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WELCOME...

...to the second edition of Mishcon de Reya's fashion & retail newsletter, which includes articles on immigration, counterfeit goods and the impact of unethical supplier behaviour on reputation.

Last year saw a huge rise in copyright infringement cases in the fashion industry, which costs the market millions of pounds in lost sales per year.

Although high street shops often take inspiration from designer clothes to create cheaper options and set trends, many of these stores have been producing clothes that are almost identical to the original designs.

In response to this increase in copycat behaviour some retailers have turned to the law to protect themselves against brand dilution, counterfeiting and infringement. High profile court cases such as *Monsoon v Primark*, *Jimmy Choo v Oasis* and *Chloé v Topshop* show that companies can take steps to protect their brands and challenge the counterfeiters who damage their profits. Using its award winning Tulip® (Turning Losses into Profits) service, the team at Mishcon has helped fashion companies not only stop the counterfeiters and copycat traders, but deliver a substantial return on investment back to the brand owner's bottom line. Further information and details of how Mishcon can help can be found on page 2.

I hope you find the information contained in this newsletter useful. If you have any comments or queries, do contact any one of the team who will be glad to help.

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Doing Business in Style is published by Mishcon de Reya's Fashion & Retail Group. If you have questions about any of the topics, please speak with the person named at the foot of each article or ask your regular Mishcon contact to put you in touch with one of our specialists.

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IMMIGRATION ISSUES FACED BY A GLOBAL INDUSTRY

From an immigration perspective, no industry is more truly 'global' than the fashion industry. Many designers show twice a year in London, Paris, Milan, New York and Tokyo, with each collection specially crafted to appeal to the local market of fashionistas, fashion editors, celebrities and retailers alike.

With high net worth markets developing in China, Russia, India and Brazil (to name only a few), the importance of inherent knowledge of conventions and styles is imperative to allow the fashion to alter geographically – a factor as vital to successful retail as the quality of the cut and the fabric. Moreover, to complicate matters further, not only does the fashion industry have to cater for local tastes, but it also has to ensure that, where collections are adapted and modified for differing markets, the integrity of the brand is protected

through the creation of authentic parallels from one adapted collection to the next.

These issues are largely unique to the fashion industry, and give rise to a very plausible need to engage expertise from different cultures and backgrounds at various levels – design, marketing, business development and even manufacturing – not always located in their country of origin. However a strong dichotomy exists in that, fashion, as one of the most global industries on the planet, is also one of the least well equipped to fit within the strictures of the UK Immigration Rules.

None of this is helped by the outside perception of the fashion industry as being sexy and glamorous, and so there is a presumption that the many people that want to work in it, are capable of doing so; where in reality, there are very

few who have the full package of qualities, talent and ability. The freedom to employ the right person at the right time is a privilege we promote and defend.

The UK Government is placing an increasing emphasis upon academic qualifications and high salaries to formulate the criteria for qualification to work in the UK – particularly as a Highly Skilled Migrant or on a Work Permit. However, by effectively demonstrating how important creative vision and experience are over pure academics, many companies in the fashion industry have successfully recruited the international talent that they need to ensure their company's success.

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TWO NEW WEAPONS TO CURB THE COUNTERFEITERS AND COPYCATS

Sadly, infringement of intellectual property rights (IPRs) by counterfeiters and other copycats is rife.

Fashion industry brands battle against the combined attack of both counterfeiting and design right infringements by copycat 'designers'. These issues cause not only initial financial loss, but also potential longer-term damage to brand names and reputation. Figures put the total cost of

counterfeiting to the EU's GDP at €8 billion a year and the ICC estimates that 7% of all world trade is in counterfeit goods.

The fashion industry is justifiably frustrated by the infringers' consistent undermining of its business and, no doubt, by the perceived cost of taking action. We have heard on many occasions that brand owners believe these problems are endemic in the industry and that little can be done. Despite this, brand owners are

increasingly seeking to protect their IPRs, by taking action against both high street infringers and larger scale counterfeiters, and beginning to recognise that there are ways both to recover money and to deter infringers in the future.

The key aim and outcome of actions against counterfeiters and copycats is recovering money and lost profits directly from those infringers, using all the weapons available in the civil courts.

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This both redresses the losses of the brand owners caused by such infringements and acts as a deterrent to infringers in the future.

Two new EU developments have given brand owners additional weapons in their armoury, particularly in relation to deterring counterfeiters and copycats from future infringements.

The recent EU IP Enforcement Directive enables successful claimants to compel defendants to publicly 'name and shame' themselves by placing adverts (at their own cost) in leading trade magazines or other press. Such a public admission of guilt will no doubt be a deterrent, particularly to those established and

otherwise reputable companies that are found to have engaged in copycat activity. Mishcon de Reya was the first law firm to successfully apply this new directive on behalf of Microsoft when the Firm obtained a Court order that compelled a software counterfeiter to publicly 'name and shame' itself in a leading trade magazine.

Secondly, the European Parliament has approved, in principle, a new directive that will criminalise any deliberate infringements of IPRs across the EU. It suggests maximum penalties of hundreds of thousands of EUROS and/or four years imprisonment for serious organised crime, such as large scale counterfeiting or piracy. Other

possible penalties include confiscation of pirated goods/destruction of property, potential closure of the company involved and a temporary or permanent ban on commercial trading.

While we recognise the fashion industry's frustration with the serious losses such infringements consistently cause its brands, there are increasing measures that can be taken to recover damages and costs, providing a real return on investment and also acting as serious deterrents to such infringers in the future.

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ETHICAL FASHION: ENSURING YOUR SUPPLIERS' REPUTATIONS DO NOT INJURE YOUR OWN

In a year where one of the most sought-after bags was a £5 cotton and rope creation from a supermarket chain, and where major high street retailers promoted their commitment to eco-sustainable fashion at London Fashion Week, it is clear that the industry is responding to consumers' increasing demands for fashion to be more ethical. Today retailers need to be not only innovative in style and competitive in price; they must also ensure that the ways in which their products are made, including how the people involved in manufacture are treated, can withstand scrutiny.



Supply practices... must be audited regularly, thoroughly and reliably, to ensure that the entire supply chain is fully accountable...

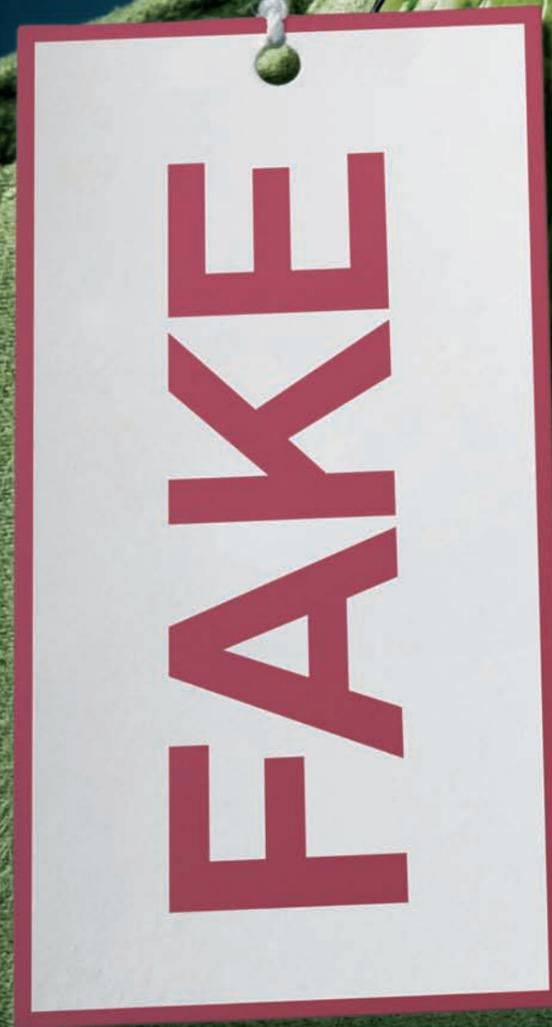
As recent examples have shown, even companies that have demonstrated commitment to ethical trade, through membership of the Ethical Trading Initiative and similar organisations, may be vulnerable to adverse publicity when suspicions arise about labour abuses at the far end of their supply chains. It is clear that, in addition to ensuring that it has effective agreements in place to ensure its suppliers demonstrate best practice, a prudent fashion retailer must now ensure that it effectively monitors and reliably audits conditions throughout its supply chain, including its suppliers' subcontractors.

Whilst it takes significant time and investment to develop a strong value-

based brand, a single incident of poor practice by a supplier can cause long-lasting effects to a fashion retailer's reputation. Rather than looking to their lawyers only when their business finds itself the subject of negative media attention, when a reputation crisis may already be brewing, retailers should be proactive in reviewing arrangements with suppliers and their subcontractors. They must be sure that those third parties uphold and maintain the retailer's ethical values and that these values may be marketed with confidence. Supply practices, including working conditions, pay and employment rights, must be audited regularly, thoroughly and reliably, to ensure that the entire supply chain is fully accountable and that any areas of bad practice are highlighted and dealt with appropriately, before any media crisis may arise.

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Fashion industry brands battle against counterfeiting by copycat 'designers'



INSIDE:

- Immigration issues faced by a global industry
- Two new weapons to curb the counterfeiters and copycats
- Ethical Fashion: Ensuring your suppliers' reputations do not injure your own