

Is intellectual property in fashion & luxury a relevant topic? You bet!

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A critical external risk that all managers of luxury goods and fashion companies are eager to protect themselves from is the infringement of their intellectual property rights, and in particular, brand dilution and the weakening of brand image. Lawyers are the best weapon luxury goods companies can use to enforce intellectual property in fashion and luxury, and to fight

against counterfeiting, especially now that so many counterfeited products are sold on the Internet.

We, at [ialci](#) and [Crefovi](#), had a great time on Tuesday 10 February 2015, discussing these issues and challenges during our law of luxury goods series seminar on “[intellectual property: how to protect, manage & monetize the know-how, intangible capital, brand image and reputation of luxury maisons & fashion brands](#)”.

We first heard the view of General Counsel Catherine Palmer, who looks after all intellectual property matters at the [Joseph Group](#). She explained how to strike a delicate balance, between the impulses as well as creative drive of in-house fashion designers on the one hand, and legal and regulatory restrictions on the other hand, in order to contain the paradox of fashion.

We then looked at some pragmatic examples of the challenges faced by fashion and luxury brands in the intellectual property field, by analysing the recent [English design law case Kaldor v Lee Ann](#) and the [American trademark law and trade dress case Converse v 31 of its competitors](#). What transpired from these two presentations is that the courts have ample powers to assess the merits of each case, on a case-by-case basis, looking at the specific facts and applicable laws and case-law in relation to those facts. While English courts have previously used “objective similarities” between designs to decide on copying, this may no longer be enough as the case Kaldor v Lee Ann illustrates.

As far as the Converse case is concerned, it is telling that some of its most high-profile fashion competitors, such as Ralph Lauren, have already decided to settle, while the parallel cases, lodged with the US district court from the Eastern district of New York and the US International Trade Commission, are ongoing.

But legal solutions are not enough, as [Netnames explained in the following presentation](#): lawyers and internet companies such as Netnames must work together, in order to implement the wide spectrum of legal and non-legal solutions offered to fashion and luxury brands to fight against brand dilution, counterfeiting and reputational risks online.

We kept a very “down-to-earth” approach to our seminar, by showcasing three talks on the enforcement of intellectual property rights in the three largest countries of the European Union, namely, [Germany](#), [France](#) and [Great-Britain](#). While full-blown litigation seems widely discouraged in England & Wales, in view of its prohibitively high costs and strict obligation to attempt to settle by sending a letter prior to court action, France and Germany seem much more IP right owners-friendly, with France probably being the worldwide champion in terms of almost nonexistent court costs, extremely protective legislation and case-law towards talent creators and no procedural rules applying to any pre-trial obligation to attempt to settle any legal issues out-of-court.

We were then graced with the presence and contribution from Michael Skrein, an expert on the protection of image and publicity rights of celebrities in England and Wales. What is the state of play to efficiently protect celebrities' personality and images rights in the UK? What previous case law was used, in order to use the tort of passing off in relation to the facts opposing Rihanna to Topshop? What is the piece of advice to celebrities and to fashion brands? These were some of the questions that Michael tackled during his talk, which was then complimented by Icondia's view on the subject.

[Icondia gave an enlightening description](#) of the new legal framework which has been created in Guernsey, further to the entering into force of the Image Rights Ordinance 2012: it is now possible to record on a public register, in Guernsey, the personality rights of celebrities in order to protect these rights adequately in case of infringement. To conclude, getting appropriate advice from top practitioners in this sector, such as specialised intellectual property lawyers, patent and trademark attorneys and online providers such as Netnames and Icondia, is an integral element of the success of a well thought-out and carefully-planned intellectual property and brand enforcement strategy. We were also delighted to read that our seminar was found entertaining albeit rich in content and information, by members of the press.

Indeed, Suleman Ali, an eminent blogger for the IPKat, commented on our event in his piece "[IP in luxury goods and fashion: a patent Kat investigates](#)". [Read article here](#)

You can also watch the videos of some of the presentations done at this seminar here:

[YouTube Video](#)

Keith Laker, Partner, Icondia, at ialci and Crefovi seminar on "Intellectual property: how to protect, manage & monetize the know-how, intangible capital, brand image and reputation of luxury maisons & fashion brands" in London – 10 February 2015

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