

Forms of Intellectual Property Law Applied to Fashion Design in the U.S.

/	Application	Strengths	Weaknesses
Trademark	Marks affixed to all categories of goods.	Flexible; inexpensive; universally available, even (to a limited degree) without or prior to federal registration; no expiration if renewed.	Applies to affixed logo or name only, not to underlying design; most effective for well-known designers with commodified logos.
Trade Dress	Designs of all categories of goods, if capable of source identification.	Protects actual design or product configuration; no expiration if renewed.	Only well-known, easily recognized designs can serve as source indicators, e.g. Hermès Birkin bag.
Utility Patent	New, useful, and nonobvious inventions, e.g. fasteners like zippers or Velcro, high-performance textiles, or new manufacturing techniques.	Strong presumption of validity; protection even against later independent creation.	Requires extensive, time-consuming prior review; expensive; very limited application to fashion designs, which only rarely meet standards of patentability.
Design Patent	Ornamental aspects of articles of manufacture not dictated by functional considerations.	Protects actual design.	Same as utility patents.
Copyright	Nonfunctional literary and artistic works only; applies to jewelry, fabric designs, some costume elements, although most clothing considered functional	Automatic protection; long term limit.	Limited application to elements of fashion design considered “conceptually separable” from useful articles (i.e. most clothing).
Sui Generis Design Protection	All apparel and accessories.	Short-term protection tailored specifically to fashion industry.	Not yet available in U.S.; H.R. 5055 would amend Copyright Act.