

Fashion Unraveled: How to Start, Run and Manage an Independent Fashion Label

By Jennifer Lynne Matthews

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Fashion industry is a multi-billion dollar business, and it significantly influences the daily lives of Americans. It influences us in the way that we base our decisions on what to wear or not to wear everyday by considering what is fashionable, stylish, and/or appropriate. As Meryl Streep's character in *The Devil Wears Prada* explained the style cycle regarding "cerulean" to Anne Hathaway's character, "th[e] blue represents millions of dollars and countless jobs, and it's sort of comical how you think that you've made a choice that exempts you from the fashion industry when, in fact, you're wearing a sweater that was selected for you by the people in this room from a pile of 'stuff.'"¹ Her statement trendily reflected the importance and relevance of fashion industry to the American society.

The value of the fashion industry to the American society is significant; however, building and operating a fashion business is difficult. It is difficult because a new fashion label owner has to encounter not only the challenge of having to know how to run her design label as a businessperson, but also the competition from knockoffs which copy her design works. Even though a fashion design work is a creative and original work, it is not protected against knockoffs because fashion design does not fall under the protection of the U.S. copyright laws. Without legal protections and a proper business planning, a

¹ THE DEVIL WEARS PRADA (Fox 2000 Pictures 2006).

new fashion designer is less likely to successfully maintain her fashion label. In *Fashion Unraveled: How to Start, Run and Manage an Independent Fashion Label*, Jennifer Lynne Matthews² first educates her readers on what the fashion design business is about, and then she offers the readers solutions to fashion business operation problems from a business perspective. The purpose of this book review is to look at some of Matthews' business approaches from a legal perspective.

Matthews divides her book into five major sections: product and brand development, production and marketing planning, sales and promotion process, legal issues concerning the business, and how to run a business. Matthews acknowledges that some of the material in this book are design and business technicality specific, but she emphasizes that it is vital to provide such information to the readers because “[e]ven if a designer does not do the technical work, he or she still needs the knowledge of the entire process to exercise quality control and to ensure the desired outcome for the finished product.”³

Matthews educates her readers her approaches to fashion design problems and issues by providing them her personal experience, links to websites and informational articles, useful sample forms and tables, and real world examples. When she discusses the legal issues relevant to the fashion design business, such as state garment laws, product safety regulations, and types of intellectual property protection available to a

² Matthews is the designer and owner of Porcelynne Lingerie and a business consultant for East Bay Fashion Resource. Porcelynne Lingerie is an intimate apparel line, *available at* www.porcelynne.com (last visited Jan. 21, 2010); and East Bay Fashion Resource is an independent resource that offers services to educate fashion entrepreneurs, *available at* www.eastbayfashionresource.com (last visited Jan. 21, 2010). Matthews also teaches pattern drafting, draping and sewing at the Fashion Institute of Design and Merchandising (“FIDM”) in San Francisco. She is an active member in the San Francisco Bay Area design community, and she currently serves on the Advisory Board for the Innovative Fashion Council of San Francisco.

³ JENNIFER LYNNE MATTHEWS, *FASHION UNRAVELED: HOW TO START, RUN AND MANAGE AN INDEPENDENT FASHION LABEL*, 18 (East Bay Fashion Resource) (2009).

designer's creations, she approaches those issues from a business perspective. For example, when she talks about trademarks, she first explains that "[t]rademarks protect words, names, symbols, sounds or colors that distinguish goods and services from those manufactured or sold by others and indicate the source of the good."⁴ She then points out that "[t]rademarks can't protect your design, but they can protect your trade name or your logo," and that "[i]f a big name company steals your design, get yourself some legal council [sic]. They will fold at the sound of a lawsuit or bad press."⁵ Her strategy to deal with those legal issues is by approaching them through business tactics.

Throughout this book, Matthews approaches issues relating to a fashion design business fundamentally from a business prospective. She centers on this prospective to draw analysis and advice on collateral design and legal issues, which brings an interesting point of view. Matthews' business approach also puts an interesting spin when she discusses the U.S. Copyright law and the proposed Design Piracy Prohibition Act (the "Act").

Currently, U.S. Copyright law offers protection to "original works of authorship fixed in any tangible medium of expression;"⁶ however, original fashion designs receive no copyright protection because articles of clothing are considered "useful articles," as opposed to works of art.⁷ The proposed Act would amend the current Copyright law to treat fashion designs as original pieces of art, as opposed to functional pieces of clothing,

⁴ MATTHEWS, *supra* note 2, at 155. *See also* 15 U.S.C. §1127. Trademark is "any word, name, symbol, or design, or any combination thereof, used . . . in commerce . . . to identify and distinguish . . . [the] goods from those manufactured or sold by others and to indicate the source of the goods . . ." *Id.*

⁵ MATTHEWS, *supra* note 2, at 154.

⁶ MATTHEWS, *supra* note 2, at 153; 17 U.S.C. § 102 (2006).

⁷ MATTHEWS, *supra* note 2, at 153; 17 U.S.C. § 101 (2006).

and to give three years of protection to fashion designs.⁸ The proposed Act would protect original designs that have been properly registered with the U.S. Copyright Office and find an article that looks “closely and substantially similar” to a copyrighted design an infringement.⁹

Matthews does not argue the possible alternative interpretation of the legislative intent, the preceding cases, or the statutory language concerning the copyright protection on fashion designs. She saw the ultimatum of the likely outcome of passing the Act and the limited benefits to small business owners like her, so she asked the business questions: “[b]ut even if these laws are passed, how will they be enforced? Will there be a large influx of lawsuits? And against who? The small designer who can’t afford a lawyer or the big guys?”¹⁰ She contends that the Act would only protect designers with the money to register their designs and to seek lawsuits against copycats.

Heavily relying on this business approach to analyze a legal issue, Matthews’ argument about whom the Act would protect is somewhat weak because her understanding of the purpose of enacting a law is incomplete. Just because a person whose rights were violated by another does not have the money to seek lawsuit against the violator, it does not mean that the law neglects her. A law is implemented and designed to protect anyone who meets the required elements to be covered under the law.¹¹ The law protects the rights of a designer who properly registered her protected work under the law, whether or not she chooses to enforce her rights.

⁸ MATTHEWS, *supra* note 2, at 153.

⁹ MATTHEWS, *supra* note 2, at 153. *See also* Steven I. Weisburd, Dawn Rudenko Albert & Brian M. Kudowitz, *The Design Piracy Prohibition Act – In Style, but Fashionably Late?*, 1/20/2009 N.Y.L.J. S2 (2009).

¹⁰ MATTHEWS, *supra* note 2, at 153.

¹¹ Design Piracy Prohibition Act, H.R. 5055, 109th Cong. (2006).

Furthermore, when a designer seeks legal representation from an attorney regarding a potential copyright infringement claim, the attorney could provide, during the initial consultation, a fee schedule to alleviate the designer's financial burden. Additionally, the attorney might be willing to take a case based on a contingent fee. Those are just two of the many ways a designer could work out with her attorney for the legal representation if the designer does not have the money to seek lawsuits against copycats. Even though Matthews discounts the protection that the Act could offer to the designers, she acknowledges that the Act will at least put some pressure on companies that buy and sell counterfeits in the U.S. She admits that the legal effect of the Act would minimize the negative impact from knockoffs on fashion design businesses.

Matthews' advice to fashion designers who grieve over the current lack of copyright protection is to utilize a business strategy. "The best things you can do to protect yourself against the loss of business is to build your brand loyalty."¹² Her comfort words are, "[I]ook at it as flattery – a big name thinks your designs are worth stealing."¹³ It is a sad, but true reality check. Arguments concerning whether fashion copying actually helps or damages the fashion industry have been made by many,¹⁴ but no fashion design copyright law has been passed.¹⁵ Since no congressional decision has yet to be made regarding such legal protection, it is only realistic to approach copyright problems with a business strategy like the one Matthews suggests.

¹² MATTHEWS, *supra* note 2, at 153.

¹³ MATTHEWS, *supra* note 2, at 153.

¹⁴ *See generally* Brandon Scruggs, Should Fashion Design be Copyrightable?, 6 NW. J. TECH. & INTELL. PROP. 122 (2007); Kal Raustiala & Christopher Sprigman, The Piracy Paradox: Innovation and Intellectual Property in Fashion Design, 92 VA. L. REV. 1687 (2006).

¹⁵ MATTHEWS, *supra* note 2, at 153-54 (talking about HR 5055 and HR 2033).

I recommend this book to anyone who is interested in the fashion design business. This book is not only for someone who wants to start and run such a business, but also for anyone who represents clients in such a business. Matthews offers good advice and analysis on business, legal, and design issues relating to the fashion design business. She provides important and insightful information to her readers regarding the fashion design process and fashion design business operation. This book is easy to read, easy to follow, and entertaining. This book, however, is not a reference book for seeking an in-depth legal analysis on the fashion design business. This could be a reference book for seeking insightful business knowledge into the fashion design business.