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# **Passion for Fashion: Protecting Your Rights through Intellectual Property**

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**Taft/**

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**You have a great design, so now what?**

**How do you protect this design or idea from others  
who want to take it and sell it for themselves?**

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# Protect it with intellectual property

- What is intellectual property?
  - Different rights you can use to keep others from taking your ideas and using them to make money that should be yours
- 3 Main Options
  - Trademark & Trade Dress
  - Design Patents
  - Copyrights



## Trademark

**KARL**  
**LAGERFELD**

I NEVER GO OUT  
WITHOUT MY  
TRADEMARK DARK  
GLASSES. I LIKE TO  
WATCH NOT TO BE  
WATCHED.





Reg. No. 1615356



Reg. No. 2291907



Reg. No. 2096500



Reg. No. 1873854



Reg. No. 3025935



Reg. No. 1810850

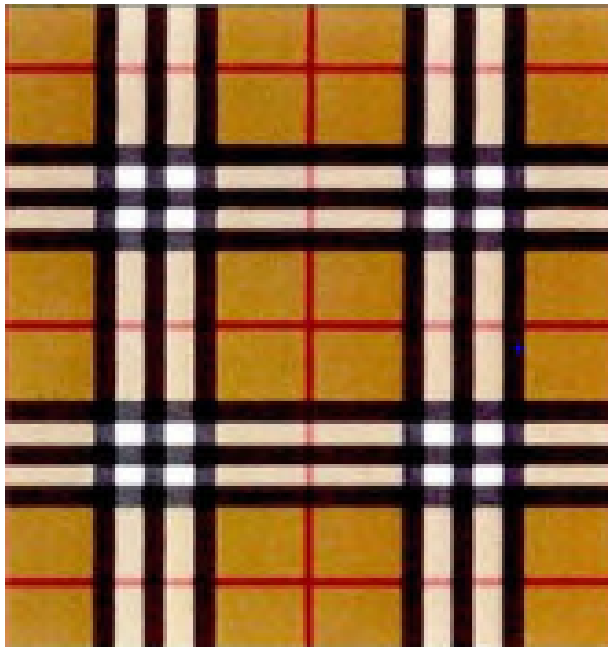


Reg. No. 4296582

## “WHO ARE YOU WEARING” – Trademarks Act as Source Identifiers:

- Registered trademarks can protect *names, logos, designs, and symbols*
- Trademarks can be renewed indefinitely every 10 years, so long as they are being used in commerce continuously

# Burberry's Plaid Design



Reg. No. 3529814



J.C. Penney Scarf that resulted in lawsuit and eventual undisclosed settlement in 2016

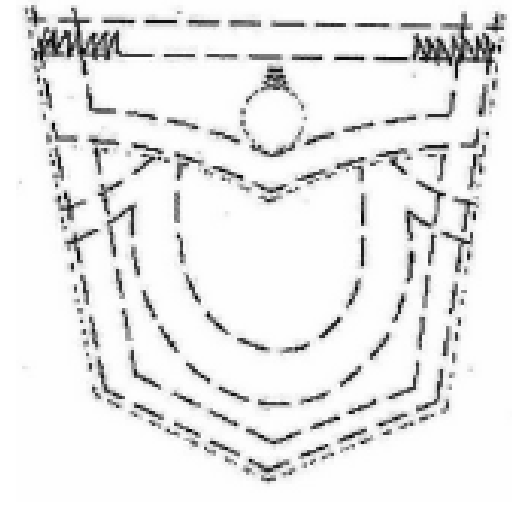
Source: Trademarks + Brands by Cosearch





## True Religion®

Guru Fashion, the owner of the True Religion® brand, has filed suit against various companies such as Forever 21, Rue 21, Burlington Coat Factory, and Walmart for infringing on their trademarked pocket design.



Reg. No. 3561466

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# Trade Dress



## Trade Dress

- Similar to trademark, but protects the design, packaging or appearance of apparel and accessories
- Must acquire **brand recognition** before it can be protected
- Must **designate the source** of the product (i.e. someone who sees the design must be able to associate it with you)
- Registration can be renewed indefinitely, so long as it is being used in commerce

ALL YOU NEED  
IS LOVE. BUT A  
BIRKIN NEVER  
HURT ANYBODY.

Hermes Birkin Bag  
(Reg. No. 3936105)



# Immediately Recognizable- Birkin Bag

Hermes sued various companies for **trade dress infringement** for selling these knock-offs of the exclusive Birkin Bag handbag

Hermes' Birkin Bag **shape is a registered trademark** with the U.S. Patent & Trademark Office. NOTE: while Birkin Bags have been manufactured using various leather types and textures, its **trade dress** is protected.

The parties reportedly settled for an undisclosed amount in 2014



BIRKIN

ACCUSED PRODUCT



TRADEMARK REGISTRATION

# The Case of the Red Sole

- The United States Patent and Trademark Office allowed registration of Christian Louboutin's red soles, but did not extend protection to monochromatic red shoes, (i.e. red soles on red shoes) because the **red sole had become synonymous** with the Christian Louboutin brand.

**MEN ARE LIKE BULLS.  
THEY CANNOT RESIST  
THE RED SOLE.**

CHRISTIAN LOUBOUTIN



Christian Louboutin Red Bottom Soles (3361597)



# Design Patents



Christian Dior  
Couture  
Patent No. US  
D708,424 S

Source: Christian Dior

# Design Patents

- **When should you file for a design patent?**
  - Novel
  - Non-obvious
  - Not functional (ornamental)



FIG. 1

Jimmy Choo "Twist" Shoe  
(US D529,264 S)

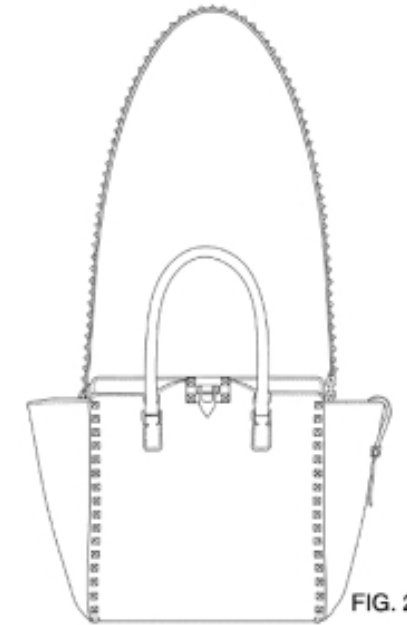


FIG. 2

Valentino Rockstud Tote  
(U.S. D697,713 S)

Source: Jimmy Choo

Taft/

Source: Valentino

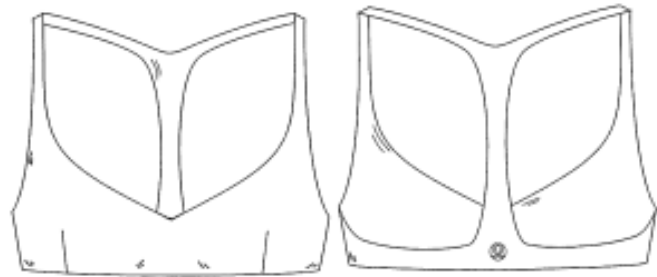
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# A Growing Trend

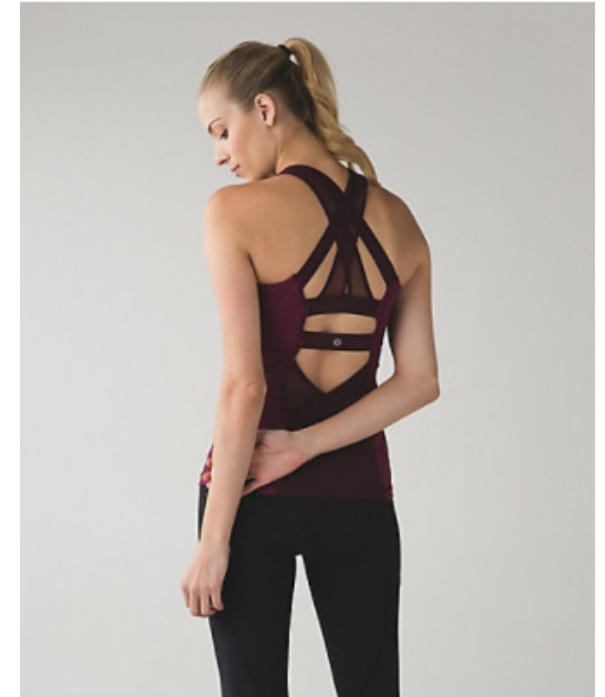
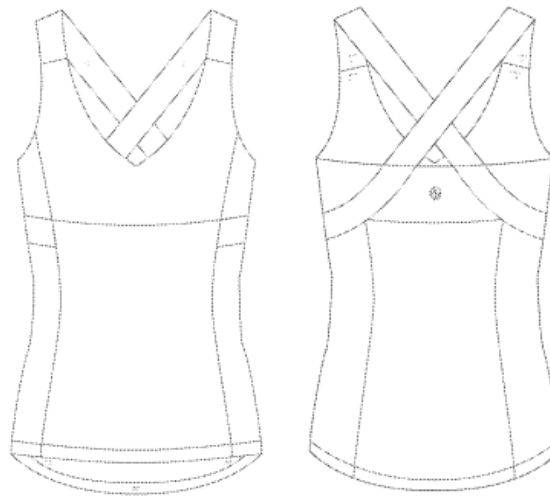
- **Class 02- Apparel (clothing, footwear)**
  - Total of 18,476 Issued Patents (since 1975)
  - 1167 of them in 2014-2015
- **Class 03- Purses and Bags**
  - Total of 16,703 Issued Patents (since 1975)
  - 948 of them in 2014-2015
- **Class 11- Jewelry and Ornaments**
  - Total of 13,852 Issued Patents (since 1975)
  - 777 of them in 2014-2015
- Brands like ***Lululemon, Louis Vuitton Malletier, and Hermes*** hold a lot of design patents and utilize this IP type to protect their brands.

# Lululemon®

The company has 55 current design patents that are registered or pending with the US Patent Office!

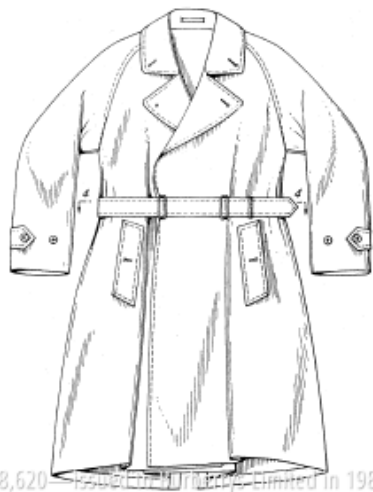


Lululemon Sport Top  
(US D708,819 S)



Tank Top (US D683,525 S)

Design Patents last for **15 years** from the date of receiving the grant of protection!



Burberry Trench Coat  
(US D288,620)



## Benefits of a Design Patent

You can stop and/or collect profits from others who are selling designs that infringe on your patent

## Downsides?

- Costly
- Timely (most take at least 1 year to obtain)
- Nature of Fashion Industry

Source: Burberry



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# **Design Patents and Trade Dress- a Trendy Fashion Duo**

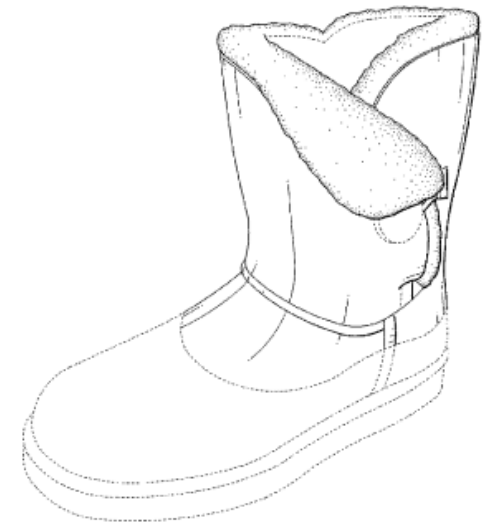
# Trade Dress and Patent Design Infringement

Gap's Infringing Imitations



Ugg's Bailey Button Style

Design Patent No.  
US D599,999



# Lululemon v. Under Armour



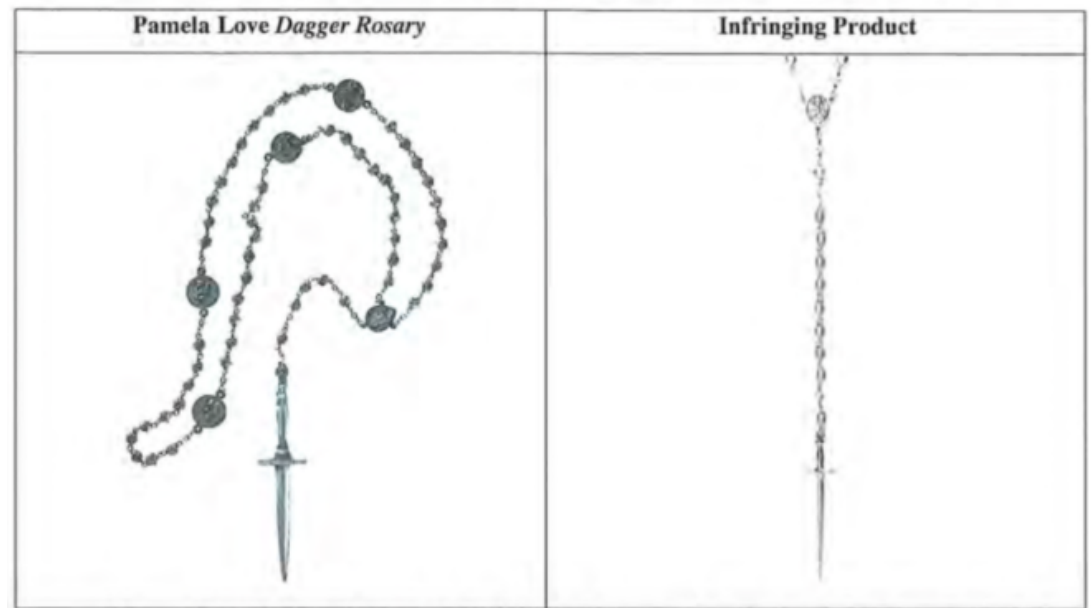
Lululemon's bra (left) & Under Armour's bra (right)

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# Copyrights

# Copyright

- Photos of designs
- Physical sketches
- Advertisements
- Two-Dimensional Designs:
  - Fabric Prints
  - Jacquard Weave
  - Lace patterns
- Sometimes jewelry (can be complicated)
- Runway show sets, backdrops and scenery



Pamela Love vs. Nasty Gal (2016)

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# Copyright, Fashion and the Idea/Expression Dichotomy:

- Does NOT protect useful things (clothing)
- Creative elements of a design that can be SEPARATED from the functional elements are subject to protection
- For example- fabric prints

# Original Prints

## A Well-Established Exception:

- Most fashion designs (as a whole) fall outside the realm of copyright protection
- Original Prints = a well-established exception
- This protects the copyright holder from blatant replication



# Diane Von Furstenberg



DV<sup>F</sup>

DV<sup>F</sup>

DV<sup>F</sup>

Taft/



## DVF v. Fast Fashion



On left, DVF \$325 "Cerisier" design. On right, Forever 21 \$32 "Sabrina" design.



Diane Von Fursenberg v. Target

# Mara Hoffman v. Forever 21



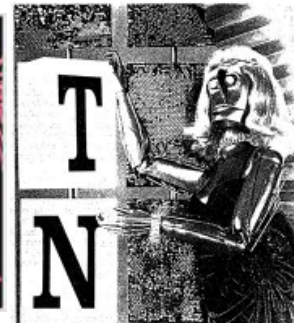
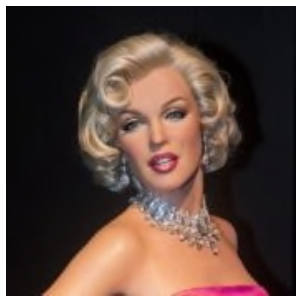
Forever 21's bathing suit (left) & Mara Hoffman's "Leaf" print (right)

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# Right of Publicity

# Right of Publicity

- Grants individuals the authority to **control the commercial use** of *his/her own name and/or likeness*.
- May be asserted in a cause of action under Section 43(a) of the Lanham Act but, rights of publicity are *primarily protected under state law* (all states recognize a right of publicity)



# Anna Wintour Pouches

- Anna Wintour's famous pout is being used by a website to sell pouches featuring her likeness— **can she do anything?**



# Protecting Your Intellectual Property

- If someone infringes on any of your rights, how should you respond?
  - Send a cease and desist letter
    - Depending on whether you have a registered right, you can get profits and attorney's fees
  - Issue a takedown notice to the website's hosting provider to remove it from their website
  - File a lawsuit
    - This should only be the last resort, as most parties will agree to cease infringing your rights



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# Contact

Please let me know if you have any questions or want assistance in protecting your fashion with the help of intellectual property!

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