

The value of brands in a pandemic: where to look when production comes to an unprecedented halt.

Pilar López, Partner at Arias, provides an overview of why IP is more crucial than ever to the fashion industry.

The Covid 19 outbreak has brought significant challenges to fashion brands and the IP attorneys who advise them. China's decision to close factories in 2020 caused closures of many companies without alternative supply chains. Fashion brands faced unexpected disruptions to supply chains, retail stores, and delivery networks, forcing several changes in the industry many of which will be permanent such as the strengthening to online sale platforms. In turn, consumers have become less brand loyal, more value savvy and increased their online shopping. The shifting consumer expectations and priorities also forced several fashion brands into new business areas to survive, whether that be the expansion of the goods the company sells or the services it offers. Consequently, it became necessary to adjust to the new reality of fashion brands, including ensuring adequate protection of intellectual property rights to be able to monetize their brands in ways beyond their current uses. An assessment of current protections should be made by an IP attorney to determine where coverage should be extended.

Fashion design ideas commonly involve protecting the designer's brand or identity and the designs themselves. To that end, the designer's brand or identity is usually protected with the application of trademark law. It is well known that a trademark is one of the most valuable assets of a company, and in the fashion industry a well-situated campaign or the latest trend of a top-fashion house could have significant economic impact. The trademark dispute between Sydney-based VB Skinlab settled out of court in 2020 serves as a reminder that fashion brands need to remain aggressive when protecting their marks.

As for the designs themselves, one normally looks to copyright law. Fashion brands should consider dual protection or protection of

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multiple intellectual property rights to hold a stronger barrier against third party infringement. In the case of KIKO (cass.780/2020) against Wycon S.p.a, the Italian Supreme Court, despite KIKO not having secured trademark registration for the layout of their stores, acknowledged KIKO's copyright protection. Brands should secure vast protection early. Given the increasing online sales, brands should seek to provide consumers with different and exclusive in store experiences and not fear enforcing their intellectual property rights having secured vast protection in advance.

Patents and trade secrets become relevant when the fashion company has developed a new manufacturing process or method. Patent protection grants the fashion brand owner the right to prevent others from making, using, selling, or copying their invention. Fashion



María Del Pilar López Quirós

Résumés

María Del Pilar López Quirós, Partner

Pilar is part of the partners team of IP specialists in Arias Costa Rica. Chambers and Partners reports that Clients note her "wealth of experience and impressive reputation in the Costa Rican legal market." She counsels clients on protection of their intellectual property, approves search and clearance reports, prepares filings for IP registrations, advocates in administrative appeals and oppositions, and advises on sanitary registrations before the Health Authorities. Pilar is also responsible for IP enforcement strategies and actions; and in judicial litigation, she collaborates with the litigation department. During the past years, Mrs. López has also focused her work on the Life Sciences Practice and Privacy Practice responding to the client's requirements and developing trends.

brands should protect all technological advantages in the invention of new, softening fabrics, anti-allergenic or weather resistant. For example, Grindi SrL developed an innovative fabric under the name Suberis made of cork and filed an international patent application under the Patent Cooperation Treaty (PCT) to protect its unique product in many countries. The Subseries fabric is used in the manufacturing of apparel, footwear and sportswear allowing the Grindi SrL to securely expand into new markets maximizing royalty revenues from this patented invention.

IP enforcement strategies must incorporate prevention, detection, and response procedures. Fashion brands should work in hand with their IP attorneys to have adequate protection under national legislations to promote the growth of the industry and the creativeness of designers. Protection of IP assets not only secures fashion brands legal protection but also serves for attracting partners or investors in the fashion business. Whether rebranding, diversifying, partnering, or joining forces with other brands or absorbing potential rivals, such deals should be supported by a full audit of any associated intellectual property rights. Intellectual property assets and their value are not to be underestimated, especially in such unpredictable times.

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Contact

Arias

Avenida Escazú, Torre Lexus, 4to piso.
Escazú, San José, Costa Rica, C.A.

Tel: +506 40362800
contact.costarica@ariaslaw.com
www.ariaslaw.com/en/

