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If the shoe fits, they'll copy it

Should the law protect fashion from knockoffs?



Jeannie Suk is helping Charles Schumer draft legislation that would give American fashion designers copyright protection. (Dina Rudick/ Globe Staff File November 2009)

By Christopher Muther
Globe Staff / March 7, 2010

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CAMBRIDGE - Jeannie Suk is poised, elegant, but decidedly conservative in her attire of muted grays, browns, and blacks. She is as well known for her teachings on feminism as for being the first Asian-American woman on the tenure track at Harvard Law School.

So why is the 37-year-old Suk, a Guggenheim fellow at Harvard Law School, at the heart of a heated debate in the fashion world about designer dresses and \$900 shoes?

After coauthoring an extensive piece for the Stanford Law Review about why American fashion designers should have copyright protection against inexpensive knockoffs, something Euro pean designers have enjoyed for more than 25 years, Suk became a sought-after authority on the subject. Now Senator Charles Schumer of New York is drafting legislation that would give American fashion designers copyright protection and Suk is helping with the bill's language.

"Books, music, film, and art are protected by copyright law," Suk says one afternoon in her law school office. "But fashion is not. I wanted to question all of that. Lots of people take for granted that fashion is an area where creativity is involved, and they also overlook the fact that there is no protection for designers."

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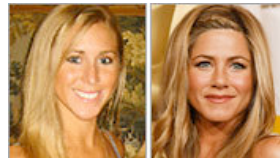
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The lack of a fashion copyright law here has given rise to an entire industry that reinterprets - fashionistas call it blatant pirating - high design on the cheap. A \$2,000 cocktail dress is inexpensively copied and sold for \$80 by Forever 21 or pricey Balenciaga shoes are replicated by Steve Madden for \$60. There are multiple examples on websites such as [Fashionista.com](#)'s Adventures in Copyright.

Industry experts say small, emerging designers are particularly at risk, even more than big labels such as Marc Jacobs or Michael Kors, because they don't have the money to fight back when their ideas are ripped off.

Some disagreement

Though Suk may think it's clear why the fashion world needs tighter restrictions, shoppers and even some designers in Boston aren't all quick to agree.

Newbury Street-based fashion designer Daniela Corte has seen a few of her dresses copied by other designers, but she takes it as a compliment. She feels a new law may help prevent this from happening in the future.

"Even if they copy and knock it off, it's not going to have the same texture, it's not going to have the same finished look, and it's not going to have the same attention to detail" she says. "That's what sets us apart. When people try on a well-made garment it feels different from something that's been made in huge numbers."

"It really is like art or music," 23-year-old Nicole Travers of Somerville said on a recent evening on Newbury Street. "I don't see why they shouldn't have the same protection."

Yet Betty Riaz, who owns the boutique Stil, maintains that unlike art or music, fashion thrives on trends, and she said a fashion copyright law would create a legal mess in the courts as multiple designers create their own similar versions of recent trends, such as the one-shoulder gown or studded boots.

"Where do you draw the line?" she asks.

A recent fascination

The mother of two, and wife of fellow Harvard Law professor and New York Times columnist Noah Feldman, Suk has long held an interest in intellectual property law as it pertains to literature and the performing arts. How the law should deal with fashion is a more recent fascination, one that led her and C. Scott Hemphill, an associate professor of law at Columbia, to coauthor an extensive article on the subject for the Stanford Law Review.

Suk says she found it strange that there were laws in place protecting artists and writers, but not fashion designers. She was also concerned that this anomaly could deter people from going into fashion design.

"When you see an anomaly, you want to know if it's anomalous for a reason," she says. "You have to look at the whole picture and see what kind of world it creates for designers."

But if Schumer's bill is going to go anywhere, it won't be without a fight. Even some in the industry worry that copyright protections may not work for something as utilitarian as garments, that it will ultimately be impractical to discern what is unique from what is just part of a trend.

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“To say something is really new and deserves legal protection I think may be challenging,” Kurt Courtney, manager of government relations for the American Association of Footwear and Apparel. “A lot of fashion involves taking elements of past things, putting something together, and then making something new out of it.”

A fashion copyright bill would set a standard that would protect designers from having their clothing and shoes knocked off by cheap imitators. Language is currently being drafted by Schumer’s office to specify just how similar an article of clothing could be to another before facing sanctions as an illegal knockoff. It’s this question of language that has held up previous versions of a fashion copyright bill in Congress.

Fashion logos are already trademarked - think Levi’s back pocket tab and Nike’s famous swoosh. Those logos are easy to protect because it is obvious when they are being imitated. But the unique design of a Michael Kors dress or a Stuart Weitzman wedge heel can be imitated with little recourse. Everyone from established designers such as Diane von Furstenberg to rising stars like Jason Wu have had their designs copied.

In recent months, Trovata, the late Alexander McQueen, and Balenciaga all filed lawsuits against lower-priced brand names including Forever 21 and Steve Madden for copying their looks. Trying these cases can be difficult because there are no current legal standards in place.

The fashion industry argues that this legislation is essential in the United States because young designers can easily be copied by bigger fashion houses or mass market stores, and lack the funds to defend themselves in court. In a letter to the Council of Fashion Designers, von Furstenberg wrote, “Starving artists, struggling writers and independent filmmakers all at least own the rights to their work. Emerging designers, however, remain vulnerable to knockoff artists who can steal ideas straight off the runway and produce copies before the originals even reach stores.”

Because these knockoffs are legal, the council says that they can now be found almost anywhere.

“The morning after the Oscars or the Emmys, you have pirates sitting on the couch at ‘The Today Show’ talking with Meredith Viera about what Cate Blanchett wore the night before, and then saying they’ll sell a copy for \$39.99,” says Steven Kolb, executive director of the council. “It really takes away from what designers are doing.”

From dance to law

While it supports a fashion copyright bill, the footwear and apparel association, which primarily represents fashion manufacturers such as Chico’s, DKNY, and Mackintosh, wants to make sure that the wording of any proposed legislation won’t be so strict that it will keep clothing manufacturers from feeling free to follow trends.

“We’re looking at a situation that could add cost or slow down the industry,” says Kurt Courtney, manager of government relations for the association. “That’s not something that’s attractive to us.”

The fashion council has no problem with stores such as H&M, which translates runway trends into its own inexpensive designs (and often collaborates with major designers rather than knocking them off). The problem is when those inexpensive interpretations become nearly indistinguishable from the original.

Because both the council and the apparel association are currently working out potential language for the bill, both sides were hesitant to publicly discuss specifics of what it might say.

“A lot of people think the whole essence of fashion is being inspired by other works, and in that way, couldn’t you say that all fashion is about copying?” Suk says. “But everyone knows the difference between being inspired by something, and just taking something and creating a replica of it.”

Suk’s detour into fashion isn’t the first time she has dramatically switched gears. As a teenager, she studied ballet at the School of American Ballet, but when dance began dominating her academic life, her parents put an end to her dance career. She went into trial law because she initially saw it as another form of performance, but eventually she says she “fell in love with other aspects of law.”

Suk, who recently published a book, “At Home in the Law: How the Domestic Violence Revolution is Transforming Privacy,” said some of her feminist followers were initially appalled with her foray into fashion. They told her that they see the fashion industry as something that objectifies women. But Suk doesn’t see fashion as evil. She sees it as a part of everyone’s life.

“People have a lifelong relationship with the clothes that they put on themselves,” she says. “One way or another, we all have a stake in what we wear. When you learn the way that the law regulates that part of your life, you start to ask questions. No matter what kind of clothes you wear.”

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