



PROTECTING

YOUR PATTERNS

& TEXTILE

DESIGN

If you design or manufacture patterned textiles or fabrics, you need to be careful not to copy other people's textile designs and find yourself entangled in legal issues, writes Intellectual property lawyer Sharon Giconi.

Likewise, nothing could be worse than a textile designer working on a unique textile design only to be copied by someone else. While you may not think these things could happen to you, law firms deal with these issues all the time.

Read on for some interesting “war stories” that have taken place in real life and gain some valuable tips along the way.

Textile designs that you have created

First up, we will turn to the issue of protecting your own textile designs.

In essence, the only “safe” way to minimise the risk of being sued by someone else for copying is to ensure that your design is entirely original and unique.

You pretty much need to start from “scratch” without reference to any other designs. Even though it is legitimate to be inspired by general fashion trends and other fabric designs, be wary: if you take too much “perspiration” without enough of your own “inspiration” you could be challenged.

Alternatively, you could purchase ready-made patterned fabric from a reputable supplier.

Getting ideas from the catwalk

Clients often ask if they can reproduce a textile design that they have seen overseas or on catwalks on their own printed fabrics and clothing ranges.

Unfortunately, the straight answer is “no”. This would amount to a slavish “copy” and be a flagrant infringement of copyright.

The reason for this is that copyright laws are international and protect what’s known as “artistic works” including patterns and pictures on textiles.

The whole purpose of copyright law is to provide people with incentive to create by giving them protection against “copycats”. Again, if you legitimately produce fabric with the design on it, that may be okay. The concerns arise if you substantially reproduce other designs on your own fabrics.

When is a design too close?

Essentially, you will “infringe” someone else’s copyright if you “substantially reproduce” the design or drawing in question.

Remember, drawings and patterns on fabrics, textiles, t-shirts and the like are generally protected under copyright law as “artistic works”.

What about the 10% rule?

Contrary to popular misconception, there is no such thing as the “10% rule”.

If you have copied a significant aspect of the design (such as the signature feature), even if it is only a small part of the overall design, liability may arise.

Further, if you chose a particular print from overseas and asked your manufacturer here to copy it (even with some differences), that could still be copyright infringement as copyright laws apply internationally.

Using contractors to create designs

Leaving parodies aside, often clients make the mistake of thinking that they own copyright just because they paid someone to create a design exclusively for them.

For example, textile design companies often use contractors to design patterns and illustrations or even take photographs to reproduce on digital prints and textiles.

However, even if you pay “good money” to use the designs, you will not own the copyright in them unless copyright is formally assigned in writing.

While this may seem to be a “small technical glitch” at first glance, it can lead to great practical and legal implications later.

For example, if someone copies your design and you do not own copyright, you cannot legally enforce it against them.

Tip: It is important to get the copyright in the design assigned to you in writing if you are using a contractor rather than an employee who designs for your business.

CASE STUDY

Louis Vuitton Parody

In March 2012, the University of Pennsylvania Law School created some controversy when it used a parody of Louis Vuitton Malletier’s famous “circled flower” and “LV” pattern to promote an intellectual property symposium (see below).

Essentially, the pattern was a “take off” of the Louis Vuitton design but instead used the legal © and ™ symbols.

For their efforts the Law School received a “cease and desist” letter from the Louis Vuitton’s Director of Civil Enforcement, the Law School was able to eloquently argue that the law allowed for non-commercial use for a parody.



The flyer used by University of Pennsylvania Law School



The Louis Vuitton pattern

What about Indigenous designs?

Sometimes you may wish to take elements of indigenous paintings and incorporate these into your own textile or fabric designs.

While this may seem innocent enough, as you are only copying “simple patterns”, be careful as these patterns and paintings are protected under copyright law.

Further, this can attract a lot of publicity due to the cultural sensitivity surrounding certain indigenous works.

CASE STUDY

The carpet case

In 1994, Aboriginal artists took legal action against a rug company for replicating Indigenous Australian art on woven carpets. As well as copying and infringement, because Indigenous artworks carry significant story-telling purposes the Court also found that errors in reproduction could cause serious offence to the communities.

Apparently, the rug company had to pay over \$100,000 to the living artists and the estates of the deceased artists.

Can patterns and designs be registered as trade marks?

Leaving copyright aside, trade marks are also very relevant to this area.

Many years ago, when the market was less sophisticated, people would often recognise an associated clothing range exclusively with its brand name or logo.


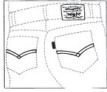

For example, the word “LEVI’S” would be associated with a pair of jeans and a tick with Nike.

However, now, shapes, colours and patterns of stitching are trade marks as well.

Something as simple as a rectangular red tag on the back pocket of a pair of jeans also equates to? You guess it, LEVI’S! Australian law recognises the value of this and numerous clothing companies have capitalised on their well-known brands by registering them as trade marks. You may be able to do this too.



For example, Levi Strauss & Co has, in addition to the word “LEVI’S”, owns several registered trade marks for stitching on the back pocket of jeans and for the red tag on the back pocket of jeans, including:

Australian trade mark number	The actual marks
304665	
328729	
302847	

So if you produced your own jeans label and used a red tag like this one on the back pocket, you could infringe LEVI’S trade mark rights.

Famous clothing patterns which are registered

Pictured below are some well-known trade marks that comprise patterns or elements of clothing which are all registered as trade marks in their own right.

Louis Vuitton

304665



1278039



Burberry's check

708955



David Jones houndstooth

659441



A Gucci pattern

1210026



Tip: If you have a signature element of your textiles these could be considered as trade marks.

CONCLUSION

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While the law in this area can be very complex, it is always best to exercise caution and know your rights.

Obviously, the simplest rule of thumb is that if you design something from scratch without any reference to anyone else's design or trade mark, this is far "safer" than using too much of someone else's.

Also ensure that you own copyright in the designs and where relevant, consider trade mark protection.

DISCLAIMER

As with all areas of the law, it is recommended to seek legal advice tailored to your own circumstances. This article is of a general nature only.

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ABOUT THE AUTHOR

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