Do I Trademark a Clothing Brand? *Legalzoom*. Retrieved from <https://www.legalzoom.com/articles/how-do-i-trademark-a-clothing-brand> 04 March 2021.

²⁹ Panidou, S. (2016). The Protection of Fashion Design Under Intellectual Property Law, 10.

Designs have something to do with shape and they are closely connected with the concept of a trademark for a three-dimensional shape.³⁰ The concept of a ‘design’ is defined as “the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.”³¹ In the EU, designs are protected under the European Parliament and Council Directive 98/71/EC on the legal protection of designs that works alongside with Council Regulation (EC) No. 6/2002 of December 2001 on community designs.³² Both of these instruments grant its owner exclusive rights over their *registered* designs to prevent their design from unauthorized copying. However, the Regulation also created a Community *unregistered* design right. The need for an unregistered right became apparent in those industries in which where fashion changes quickly and the registration process would take too long.³³

D. Patent

A *patent* is an exclusive right granted for an invention to their inventors.³⁴ Some examples of invention patents in the fashion industry include the technology used to manufacture CROCS shoes, wrinkle-free fabrics, UV-filtering textiles resistant to fire, and water-repelling textiles.³⁵ Artistic creations cannot be, however, patented. For this reason, fashion designers do not often turn into the protection of patents law. The trends in fashion change rapidly. Therefore, getting a patent is not the best option for designers. However, technical inventions can give a fashion business a significant advantage in the highly competitive market. Fashion patents provide the inventor a legal right to protect his invention, whether it is a product, design, or process related to the fashion designs.³⁶

³⁰ Pila, J., & Torremans, P. (2019). *European intellectual property law*. (2nd ed.) USA: Oxford University Press, 461.

³¹ Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs, art 1 (a).

³² Pila, J., & Torremans, P. (2019). *European intellectual property law*. (2nd ed.) USA: Oxford University Press, 461.

³³ *Ibid.*, 479.

³⁴ Farre-Mensa, J., Hegde, D., & Ljungqvist, A. (2020). What is a patent worth? Evidence from the US patent “lottery”. *The Journal of Finance*, 75(2), 1.

³⁵ Mossack Fonseca & Co. (2013). Intellectual property and the fashion industry. *Lexology*. Retrieved from <https://www.lexology.com/library/detail.aspx?g=6c596a24-e79b-4d39-a73f-9837529d9a78> 07 March 2021.

³⁶ Saxena, A. (2020). Significance of intellectual property in the fashion industry. *Lexology*. Retrieved from <https://www.lexology.com/library/detail.aspx?g=3011b365-d004-402f-8a62-1a52265787b0> 07 March 2021.

The significance of intellectual property in the fashion industry is without a doubt substantial, and there is a genuine need to reconsider the range of safeguards that are available to fashion designs and fashion designers. Fashion designers should educate themselves on different types of intellectual property rights and discover the best way to protect themselves - their brand and their designs. For the purpose of this thesis, however, we will mainly focus on trademark law and the issues designers face while trying to get trademark protection for the use of their name.

2. Trademarks as a Symbol for Goodwill

2.1 The Concept of Goodwill

Trademarks have developed in the context of the misappropriation model of trademark law.³⁷ Under this model, trademark law aims not only to prevent confusion but also prevent unauthorised misappropriation through protecting the goodwill of a business.³⁸ The “*goodwill*” of a trademark relates to the inherent value of your trademark. Trademark law protects a seller’s goodwill in its mark.³⁹ Goodwill protection relates to protecting sellers from misappropriation and it demonstrates the exceptional value that attaches to a mark when the seller’s advertising and investments in quality generate consumer quality.⁴⁰ In other words; defendant who uses the plaintiff’s trademark to attract customers will be regarded as improperly exploiting the goodwill of an existing business even if the plaintiff’s goodwill was not impaired in any way.⁴¹ Trademarks are symbols of this goodwill, and trademark law prevents others from appropriating it by using a similar mark.⁴²

The concept of goodwill, however, is broad and needs further elaboration. Bone distinguishes between three types of goodwill – brand goodwill, firm goodwill, and inherent goodwill.⁴³

³⁷ Beebe, B. (2013). The Suppressed Misappropriation Origins of Trademark Antidilution Law: The Landgericht Elberfeld's Odol Opinion and Frank Schechter's The Rational Basis of Trademark Protection. *Intellectual Property at the Edge: The Contested Contours of IP* (Rochelle Cooper Dreyfuss and Jane C. Ginsburg, eds., 2013), Forthcoming, 13-36.

³⁸ Basma, D. (2016). *The nature, scope, and limits of modern trademark protection: A luxury fashion industry perspective*. The University of Manchester (United Kingdom), 72.

³⁹ Bone, R. G. (2006). Hunting goodwill: a history of the concept of goodwill in trademark law. *BUL Rev.*, 86, 549.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*, 551.

Brand goodwill is the most limited one, and it refers to the optimistic information consumers have about a specific brand. This type of goodwill can only be misappropriated if a third party uses a similar trademark and deceives consumers into thinking that the defendant is selling the same brand of the same product.⁴⁴

The second type of goodwill Bone refers to is *firm goodwill*. This type of goodwill extends beyond associations with a brand, and it includes positive impressions which consumers form about the firm as a whole. In this context, misappropriation can appear when a third party uses a previous mark in a way that creates an association between the trademark and its products.⁴⁵ Here, the third party benefits from the association that a consumer has with the particular trademark.

The third type of goodwill is referred to as *inherent goodwill*.⁴⁶ Misappropriation of this type of goodwill occurs when a third party benefits from the positive connotations attached to the trademark itself. For example, suppose a third party uses the Yves Saint Laurent trademark in the market in which Yves Saint Laurent operates. In that case, misappropriation occurs because the third party is benefiting from the luxury and prestige associations associated with the Yves Saint Laurent trademark.⁴⁷

Consumers are attracted to the associations within the mark itself. The goodwill of a business can only be attained by the use of a trademark. From a consumer point of view, a trademark is a symbol of ‘the value consumers place on the product and the reputation of the product source’.⁴⁸ To put it simply, a trademark cannot be of substantial value unless it is assigned to the goodwill of the business and is represented through a trademark.

The importance of trademarks in the context of goodwill also lies within the ability of trademarks to transform a firm’s goodwill into a transferable asset.⁴⁹ This means that trademarks that are registered and assigned to particular products can be transferred alongside

⁴⁴ *Ibid*, 551.

⁴⁵ *Ibid*.

⁴⁶ *Ibid.*, 551-553.

⁴⁷ *Ibid*.

⁴⁸ Jacobsen, T. (2001). Trademarks and goodwill-relationships and valuation. *J. Contemp. Legal Issues*, 12, 193, 194.

⁴⁹ Basma, D. (2016). *The nature, scope, and limits of modern trademark protection: A luxury fashion industry perspective*. The University of Manchester (United Kingdom), 76.

the goodwill of the business concerned.⁵⁰ This has triggered issues within trademark protection for designers protecting their personal name trademark after it has become a valuable brand.

2.2 Registering Personal Names as Trademarks

“Herve Leger, who, in the late 1980s, designed the iconic “bandage dress”, was a nearly unknown designer, when, in 1985, he founded his fashion label. After his breakthrough design, however, his fashion line quickly became famous, and he was known by his namesake designs. Nevertheless, Ledger can no longer use his name on the designs he creates. This is because Leger lost control of his company to BCBG Max Azria Group, which now promotes the acquired line as “Herve Leger by Max Azria”. In selling his business, Leger sold the commercial use of his own name. As a result, Herve Leger, the brand, is owned by BCBG Max Azria Group, while Herve Leger, the man, was forced to promote his new designs under his new design name, Herve L. Leroux.”⁵¹

For fashion designers, it may be challenging to clear and register a personal name as a trademark. When you select a mark to identify your particular goods or services, you need something capable of distinguishing your goods and services from those of others. It may seem logical to think that a person’s name serves that purpose entirely. For example, designers, including Elizabeth Emanuel, Jil Sander, Thierry Mugler, Joseph Abboud, and many others, have successfully registered their names as trademarks for their fashion brand. However, The marketplace and applicable trademark registers may already be crowded with marks that include the designer’s personal name.⁵²

In the EU, acquiring first, middle or last names as trademarks is relatively straightforward, and according to EUIPO guidelines, there are no specific criteria to be taken into account when the

⁵⁰ *Ibid.*, 76.

⁵¹ Pitzer, A. B. (2010). Unfashionably Late: Protecting a Designer's Identity after a Personal Name Becomes a Valuable Trademark. *S. Ill. ULJ*, 35, 309 – 310.

⁵² Sciarrino, G. C., & Asbell, M. D. (2017). The Designer Formerly Known as: Intellectual Property Issues Arising from Personal Names as Fashion Brands. *Trademark Rep.*, 107, 1152.

likelihood of confusion between names is assessed.⁵³ However, personal names are still treated as exceptional cases in the EU. Specific aspects need to be considered, such as whether a given first name or surname is common or not in the relevant territory.⁵⁴ A personal name trademark may fail to be registered if it includes a name or a surname used in the specific territory. This causes problems when a designer is trying to acquire trademark protection in multiple areas.

In contrast, Common Law trademark rights arise through adoption and from the actual use of the mark in commerce.⁵⁵ In practice, this happens once consumers view the brand name as an indicator of the product's source. Common law marks are protected because they have been adopted and used, and the public recognizes the products or services are coming from a particular source.⁵⁶ In other words, the first to either use a mark in commerce or file an intent to use application with the USPTO has the ultimate right to use and registration.

As mentioned above, for a personal name to serve as a trademark or achieve federal registration, the name must be used in connection with goods or services. In addition, to use as a trademark, a showing of secondary meaning is required to protect a name as a trademark.⁵⁷ This means that a personal name can be protected as a trademark only if the owner can prove that the name has acquired distinctiveness and the consuming public recognizes that the descriptive name is a trademark that refers to your products. To achieve federal registration of a personal name, the focus is on the primary significance of the term and whether the public will perceive the mark as a personal name. If the public views the mark as a personal name, then proof of secondary meaning is required.⁵⁸

Part of the rationale for requiring secondary meaning is a reluctance to prevent a person from using his or her own name within a business name or trademark due to exclusive rights in that

⁵³ EUIPO trade mark guidelines. 7.2.3 First and family names. Retrieved from <https://guidelines.euipo.europa.eu/1803468/1785734/trade-mark-guidelines/7-2-3-first-and-family-names> 16 March 2021.

⁵⁴ *Ibid.*

⁵⁵ Intellectual Property Center. (2005, May 23). Trademark Protection under State Common Laws. [Blog post]. Retrieved from <https://theipcenter.com/2005/05/trademark-protection-under-state-common-laws/> 16 March 2021.

⁵⁶ Trademark Protection under State Common laws, May 23, 2005. Retrieved from <https://theipcenter.com/2005/05/trademark-protection-under-state-common-laws/> 16 March 2021.

⁵⁷ McCarthy, J. T. (1996). *McCarthy on trademarks and unfair competition*. Clark Boardman Callaghan. (4th ed.)

⁵⁸ Nicholas, R. (2015, March 18), Let's Get Personal – Trademark Protection for Personal Names. *The National Law Review*, 1.

name to another.⁵⁹ The view that everyone has a right to use their own name as a mark has evolved over the years as trademark law has changed. Trademark law's primary focus is to protect the public from confusion, which is why a person might face limits to using their own name if it is likely that it would cause confusion with an already existing mark. However, it is problematic that it can affect an individual's right to use their own name since it is their identity.

Although establishing a secondary meaning can be challenging, a personal name can become a strong mark, such that the general public recognizes the name as identifying certain goods and services from one source. Trademarks, such as Ralph Lauren and Jil Sander, are both personal names that serve as strong and effective trademarks for designers. In the U.S., under the Lanham Act, a mark that is "primarily merely a surname" cannot be registered on Principal Register without proof of secondary meaning. There is a five-factor test that courts use to decide whether a name is "primarily merely a surname."⁶⁰ The five factors are as follows:

- (1) whether the surname is rare
- (2) whether the term is the surname of anyone connected with the applicant
- (3) whether the term has any recognized meaning other than as a surname
- (4) whether it has the "structure and pronunciation" of a surname; and
- (5) whether the stylization of lettering is distinctive enough to create a separate commercial impression⁶¹

If your name does not conform with each of these five factors, it will likely be challenging to register and protect your name as a trademark. For this reason, it is crucial for the designer to formulate ways to build and demonstrate secondary meaning to increase the probability of the personal name mark being registered and protected. Fortunately, in the U.S., it is very unlikely for a designer to face refusal for a mark that is a combination of their first name and surname.⁶²

⁵⁹ McCarthy, J. T. (1996). *McCarthy on trademarks and unfair competition*. Clark Boardman Callaghan. (4th ed.)

⁶⁰ See TMEP § 1211.01(a).

⁶¹ *Ibid.*

⁶² Sciarrino, G. C., & Asbell, M. D. (2017). The Designer Formerly Known as: Intellectual Property Issues Arising from Personal Names as Fashion Brands. *Trademark Rep.*, 107, 1153.

In the U.S, in order to register a personal name as a fashion brand, there is also a requirement for written consent. When a name, portrait, or signature in a mark identifies a particular living individual, the mark can be registered only with the written consent of the individual.⁶³ This may cause problems when a purchasing company seeks to register the designer's name in new applications. A great example of this is the opposition filed by the fashion designer Christian Lacroix against the registration of the mark CHRISTIAN LACROIX by the company Christian Lacroix, Snc.⁶⁴ In this case, the TTAB found that Christian Lacroix ("Opposer") had assigned all of his trademark rights in his name to Christian Lacroix, Snc. ("Applicant") and the Trademark Sale Agreement implied that the Opposer had consented to the use and registration of the CHRISTIAN LACROIX trademark by the Applicant. For this reason, it is extremely important to bear in mind when attempting to register a personal name as a trademark the potentially long-lasting effects of any consent given.

Designers who wish to own and use their names as trademarks should also consider possible rights worldwide. Foreign brands have learned the hard way to be proactive when it comes to protecting their foreign language brand names.⁶⁵ Michael Jordan spent years fighting in Chinese courts to get the rights over the use of Jordan's Chinese name 乔丹 (Qiaodan), from Qiaodan Sports Co.⁶⁶ Therefore, designers should consider applying to register their names in non-Latin characters in relevant jurisdictions.

3. Unfair Commercial Practices

3.1 Misleading and aggressive actions

Unfair commercial practices refer to the use of various deceptive, fraudulent, or unethical methods to obtain business. A commercial practice is unfair, under EU law, when it prevents the consumer from making a fully informed and accessible economic decision.⁶⁷ Unfair

⁶³ See *TMEP* § 813.01(a).

⁶⁴ *Christian Lacroix v. Christian Lacroix, Snc.* No. 91202642 (T.T.A.B Mar. 10, 2017).

⁶⁵ Garraffa, P. (2017). Michael Jordan's who? The trade mark litigation between Michael Jordan and 'Qiaodan'sports. *The International Sports Law Journal*, 16(3), 234-239.

⁶⁶ *Ibid.*

⁶⁷ European Parliament, Consumer Law Training for European SMEs, January 2018. Retrieved from https://www.consumerlawready.eu/sites/default/files/2019-04/CLR_Module_4_MT_Unfair_Commercial_Practices.pdf 02 April 2021.

commercial practices are prohibited across the EU.⁶⁸ Consumers are protected against two main categories of unfair commercial practices:

A) Misleading actions

- **Misleading action:** A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise.⁶⁹
- **Misleading omissions:** A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.⁷⁰

B) Aggressive actions

- A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise.⁷¹

⁶⁹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, 11.05.2005, art. 6.

⁷⁰ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, 11.05.2005, art. 6-7.

⁷¹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, 11.05.2005, art. 8.

3.2 Deceiving the Public

Trademarks exist to distinguish origin. Without distinctiveness, a trademark cannot be registered. The function of trademarks is to enable the consumer to distinguish between identical goods of different origins. Therefore, trademarks operate in the relationship between the rights-holder (producer of the goods or renderer of the service) and the consumer. The consumer relies on the trademark for information and to enable repeat purchases. In other words, the trademark should not deceive the product, as that would destroy the essential relationship between the rights holder and the consumer.⁷² When a designer uses their personal name as a trademark and assigns it to a third person with its registered trademark and goodwill, and continues the business with its acquired trademark, it could possibly mislead the consumer. Deceiving the public is an absolute ground for refusal, and *Elizabeth Florence Emanuel v Continental Shelf* provided the CJEU with an opportunity to explain this provision. This case concerned whether an individual who sells the rights in their name can challenge the ownership of those rights on the basis that its use would be fraudulent.⁷³

Elizabeth Florence Emanuel is a well-known British fashion designer of wedding attire. She registered the trademark ‘Elizabeth Emanuel’ for her company. She assigned her business with its goodwill and the registered trademark to Frostprint Ltd, which changed its name to Elizabeth Emanuel International. Soon afterwards, Elizabeth Emanuel left the business. After another assignment, the new company, with which Elizabeth Emanuel has no links, applied to register another trademark, ‘ELIZABETH EMANUEL’.⁷⁴ In her view, the registration of her name by a company with which she had no links was likely to deceive the public that still associated her name with wedding attire, but she had no involvement in that company’s clothes.⁷⁵

The Court refused to establish the link between the use of a name and deception because the person whose name is used is no longer involved. In the view of the Court:

- (i) A trademark corresponding to the name of the designer and first manufacturer of the goods bearing that mark may not, by reason of that particular feature alone, be

⁷² Pila, J., & Torremans, P. (2019). *European intellectual property law*. Oxford University Press, USA., 371.

⁷³ Court decision, 30 March 2006, *Elizabeth Florence Emanuel v Continental Shelf 128 Limited*, C-259/04, ECLI:EU:C:2006:215

⁷⁴ Fiddess, A. (2006). Current intelligence. *Journal of Intellectual Property Law & Practice*, 1, 503.

⁷⁵ Pila, J., & Torremans, P. (2019). *European intellectual property law*. Oxford University Press, USA., 371.

refused registration on the ground that it would deceive the public, within the meaning of Article 3(1)(g) of Directive 89/104, in particular where the goodwill associated with that trademark, previously registered in a different graphic form, has been assigned together with the business making the goods to which the mark relates.

- (ii) A trade mark corresponding to the name of the designer and first manufacturer of the goods bearing that mark is not, by reason of that particular feature alone, liable to revocation on the ground that that mark would mislead the public, within the meaning of Article 12(2)(b) of Directive 89/104, in particular where the goodwill associated with that mark has been assigned together with the business making the goods to which the mark relates.⁷⁶

Elizabeth Emanuel had sold the rights to her name to the proprietor of the registration and the application. This sale effectively deprived her of the right to prevent that company from using the trademark, which was the subject of the existing registration, and registering a new version of the trademark. Therefore, the applicant is required to prove actual deception, and in the absence of that proof, the rights holder that has acquired the trademark in a bona fide way as a tradable commodity in its own right can continue to use it.⁷⁷ In addition, having obtained the business, nothing will stand in the way of additional trademark registrations. However, this case raised an issue that was not clear - whether the sale of an individual's name would remove the protection given by the 'own name' defence under section 11 of the Act, thus preventing an individual from using his own name in the future.⁷⁸

The designer's name is, in fact, a term that "identifies and distinguishes" goods or services that allow consumers to decide based on past experiences with other works by the same designer or on the basis of the designer's reputation. When a consumer encounters the designer's name, for example, on a dress, it expects the work to meet certain qualities. A fashion designer endeavors to give their goods a brand image that will enable the consumer to identify the goods

⁷⁶ Court decision, 30 March 2006, *Elizabeth Florence Emanuel v Continental Shelf 128 Limited*, C-259/04, ECLI:EU:C:2006:215, point 51 and 53.

⁷⁷ Pila, J., & Torremans, P. (2019). *European intellectual property law*. Oxford University Press, USA., 372.

⁷⁸ Fiddes, A. (2006). Current intelligence. *Journal of Intellectual Property Law & Practice*, 1, 505.

and relate them to his past experiences with the brand and grant a certain “cachet” to the trademark. A consumer ends up associating the trademark with certain goods and a lifestyle or with various physical or emotional qualities he finds attractive.⁷⁹ For this reason, it is problematic and challenging that a designer, after assigning their brand, cannot use their name anymore, and a third party benefits from the reputation of the name, and it could deceive the public.

4. The Transfer of Trademark Rights: Case Law Examples

4.1 The Joseph Abboud Case

If a seller only transfers trademark rights to his personal name, he can still continue to use his name for specific non-trademark commercial purposes.⁸⁰ However, such use must be limited so that it does not create confusion with the trademark holder’s business and not impinge upon the goodwill he sold for significant considerations.⁸¹ However, if the contract terms manifested a “clear” and expressed intent to transfer the exclusive right to commercial use of the name, the name-source is prohibited from using his name to advertise for a new business.⁸²

A milestone case in the fashion industry concerned the selling of a personal name.⁸³ The case *Paolo Gucci v. Gucci Shops, Inc.*⁸⁴ revolved around the likelihood of confusion with Gucci’s goods, if Paolo used his surname as a trademark. The Court held that Paolo had a right to use his surname in other business ventures to identify himself as the designer, as long as he makes it clear by using a disclaimer that he is using it as his personal name and that he is not affiliated with any of the Gucci entities.⁸⁵ The principles in *Gucci* remained in effect in the following case, *JA Apparel Corp., v. Abboud*:

⁷⁹ Ginsburg, J. C. (2005). The Author's Name as a Trademark: A Perverse Perspective on the Moral Right of Paternity. *Cardozo Arts & Ent. LJ*, 23, 381.

⁸⁰ Montalvo, F. M. (2012). Refashioning the right of publicity: protecting the right to use your name after selling a personal name trademark. *Cardozo Arts & Ent. LJ*, 31, 896.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ See *Paolo Gucci v. Gucci Shops, Inc.* 688 F.Supp. 916

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

A person may transfer trademark rights to a personal name along with his related publicity rights to use his name commercially.⁸⁶ The *Joseph Abboud* case⁸⁷ illustrates the issue in determining what rights a name-source retains to utilize his personal name in commerce after assigning a personal name trademark. Joseph Abboud, a fashion designer, launched a menswear company in 1987 and registered his personal name, “Joseph Abboud”, as a trademark. He sold certain company assets and its trademarks to JA Apparel Corporation (“JA Apparel”). The sale agreement stated that the sale included “the names, trademarks, trade names, service marks, logos, insignias... and the goodwill related thereto. . . and all other Intellectual Property.”⁸⁸ Simultaneously, Abboud also agreed that he would provide JA Apparel with design ideas for the first five years and help promote “Joseph Abboud” products.⁸⁹ In addition, Abboud also agreed not to compete with JA Apparel.⁹⁰ After the non-compete period expired, Abboud launched another fashion line under the name “Jaz.”⁹¹ At this time, Abboud and his attorneys thought he had retained the right to use his personal name, Joseph Abboud, while marketing and advertising the “Jaz” line.⁹²

JA Apparel filed a lawsuit against Joseph Abboud, alleging a breach of contract and trademark infringement.⁹³ Abboud claimed that he was using his name descriptively and not as a trademark to promote his new line.⁹⁴ Abboud also claimed that JA Apparel had violated his right of publicity by using Abboud’s name in connection with JA Apparel products and engaging in “false endorsement, false advertising, and unfair competition, and violating New York civil rights law.”⁹⁵

The District Court found that Abboud had transferred his trademark rights to his name and the commercial use right to use his name.⁹⁶ Therefore, any use of his name would constitute a breach of the agreement. On appeal, however, the Second Circuit disagreed with this Court’s

⁸⁶ Montalvo, F. M. (2012). Refashioning the right of publicity: protecting the right to use your name after selling a personal name trademark. *Cardozo Arts & Ent. LJ*, 31, 902.

⁸⁷ United States District Court, S.D. New York, *JA Apparel Corp. V Abboud*, 682 F. Supp. 2d 294 (S.D.N.Y.2010).

⁸⁸ Montalvo, F. M. (2012). Refashioning the right of publicity: protecting the right to use your name after selling a personal name trademark. *Cardozo Arts & Ent. LJ*, 31, 903.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

conclusion that the word "names" in the Sale Agreement unambiguously conveyed to Plaintiff the exclusive right to use the Joseph Abboud name commercially and remanded to consider further evidence of the parties intent.⁹⁷ After reviewing the evidence, the District Court concluded that the designer did not intend to transfer non-trademark rights to his name in the Sale Agreement.⁹⁸ However, the Court prohibited Abboud from using his name as a trademark or from using his name on any "jaz" products.⁹⁹ Abboud was permitted to use his name for descriptive, non-trademark purposes in advertisements in good faith.¹⁰⁰

The Joseph Abboud controversy demonstrates the importance of drafting clear and specific language in agreements that transfer personal names as trademarks and as publicity rights.¹⁰¹ In order to effectively protect the transferor of a personal name, these agreements must include specific "carve-out" provisions that list what the designer can still do with his name post-transfer.¹⁰² For this reason, it is essential that the attorney has a conversation with his client and can foresee any uses that the designer would like to have for his name in the future.¹⁰³ If a person fails to plan for his retained uses and include them in the carve-out provision when entering into an agreement, he may be unable to use his name in the future for those desired purposes.¹⁰⁴

4.2 The Karen Millen Case

This case concerned Karen Millen's right to use her name.¹⁰⁵ In 2004, Karen Millen sold her company, along with the rights to use her name on future competing business ventures, to the Icelandic private equity group Baugur, by a purchase agreement (SPA). The legal battle between fashion designer Karen Millen and London-based international fashion brand Karen Millen Fashions Limited (KMFL) has been ongoing since 2011. In 2011, Millen announced

⁹⁷ *Ibid.*, 904.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ Montalvo, F. M. (2012). Refashioning the right of publicity: protecting the right to use your name after selling a personal name trademark. *Cardozo Arts & Ent. LJ*, 31, 905.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ See *Millen v Karen Millen Fashions Ltd* [2016] EWHC 2104 (Ch).

her intent to return to the fashion business by using the name KAREN.¹⁰⁶ A settlement was reached in February 2015 in relation to any use of both the KAREN MILLEN marks and the KAREN solus marks in the U.K. and the EU. This settlement prevented Millen from using her name on fashion or lifestyle products in these jurisdictions. However, the settlement did not address the position in the U.S. or China.¹⁰⁷ Millen then attempted to register trademarks in the U.S. that included her name.¹⁰⁸ In addition, Millen filed cancellation actions in the U.S. against KMFL marks that included her name. KMFL initiated legal proceedings by claiming, inter alia, breach of contract.

Karen Millen brought an action in the High Court of England and Wales that included a claim for declaration that she could use the marks KAREN and KAREN MILLEN in the U.S..¹⁰⁹ In the High Court decision, the judge ruled that the designer Karen Millen no longer had the right to use KAREN or KAREN MILLEN as a trademark for any goods and services in the U.S. However, the judge noted that if Karen Millen would have pursued a decision solely in relation for the use of KAREN (for instance, geographic positioning, its trade dress and the use of the mark) then the result could have been different and this aspect of her claim might have succeeded.¹¹⁰ Millen has not, as of now, appealed the High Court's decision. As a result, Millen has to redevelop her new brand under a different name.

4.3 The Paul Frank Sunich Case

The fashion designer Paul Frank Sunich was in a legal battle with the owners of Paul Frank Industries Inc. (PFI), which was his former company. This case concerned the use of his full name on T-shirts.¹¹¹ The Court ruled that Sunich could not use his name on T-shirts, which the public had come to associate with his former company. However, he could identify himself as the designer of his new products, inter alia business cards or on his website, as long as he disclaimed that he is no longer affiliated with PFI.¹¹² This case is a great example of how

¹⁰⁶ *Ibid.*

¹⁰⁷ *See facts recited in* Millen v Karen Millen Fashions Ltd [2016] EWHC 2104 (Ch) Retrieved from <https://www.casemine.com/judgement/uk/5a8ff76e60d03e7f57eac6a9> 02 May 2021.

¹⁰⁸ *Ibid.*

¹⁰⁹ *See* Millen v Karen Millen Fashions Ltd [2016] EWHC 2104 (Ch)

¹¹⁰ *Ibid.*

¹¹¹ *See* Paul Frank Industries, Inc. v. Paul Sunich. 502 F. Supp. 2d 1094 (C.D. Cal. 2007)

¹¹² *Ibid.*

designers should be aware that when they leave their companies, they may inevitably leave behind the trademark rights to their names.

5. Comparing EU and U.S. perspectives

There is a significant difference between European and American regulation of fashion law. However, in both legal systems, the most extensive intellectual property protection in fashion is granted by trademark law.¹¹³ Trademark protection in Europe allows for the protection of a brand or company name as a community trademark if it has a distinctive character. In the U.S., trademark rights arise through adoption and from the actual use of the mark in commerce. In both jurisdictions, a showing of secondary meaning is required.

In the U.S., there is a possibility to guarantee fashion law protection by trade dress law.¹¹⁴ There is no legal definition for trade dress; however, according to G. Jimenez, trade dress is intellectual property in the characteristic appearance or packaging of a product.¹¹⁵ In the EU, there is no single way to protect appearance, product and packaging shape, product colour and shop fronts.¹¹⁶ However, EU legislation has started to develop trade dress.¹¹⁷ For trade dress to be protected, it must be distinctive, or the public must have learned to associate the appearance of the product with its specific source, which is similar to the protection of trademark in both Europe and the U.S.

In the U.S., a person's right to commercially use their name falls under the category of the right of publicity. This right has not been reinforced in Europe; however, some jurisdictions in Europe may recognize under their Copyright laws a designer's moral rights over their design the moment an original work is created. Moral rights include the right of attribution (i.e., the right to be identified as the author), the right of integrity (i.e., the right to prohibit modification or destruction of the work), the right of disclosure (i.e., the right of control over publicizing of the work), and the right of withdrawal (i.e., the right to take back the work from the public after

¹¹³ Buchalska, J. (2016). Fashion Law: A New Approach. *QMLJ*, 7, 19.

¹¹⁴ *Ibid.*, 18.

¹¹⁵ Jimenez, G. C., & Kolsun, B. (Eds.). (2014). *Fashion law: A guide for designers, fashion executives, and attorneys*. A&C Black., 13.

¹¹⁶ Melilli, V. (2019). Focusing on trade dress in the European Union. *WTR*.

¹¹⁷ *Ibid.*

it has been released).¹¹⁸ Therefore, jurisdictions that recognize moral rights, usually the law regulates that the designer cannot assign the right of attribution. For this reason, after designers sell their brands, a designer may be able to maintain moral rights over using their names to present themselves as the creator of their past and future designs.¹¹⁹

The biggest difference between the U.S. and EU's fashion law concerns design protection and piracy prevention. European Union has registered and unregistered Community design rights that provide protection for clothing and accessories. That does not exist in the U.S. This is a huge advantage for European designers. Although intellectual property law for fashion is more extensive in Europe, it still does not provide extensive protection for designers' personal name trademarks. This is where the U.S. has an advantage with its right of publicity rights. However, the proper protection is not guaranteed, and for this reason, new solutions need to be proposed.

Conclusion

This dissertation had as an aim to present the serious legal problems, concerning the use of designers' personal name as a trademark in the fashion industry, but also, try to propose the most effective solutions, given by intellectual property law, in order to protect the fashion designers and their brands.

In this paper, we analyzed the choices that intellectual property law gives to the fashion designers: 1) to be protected by trademark law, 2) to be protected by copyright law, and 3) to be protected under industrial designs law. It is evident that the fashion industry is not regulated by one branch of law. Several different branches of law regulate it, and it cannot be compared to many other disciplines. We discussed briefly about what type of protection each system provides and which of them provides the most effective solutions for protecting fashion designers. However, for the purpose of this thesis, we focused on trademark law.

¹¹⁸ Sciarrino, G. C., & Asbell, M. D. (2017). The Designer Formerly Known as: Intellectual Property Issues Arising from Personal Names as Fashion Brands. *Trademark Rep.*, 107, 1159.

¹¹⁹ *Ibid.*

The conventional wisdom that trademark law traditionally protects consumers from confusion is based on recognition of a well-known mark, and post-sale confusion is much more likely for brands that are immediately recognizable.¹²⁰ As we have discussed in this paper, courts' have held that use of a well-known mark is presumably bad faith and it may deceive the public. For designers, this is problematic after they sell or assign their personal name brands to a third party because there is a possibility that they cannot use their name in future ventures. It should be considered that a third party benefiting from a famous designer's name and its goodwill after buying his brand should also be looked at as likelihood of confusion.

After all this analysis, we have to point out, as a conclusion, that trademark law cannot provide valid protection for fashion designers' personal name, because courts' have given less weight to the rights of an individual to use his name and more concern to the protection of established goodwill of a business. Moreover, minimizing the potential of confusion and deception is given more consideration to protect consumers. A fashion designer losing his right to his own name or being required to limit how he commercially uses his name is problematic, and the Courts should give more weight to the rights of an individual to use his name. To prohibit a designer from using his personal name takes away their identity.

Fashion designers should be entitled to full protection. Fashion designers do not enjoy the same level of protection as their artistic peers in visual arts, music, film, and dance. We should consider designers as their own group of artists and select out all the regulations that apply to them and extend the emerging branch of law, 'Fashion Law'. As of now, fashion law is a combination of copyrights and industrial property. Considering the rapid growth of fashion law, I think it is fair to consider implementing an extensive trademark protection, and to create new regulations to change the course and future of fashion designers and fashion brands. A regulation dedicated to fashion designers alone would allow us to one exceptional and adequate protection to the designers.

¹²⁰ McKenna, M.P. (2006). *The Normative Foundations of Trademark Law*. University of California, Berkeley, USA., 88.

In conclusion, we can understand that the only way to acquire a sufficient protection for fashion designers' personal name trademarks, is to prompt new legislation that provides full legal protection for fashion designers alone.

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Appendix 1. Non-exclusive licence

