Retail Trend Imitation: A Controversy Between Firms of Europe and North America

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Abstract:

Intellectual property legislation exists to protect firm offerings or innovations from being mimicked by others without authorization, among other reasons. Despite its global ascension to simplify registration and expand the bounds of protection for firms, intellectual property law does not completely prevent the practice of imitation, in part because not all forms of it are illegal. Certain products, namely apparel and accessories, have historically not received much protection on an international level, resulting in a market saturated with copies. This has fueled a long-standing controversy and provoked a number of high-profile lawsuits (primarily involving defendants from the U.S. and European plaintiffs). In an effort to respond to the question of the true effect of imitations, this paper discusses the background of, and literature on, imitation practices in the industry, a typology of imitations that explains the controversy, empirical evidence on the topic and issues therewith, and future research directions.

Keywords: international business administration | risk management | intellectual property | intellectual capital | marketing

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ABSTRACT

Intellectual property legislation exists to protect firm offerings or innovations from being mimicked by others without authorization, among other reasons. Despite its global ascension to simplify registration and expand the bounds of protection for firms, intellectual property law does not completely prevent the practice of imitation, in part because not all forms of it are illegal. Certain products, namely apparel and accessories, have historically not received much protection on an international level, resulting in a market saturated with copies. This has fueled a long-standing controversy and provoked a number of high-profile lawsuits (primarily involving defendants from the U.S. and European plaintiffs). In an effort to respond to the question of the true effect of imitations, this paper discusses the background of, and literature on, imitation practices in the industry, a typology of imitations that explains the controversy, empirical evidence on the topic and issues therewith, and future research directions.

Keywords: international business administration; risk management; intellectual property and intellectual capital; marketing

I. INTRODUCTION

Firms from virtually all industries and countries imitate one another's initiatives. Companies copy brand names, logos, stores, products, and packaging, among other innovations (Frohlich, Hess, and Calio, 2014; Pouillard, 2011; Satomura, Wedel, and Pieters, 2014; Wang and Song, 2013), which are covered by intellectual property law. The registration processes for the forms of intellectual property (i.e., patents, copyrights, and trademarks), along with the protection they afford, have been internationally streamlined primarily by the World Intellectual Property Association.[1] Nevertheless, the practice of imitation persists. This is because not all imitations are necessarily illegal, and the policing efforts to curb the practice are more stringent in some countries than others. For instance, the government of China is somewhat lax in its enforcement of trademark infringement, and, as a result, the country is the world leader in counterfeit manufacturing (Turnage, 2013). Counterfeits perpetuate a global multi-billion-dollar industry that causes financial and labor losses and has been linked to terrorism (Ellis, 2010; Bird, 2007; Kim and Karpova, 2010; Marcketti, 2010; "Superfakes," 2013; Tushnet, 2008; Wang, 2013; Wild, Wild, and Han, 2016). Moreover, with counterfeit consumption experiencing worldwide growth (e.g., Russia has recently witnessed an extreme increase in its consumption of counterfeit goods), the industry shows no signs of future recession (Morency, 2018; Wild et al., 2016).

Some innovations are well suited for intellectual property protection because they can easily meet the related application or registration requirements (e.g., machines) (35 U.S.C. § 101-103, 2012). On the other hand, apparel and accessories have traditionally not enjoyed much protection because their function, which is basically to be worn, cannot be separated from their artistic aspects (*Kieselstein-Cord v. Accessories by Pearl, Inc.*, 1980). Efforts to specifically include apparel and accessories within the bounds of intellectual property protection have been in vain since the beginning of the century (Bader, 2013; Beltrametti, 2010; Ederer and Preston, 2011). This industry has also witnessed some of the most controversial lawsuits on the matter, many involving European plaintiffs and U.S. defendants and filed in the U.S. (Bird, 2007; Marcketti, 2010; Sauers, 2011; Tushnet, 2008; Wang, 2013). This paper first addresses the background of the imitation practices underlying the apparel and accessories industry. Second, this paper reviews the literature and proffers a typology of imitations (based on the related legal standard, cause of action, and resulting legal status). Third, the typology is used to explain the controversy that has historically underscored the sector. Fourth, empirical evidence on the topic is discussed that elucidates the lingering question of the true effect of imitations. Fifth and finally, future research directions are offered.

II. BACKGROUND

A. Imitation Practices in the Apparel and Accessories Industry

French luxury brands, such as Louis Vuitton and Chanel, are the most imitated globally (Frohlich, Hess, and Calio, 2014; Gupta, 2015). U.S. companies in particular have copied these luxurious European brands since before the mass production of apparel and accessories, also labeled as prêt-a-porter or ready-to-wear (RTW) (Burns, Mullet, and Bryant, 2011). Historically, the trends of industry-leading, luxury houses of Paris, France

would spread to the U.S. and trickle-down to the masses via fashion magazines and trade publications (e.g., Vogue, Women's Wear Daily) (Burns et al., 2011; Marcketti, 2005; Simmel, 1957; Veblen, 1899). U.S.-based manufacturers then mimicked and adapted the French designs for U.S. consumers (Green 1994; Marcketti, 2005; Pouillard, 2011). World War II then caused the decline of the fashion capital, leaving room for U.S. firms to lead the industry; yet, imitation practices thrived because these companies could not afford inventive designers or break the routine of imitating European trends (Claire McCardell, n. d.; Burns et al., 2011; Marcketti, 2005). Not surprisingly, Paris eventually reclaimed the fashion throne, and U.S. firms continued to copy French designs (e.g., Jackie Kennedy's infamous pink suit, worn on the day President Kennedy was killed, was a U.S.-manufactured line-for-line copy of a Chanel item) (Fleming, 2013; Marcketti, 2005).

B. Legislation Focused on Curbing Imitation

To limit copycatting during this time, France created what is known today as the Fédération de la Haute Couture et de la Mode (n.d.) that promoted authorized copying (Sterlacci and Arbuckle, 2009). The organization sold patterns for French garments, along with a list of components, and U.S. companies exercising this option gained notoriety for their ability to produce less-expensive versions of French trends. However, most firms could not travel to Paris to purchase the replicating instructions, and unauthorized copying continued despite the legal and ethical questions surrounding the practice (Green, 1994; Haire, 1913; Marcketti, 2005).

In the U.S., similar endeavors to reduce imitation have also been ineffective throughout the years. Approximately 70 laws specifically protecting apparel and accessories have been proposed since 1914, none of which have passed (Beltrametti, 2010). The National Recovery Administration and the Fashion Originators Guild of America, both of which provided protection to the industry, were declared unconstitutional (*Fashion Originators' Guild of America v. FTC*, 312 U.S. 457, 1941; Marcketti, 2005, 2010; National Recovery Administration, n.d.). More recent efforts[2] toward broadening the reach of copyright[3] protection to include designs of apparel and accessories have also been unsuccessful (Bader, 2013; Beltrametti, 2010). Intellectual property law generally has not protected RTW company initiatives from being copied, and the practice remains highly debated, even though it is almost as old as the industry itself (Lovells and Pecnard, 2012; Marcketti, 2005, 2010; Pullig et al., 2006). A thorough understanding of the controversy first requires a conceptualization of types of imitations based on the nuances and scope of U.S. intellectual property law, which is addressed in detail in the following section.

III. LITERATURE REVIEW

A. General Intellectual Property Protection

Intellectual property laws protect and enforce one's ownership rights in intangible assets, such as inventions or artwork, and exist in three primary forms: patents, copyrights, and trademarks and/or trade secrets. Patents protect designs of machines and processes and, as a result, tend to cover scientific and technological inventions (35 U.S.C. § 101-103,

2012). Copyrights protect literary, dramatic, graphical, musical, sculptural, graphical, pictorial, audiovisual, or architectural works, as well as motion pictures, sound recordings, pantomimes, and choreography (Copyright Act of 1976, 2012, § 102). Trademarks are symbols, words, groups of words, logos, etc. that are attached to goods and services, and that identify their manufacturer or source (Lanham Act, 2012, §§ 1051, 1127). Trademark protection includes trade dress, which is the packaging or presentation of a good or service. (Lanham Act, 2012, §1127; McCarthy, 2015). By affixing their marks to products/services, trademark owners are able to create impressions of quality associated with their offerings (*In re Wood*, 1983). While the protection afforded by patents and copyrights eventually expires, trademark protection may last indefinitely so long as the owner does not misuse the mark (Lanham Act, 2012, § 1127). RTW firms have had to rely on trademarks to prevent their products from imitation, as patents and copyrights do not provide these companies with much recourse. Below is a discussion of trademark law as it applies to apparel and accessories retail.

B. Trademark Infringement

Trademark infringement occurs when a company uses the mark of another in a manner that confuses consumers about which company actually manufactured the offering (Lanham Act, 2012, § 1114). Goods that imitate marks of others infringe when they are so similar to the original, consumers believe the copy is real (Lanham Act, 2012; *Louis Vuitton Malletier v. Dooney and Bourke, Inc.*, 2006; *Ty Inc. v. Perryman*, 2002). As such, counterfeits and design pirates (i.e., line-for-line copies) are generally illegal (Beltrametti, 2010; Ellis, 2010; Kim and Karpova, 2010). Firms that are victims of infringement may seize and destroy the offending goods; a court may also force the culprit to stop producing the imitations and/or pay damages (e.g., lost profits, punitive damages, attorney's fees) to the trademark owner (Lanham Act, 2012, § 1116, 1118; McCarthy, 2015).

C. Trademark Dilution

Some copies feature their own brand names or letters rather than those of the original trademark owner, but with similar fonts, placement, colors, adjoining graphics, etc. (Bird, 2007; Pullig et al., 2006; Tushnet, 2008). Because such goods do not necessarily confuse consumers, they do not infringe based on the standard explicated above (*Ty Inc. v. Perryman*, 2002). Nevertheless, these imitations are illegal if they dilute or weaken a famous trademark (Schechter, 1927; Federal Trademark Dilution Act, 1995). For example, if the brand name, Big Red, was attached to strawberry bars, and this caused consumers to associate the name with the bars instead of the cinnamon chewing gum (arguably what Big Red is most associated with), dilution is said to have occurred (Pullig et al., 2006). Diluting goods benefit from the marketing tactics and positive brand image of the original rather than be confused with it (Horen and Pieters, 2012a).

Trademark dilution exists in three forms: blurring, tarnishing, and free-riding. Blurring dilution occurs when consumers cannot recognize or remember the product or its attributes when prompted with the original brand name (or vice versa) (Bird, 2007; Morrin and Jacoby, 2000). Tarnishment transpires when consumer evaluations of the original brand decrease or fall (e.g., Tiffany's strip club tarnishes the Tiffany brand name)

(Bird, 2007; Morrin and Jacoby, 2000; Pullig et al, 2006; *Ty Inc. v. Perryman*, 2002). Free-riding takes place when a copycat capitalizes on the branding efforts of another. This rarely succeeds as a dilution claim because the risk to the original firm is low (i.e., the two firms often do not share patrons) (Horen and Pieters, 2012a; *Ty Inc. v. Perryman*, 2002). In addition, evidence of blurring (i.e., reduced consumer mental associations between brands and their attributes) has not compelled courts to find dilution to be present; while firms need not prove lost sales or profits due to copies of their products, courts have been nebulous as to what evidence will support a dilution claim. (Bird, 2007; *Moseley v. V Secret Catalogue, Inc.*, 2003; Pullig et al., 2006; Tushnet, 2008). Ultimately, trademark laws are only able to prevent others from infringing upon or diluting another firm's mark, meaning that exact replication of practically all other aspects of another firm's good/service is essentially legal.

D. Cases Involving Apparel and Accessories

A number of firms in the apparel and accessories arena have instigated lawsuits alleging trademark infringement, dilution, or both. Although many settle well before making it to court, the cases discussed below illustrate the difficulty of apparel and accessories firms with respect to the protection of their intellectual property (Marcketti, 2010; Sauers, 2011; Wang, 2013). One of the first is the case of *Louis Vuitton Malletier v. Burlington Coat Factory Warehouse Corp.* (2005), which concerned the Murakami style of handbags launched by Louis Vuitton ("LV"), a French company, on or about October of 2002. The bags featured a multi-colored LV monogram on a black or white background, and prices ranged from $400 to $4,000 per item. Approximately one year later, Burlington Coat Factory ("Burlington"), a U.S.-based discount retail chain, offered similarly-colored bags with a NY monogram (for New York) on black or white backgrounds (the style code was "LVTN"; short for LV), which were priced under $30 (*Louis Vuitton Malletier v. Burlington Coat Factory Warehouse Corp.,* 2005). Burlington won the case on appeal (*Louis Vuitton Malletier v. Burlington Coat Factory Warehouse Corp.*, 2007).

Not long after LV instigated the above case, the firm filed a second suit regarding the same style of accessories and a different U.S.-based defendant. In the case of *Louis Vuitton Malletier v. Dooney and Bourke, Inc.* (2006), Dooney and Bourke ("DB") launched the It-Bag in July of 2003, which also mimicked the Murakami style of LV and featured a DB multi-colored monogram on black and white backgrounds (*Louis Vuitton Malletier v. Dooney and Bourke, Inc.*, 2006). DB sent a group of teenage girls (i.e., the target market) to Europe to see the LV multi-colored fabric prior to the release of the bag, and essentially admitted that DB copied LV. DB priced its imitations between $125 and $400. The court determined that the bags were not "confusingly similar," and DB won (*Louis Vuitton Malletier v. Dooney and Bourke, Inc.*, 2006).

The case of *Gucci Am., Inc. v. Guess?, Inc.* (2012) similarly involved the Italian luxury house as the plaintiff and mid-market, U.S.-based Guess as the defendant, which the court characterized as a trend-follower. Guess had manufactured several products featuring the Guess brand name in similar styles to several of Gucci's trademarks. Evidence revealed that Guess intentionally copied Gucci in an effort to provide its customers with a substitute for the luxury brand (*Gucci Am., Inc. v. Guess?, Inc.*, 2012). The Court found that several Guess imitations diluted Gucci's trademarks (e.g., Guess'

Quattro "G" pattern in comparison to Gucci's "GG"-diamond pattern) due to similar lettering and design, while others did not (*Gucci Am., Inc. v. Guess?, Inc.*, 2012). Here, because the letter(s) on the imitation were the same as those of the original mark ("G"), the case for dilution was more compelling than the LV cases above.

The case of *Christian Louboutin vs. Yves Saint Laurent* (2011) involved two French companies, but was filed in the U.S. Christian Louboutin ("Louboutin") alleged that Yves Saint Laurent (YSL) copied the trademarked red sole that adorns the bottoms of all Louboutin shoes (*Christian Louboutin vs. Yves Saint Laurent*, 2011). YSL offered a red shoe with a red sole that was quite similar to the highly recognizable Louboutin shoes. Louboutin lost (both at the trial level and on appeal) because the YSL shoes were completely red, rendering the sole indistinctive (*Christian Louboutin vs. Yves Saint Laurent*, 2011). In addition to the above cases that actually made it to court, there are a myriad of lawsuits involving foreign plaintiffs (e.g., Balenciaga) and U.S.-based defendants (e.g., Forever 21, Steve Madden) that are settled before the cases even get close to trial (Ellis, 2010; Lovells and Pecnard, 2012); however, information on these lawsuits is not available.

E. A Typology for Apparel and Accessories Imitations

Collectively considering the law and related cases described above, imitated goods in the apparel and accessories industry may be classified as illegal if they cause consumer confusion (as to the true manufacturer) or trademark dilution (a decrease in brand value) (Ellis, 2010; Pullig et al., 2006; Wilke and Zaichkowsky, 1999). Apart from these illegal goods (Bird, 2007; Beltrametti, 2010; Kim and Karpova, 2010; Lanham Act, 2012, § 114; Morrin and Jacoby, 2000; Pullig et al., 2006; Tushnet, 2008), the market also contains copies that range in resemblance to the original from highly similar (and sometimes identical) to minimally comparable (i.e., copy only certain aspects of the original). Again, these imitations are essentially legal providing they do not encompass any aspect of the original trademark and, as such, could not infringe upon or dilute it (Arboleda and Alonso, 2015; Burns et al., 2011; Ellis, 2010; Jiang and Shan, 2016; Quintal and Phau, 2013; Simonson, 1993; Wilke and Zaichkowsky, 1999). Further, a consideration of the literature above indicates that imitations can even mimic the style or exact colors of another's trademark so long as the copied offerings do not mimic the exact letters of the original trademark (*Gucci Am., Inc. v. Guess?, Inc.*, 2012; *Louis Vuitton Malletier v. Dooney and Bourke, Inc.*, 2006, 2007). The lofty standard for illegal goods explains why retail channels house both the original goods and highly similar copycats, whereas exact replicas with identical trademarks to the originals (i.e., counterfeits and/or design pirates) must be offered in nontraditional channels (Burns et al., 2011; "Superfakes," 2013). Highly similar legal imitations have been termed "trend imitators" (Vogel and Watchravesringkan, 2017). Table 1 provides a typology of imitation types based on the legal standard they violate, the trademark-related cause of action, and the resulting legal status of the goods.

Table 1
Typology of imitation based on legal standard, cause of action, and resulting legal status

Classification	Legal Standard	Cause of Action	Legal Status
Counterfeits and design pirates	Confusing or likely to confuse consumers as to the true manufacturer	Trademark infringement	Illegal
Diluting copycats	Not confusing (as to the true manufacturer), yet blurs, tarnishes, or free rides on the original brand equity	Trademark dilution	Illegal
Trend imitators	Not confusing (as to the true manufacturer), and does not blur, tarnish, or free ride on the original brand equity	None	Legal

F. The Controversy Surrounding Apparel and Accessories Retail

As revealed above, the narrow application of U.S. trademark law to the apparel and accessories industry allows for a market heaving with trend imitators. The situation is not without contention, however, as it endures and possesses an international scope (Ellis, 2010; Bird, 2007; Kim and Karpova, 2010; Marcketti, 2010; "Superfakes," 2013; Tushnet, 2008; Wang, 2013; Wild, Wild, and Han, 2016). The side of the controversy that is against imitation (and in support of extending copyright protection to certain apparel and accessories items) points to the persistence of a thriving global copycat sector in arguing that imitation both prevents new/younger brands from establishing brand equity[4] and dilutes that of existing brands (Ederer and Preston, 2011; Ellis, 2010). Mimicked firms experience returned goods, canceled orders, and/or decreased sales once practically identical, cheaper substitutes are available, effectively diminishing the exclusivity associated with the originals (Ellis, 2010). The core of the opposition is the "piracy paradox" theory, which holds that copying spurs innovation by enforcing shorter lifespans for trends (Ederer and Preston, 2011). This viewpoint is obviously against any legislation that would increase intellectual property protection because of the belief that doing so will impede creativity, increase prices, and have a negative affect overall on the RTW industry (Bader, 2013; Ederer and Preston, 2011).

One of the primary issues underlying the controversy is whether the existence of copies prevents sales of the originals. Imitation proponents contend that patrons of the copies are not the consumers of the originals, such that original firms experience no lost sales or revenue from the existence of copycats (Beltrametti, 2010). Although this may be true when the price zone[5] of the original is drastically higher than that of the imitator, some copies are featured in similar price zones as the original (e.g., Beltrametti, 2010; *Christian Louboutin SA et al v. Yves Saint Laurent America, Inc et al.*, 2011; *Levi Strauss and Co. v. Abercrombie and Fitch Trading Co.*, 2011). In this circumstance, imitations could steal sales from the original firm (Beltrametti, 2010).

G. Theoretical Underpinning of the Controversy

It may seem farfetched that the mere presence of an imitation might have some sort of impact on the original. Yet, the existence of counterfeits (which are illegal, but are imitations nonetheless) often negatively affect the original brand (Loken and Amaral, 2010; Nia and Zaichkowsky, 2000; Wang and Song, 2013), as can private label/me-too imitations (Aribarg, Arora, Henderson, and Kim, 2014). The theories of cue utilization and categorization/schema jointly explain these effects. Consumers encounter imitations featuring certain cues (e.g., brand name, country of origin, color) that consumers compare to their existing knowledge and consequently evaluate (Cohen 1982; Cohen and Basu, 1987; Fiske and Pavelchak, 1986; Jacoby, Olson, and Haddock, 1971; Loken, 2006; Simonson, 1993; Solomon, 2013). The comparison process mentally triggers recollections of the original brands, the evaluations of which might then be altered (Carlston, 1980; Cohen, 1982; Cohen and Basu, 1987; Jacoby, Olson, and Haddock, 1971; Loken, 2006; Peterson et al., 1999; Pullig et al., 2006). Simply put, the similarity between imitations and the originals activates the associations between the two firms for comparison (Choy and Kim, 2013; Pullig et al., 2006), which, in turn, determines whether the imitation will ultimately affect the equity of the original brand (Carlston, 1980; Cohen, 1982; Cohen and Basu, 1987; Loken, 2006; Peterson et al., 1999; Pullig et al., 2006; Solomon, 2013).

H. Empirical Evidence of the Effects of Trend Imitations

Although the research on counterfeits is telling, as explained above, counterfeits violate the legal standard for trademarks, thereby causing consumers to believe they are originals. To that end, the sale of counterfeits is illegal, and these goods are not offered in traditional retail channels where the imitation and the original would be adjacent to, or arguably substituted for, one another (Kim and Karpova, 2010; "Superfakes," 2013). Moreover, consumers of counterfeits inherently are motivated by needs and values (e.g., social consciousness) (Jiang and Shan, 2016) that may be distinct from those of individuals that purchase trend imitators. Thus, empirical research on the effects of counterfeits, of which plenty exists (e.g., de Matos, Ituassu, and Rossi, 2007; Doss and Robinson, 2013; Kim and Karpova, 2010; Phau and Teah, 2009; Zampetakis, 2014), is not exactly a panacea for the effects of trend imitators. Such a question essentially asks about the line between trademark diluting goods, which would be illegal, and trend imitators that would be perfectly legal.

Empirical evidence in the sphere of trend imitation, however, is meager and has yet to uncover whether the practice begets actual harm to the original firms. Research reveals that original brands are generally harmed by both private label (i.e., "me-too") imitation, and to varied extents, by brands that are not private labels (Aribarg, Arora, Henderson, and Kim, 2014; Choy and Kim, 2013; Morrin and Jacoby, 2000; Pullig et al., 2006). From another angle, the existence of imitations may cause original firms to lose competitive advantage, especially when the two offerings emerge around the same time (Carson, Jewell, and Joiner, 2007; Quintal and Phau, 2013).

I. Measuring the Effects of Imitations

Effects of imitations on original brands have mostly been measured via changes in original brand equity (Choy and Kim, 2013; Morrin and Jacoby, 2000; Pullig et al., 2006), a multi-dimensional construct generally considered to include brand awareness, brand association, perceived brand quality, and brand loyalty (Aaker, 1991, 1992, 1996). Changes have manifested themselves as either brand equity reinforcement (an increase in brand value; positive effects) or dilution (the diminishing or decrease in value of the equity enjoyed by an established brand; negative effects) (Choy and Kim, 2013; Keller and Sood, 2003; Kort, Caulkins, Hartl, and Feichtinger, 2006; Loken and John, 1993; Pullig et al., 2006).

Researchers (Choy and Kim, 2013; Morrin and Jacoby, 2000; Pullig et al., 2006; Satomura et al., 2014) have argued that imitations with identical (or highly/obviously similar) brand names to the original that are in similar product categories and/or have similar attributes can reinforce consumer ability to recognize and recall the original brand (i.e., brand awareness/association). Contrarily, dissimilar attributes cause reinforcement of original brand name recall, while also diluting some of the associations between the original and its attributes (Pullig et al., 2006). Furthermore, when the original brand is well-known, imitations with similar brand names and packaging (i.e., trade dress) to the senior reinforce its brand equity (as measured in terms of brand personality), while dissimilar juniors decrease senior brand personality and ultimately original brand attitude (Choy and Kim, 2013). Less familiar original brands experience greater dilution and recall interference than familiar brands; however, the extent of the dilution for the fewer familiar brands was affected by category similarity (Morrin and Jacoby, 2000).

J. Issues with the Extant Research Measuring Effects of Imitations

The fruits of the above labors reveal both positive and negative effects of trend imitation on original brands. Even so, the brand awareness/brand association dimensions of brand equity do not exactly capture changes in choices regarding the original brand, which is the primary void in the literature assessing effects of imitations. Evidence of reduced associations between original brands and their distinct aspects (e.g., the Levi brand and jeans) (Anderson, 1983; Choy and Kim, 2013; Collins and Loftus, 1975; Morrin and Jacoby, 2000; Pullig et al., 2006) is simply not enough to support any real effect that imitations may have on original firms (Tushnet, 2008). Correspondingly, associations between original marks and imitations in addition to negative use by the latter is also not sufficient for evidence of dilution (*Starbucks Corp. v. Wolfe's Borough Coffee, Inc.*, 2009).

In an attempt to bridge this gap, studies (Choy and Kim, 2013; Pullig et al., 2006) have also included a choice component (i.e., brand choice or purchase intention) related to the original. The researchers posit that situations causing original brand equity dilution also result in deceased choice for the original (Choy and Kim, 2013; Pullig et al., 2006). These studies are somewhat problematic in uncovering the actual effects of imitation for several reasons, both related to the imitation stimuli. First, and perhaps most importantly, the research that does exist does not classify, at least with any consistency, the type of imitation used as a stimulus with regard to trademark law (Bird, 2007; Choy and Kim, 2013; Ellis, 2010; Marcketti, 2005; Morrin and Jacoby, 2000; Pullig et al., 2006) as outlined above. Imitations featuring identical or highly similar brand names (to the

original) were employed in much of the seminal research in this area (Morrin and Jacoby, 2000; Pullig et al., 2006), which would likely confuse consumers and ultimately characterize the imitation stimuli as counterfeits or design pirates. As such, the heart of the prior research is not exactly trend imitators (that would appear in the same channels as the originals). Second, these studies chiefly discovered effects of low-involvement (primarily edible) imitations (Horen and Pieters, 2011, 2012, 2013; Kim, 2005; Laurent and Kapferer, 1985; Warlop and Alba, 2004).

Along this vein, very few studies incorporated any luxury firms as the original brands. Yet, the history of apparel and accessories and the positioning of the parties involved in some of the more current controversial cases (e.g., Louis Vuitton and Gucci) indicates the need for luxury to be integrated into research on the topic. High-end luxury firms, often of European origin, tend to launch the trends that mass or neo-mass luxury brand firms, often of U.S. origin, copy (Clark, 2008; *Christian Louboutin SA et al v. Yves Saint Laurent America, Inc et al.*, 2011; Ellis, 2010; *Gucci Am., v. Guess?, Inc.*, 2012; *Louis Vuitton Malletier v. Burlington Coat Factory Warehouse Corp.*, 2005; *Louis Vuitton Malletier v. Dooney and Bourke, Inc.*, 2006; Pouillard, 2011; Vigneron and Johnson, 1999; Wang, 2013). Furthermore, apparel and accessories goods, and certainly luxury offerings, are generally associated with escalated levels of product involvement (Kim, 2005; Solomon, 2013). Thus, the extant research is not particularly relatable to the apparel and accessories sector.

IV. FUTURE RESEARCH DIRECTIONS

The foregoing describes the system of copycatting that has plagued the industry of apparel and accessories globally since at least the birth of RTW. When counterfeits and design pirates emerge that are meant to be exact substitutes for offerings by original firms, they have remedies with relatively clear standards to combat such illegal imitation practices. However, copycat goods that feature their own brand names that are highly similar to originals are much more difficult to oppose. The standard for dilution remains indeterminate, as empirical evidence of any actual damage to the original brands by virtue of the existence of highly similar trend imitations has yet to be attained. This is largely because the stimuli utilized up to this point have not been qualified (in terms of their presumable legal status), resulting in the employment of imitations that are more akin to counterfeits or design pirates than trend imitators. As indicated, inherent differences exist between legal and illegal imitations with respect to retail channel and consumer segments to say the least. Consequently, it is suggested that the typology set forth above be applied to the stimuli that serve as the imitations in future research that seeks to determine actual outcomes of trend imitation. Additionally, future research should both include the luxury sector and focus on effects of imitation in the form of direct choice between the originals and copycats, as evidence of reduced brand associations has yet to suffice for brand dilution claims.

ENDNOTES

1. WIPO is an agency of the United Nations that is responsible for administering many of the treaties targeting intellectual property issues (e.g., Hague Agreement, Paris Convention) among other related duties (Wild, Wild, and Han, 2016).

2. A more recent form of these efforts was the Innovative Design Protection Act of 2012 (IDPA), which was supported by both the Council of Fashion Designers of America (CFDA) and the American Apparel and Footwear Association (AAFA), and which stalled in the House of Representatives after being passed by the Senate (Bader, 2013; Ederer and Preston, 2011).
3. Apparel has traditionally not enjoyed copyright protection due to its status as a useful article (i.e., the functionality of clothing is inseparable from the artistic aspects thereof) (*Kieselstein-Cord v. Accessories by Pearl, Inc.*, 1980).
4. Brand equity is considered to be the additional value a brand affords a product that is based on consumer perceptions of and associations with the brand (Baldinger and Robinson, 1996; Dyson et al., 1996; Farquhar, 1989; Park and Srinivasan, 1994).
5. Price zones range from low/budget pricing (goods mostly under $50) to high/designer pricing (goods mostly over $1000), with several zones in between (e.g., bridge, moderate, and etc.) (Burns et al., 2011).

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