

FASHION DESIGN PROTECTION : SOCIAL NETWORK ANALYSIS TO MEASURE THE EFFECTS OF EXCLUSIVE RIGHTS ON THE FASHION INDUSTRY

サーンティカセーム, アピンヤー

<https://hdl.handle.net/2324/1470514>

出版情報 : 九州大学, 2014, 博士 (法学), 課程博士
バージョン :
権利関係 : やむを得ない事由により本文ファイル非公開 (3)



氏 名 : サーンティカセーム アピンヤー

論文題名 : Fashion Design Protection: Social Network Analysis to Measure the Effects of Exclusive Rights on the Fashion Industry

「ファッションデザインの保護：社会ネットワーク分析を用いて、ファッション産業における独占権の効果を見積もる」

区 分 : 甲

論 文 内 容 の 要 旨

This thesis analyzes and outlines the structure of the fashion society, comprising fashion professionals, informational intermediaries, consumers, and the relationships among them. It addresses two distinct types of fashion design imitation – “literal” and “non-literal,” which exhibit different degrees of similarity to design of the original. Through theoretical concepts and network measures provided in Social Network Analysis, this thesis examines the effects of variant degrees of exclusive rights on the fashion industry, in order to answer the question as to whether granting exclusive rights to protect fashion design serves as a means to prosper the fashion industry and enhance public welfare, and if it is, to what extent and to whom it shall be granted.

This thesis stems from the intricate contradiction of the fashion market on the diffusion of the same or similar design to that of the original. On the one hand, this phenomenon ignites a fashion trend and exposes the society to greater benefit from information embedded in fashion works. On the other hand, it arguably poses a threat to the business of fashion. Today’s technology makes this contradiction even more complicated. Products of the same or similar design can be made instantaneously in large volume, but at surprisingly low cost. The threat to fashion business, therefore, becomes more accentuated. Nonetheless, fashion industry of one of the biggest fashion markets like the US remains astonishingly vital even when it operates in the negative space of IP protection. This apparently calls for discreet inquiries on the necessity of *sui generis* fashion design protection against products exhibiting different degrees of similarity to that of the original.

Through network measures, this thesis finds that, exercising exclusive rights against design imitations impedes the diffusion of information regarding the original design, which in turn hinders public access to creative outputs. However, if exclusive rights are exercised only to exclude the so-called “literal design imitation” from the fashion market, public access to design information would not be greatly reduced. Instead, a threat potentially posed by literal design imitation to the business of the original designers, especially those operating in the mass market, would be significantly diminished. To a certain extent, this could help sustain the business of the original fashion professionals and ensure creation of subsequent fashion designs. On the contrary, the so-called “non-literal design imitation,” which has been an accepted practice of “referencing” or “interpreting” in the fashion industry, is found to be not as harmful to the business of fashion. Rather, it helps promote public access to information regarding the original design,

which in turn and in particular for the luxury brands, helps secure the luxury status and hence sustaining the business of luxury fashion. For these reasons, this thesis proposes that granting the fashion designers IP exclusive power to an extent that it could protect the original designs against only literal design imitation is preferable as it allows fashion professionals and consumers to benefit from an enriched fashion culture and a prospered business of fashion.