

Master Thesis Cultural Economics & Cultural Entrepreneurship

Intellectual Property rights in fashion in China and the knowledge of young Chinese designers on this topic

Geertje Hesseling
314816
314816gh@student.eur.nl

Erasmus Universiteit Rotterdam
Faculteit der Historische en Kunstwetenschappen
An Moons
Christian Handke

Foreword

With a healthy sense of relief and pride I present to you my master thesis. Started in Hong Kong, finished in the Netherlands, and thanks to people that I already knew for a long time, just met or might never see again. The biggest thanks goes out to the influence of the city that gave me the inspiration and information to base this thesis on, Hong Kong SAR. The six months I spend there were most valuable. Next to this, a big thank you to my thesis supervisor An Moons. With her guidance, this thesis got more depth and also got finished on time. The third big up goes to my family. Mom, dad, my twin sister, for staying strong and having confidence in me. For asking me questions that pushed me to think further. And last but not least, my friends. Long time friends, short time friends, new found friends, Hong Kong friends and flatmates. For just being there and waiting and asking and staying and believing. Thank you.

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1. Introduction Intellectual Property rights in Fashion in China

Introduction

With the reopening of China's market to foreign trade in 1970 (Yu, 2002) the country has grown in a fast pace. China's imports "tripled from \$225 billion in 2000 to \$600 billion in 2005", and the country "accounted for about 12 per cent of the growth of global trade" where it was 4 per cent in 2000 (Bergsten and Mitchell, 2006). And "since 1983, Foreign Direct Investment (FDI) has grown from less than \$1 billion a year to more than \$60 billion, and it is projected to soon reach \$100 billion annually" (Navarro, 2006). Although some critics take their stands against this growth, such as Gordon Chang (2002) who announces the collapse of China, and Nicholas Lardy (1998) who expresses the concern of a lack of governmental guidance and a lack of social interference, on the other side there are great believers in the upcoming power of this "next superpower" (Murray, 1998).

In an article by Peter Yu (2007) it is posed that China brings an interesting case to the table when it comes to this economic growth. While a lot of Foreign Direct Investments are being transferred to China, the state of the Intellectual Property rights in the country do not meet the standards that other countries expect and meet. This contradiction is referred to by Yu as "The China Puzzle". Although China is a member of the World Intellectual Property Organization since 1980, and it has signed the Berne Convention, the TRIPS agreement (Birden, 1996), and several other IP rights related agreements and conventions, the total losses in revenue of other countries or international brands because of pirated and counterfeited goods made in China are immense.

Looking at the \$100 billion dollar worth women's fashion industry (Winograd&Lu-Lien, 2005), the economic damage of pirated and counterfeited luxury goods such as fashion designs are imaginable. In an investigation from the United States Customs and Border Inspection (2008), it is shown that China is the top producing country for seized counterfeited IP rights goods in the United States. 81% of these goods were produced in China, which is an increase of 40% compared to 2007 and accounts for a domestic value of \$221.7 million. Looking at apparel, handbags and shoes, apparel amounts for \$25,11 million, handbags (here including wallets and backpacks) for \$29,6 million and footwear makes up for \$102,3 million. In comparison to other countries, China is the infringe and counterfeit capital in the world (research US Customs and Border Inspection 2008). Number two and three are India and Hong Kong, with respectively a domestic value of such goods of \$16,3 million and \$13,4 million¹.

But on the other side of this economic damage Giorgio Armani, a famous Italian designer, shows us that counterfeit designs have a significant double image:

¹ http://cbp.gov/linkhandler/cgov/trade/priority_trade/ipr/seizure/fy08_final_stat.ctt/fy08_final_stat.pdf

“Professionally, it causes big problems because it creates products with your name on them that are not controlled by you. Personally, I think counterfeit products are good because their existence shows that we create something people want to copy”²

Large fashion houses and established designers such as the one Armani gave his name have the financial possibility to fight the pirates. With a share of their profit it can be read in newspapers and on the internet³ that they take the pirates to court and often win their cases (Derclaye, 2008). It is even ruled by the French court that fashion shows can be protected by copyright. But protecting your designs, if possible, and taking pirates to court costs money. And it is questionable if young designers, as opposed to established designers, have the financial position to take such actions. Even if they have the financial status to do so, do they have the knowledge to protect their designs? Do they study IP rights in their studies, or are they not interested in the subject?

In this thesis the main focus will lay on the young Chinese fashion designers that just graduated from their design school and are now looking to send their own creativity in to the world. What is their knowledge on the topic of IP rights and how have they gathered this knowledge? What do they think of the existence of the poor IP rights in their country and how do they cope with this? To understand the current state of these rights, investigating the history of IP rights in China is important and the way this has developed over the years under circumstances that are unique for this country in the world.

If the quote by Armani is reconsidered in this context, the two points he notes, that are opposed to each other can be seen in this Chinese context too. Firstly, the producing of counterfeited and infringed goods. How can it be that China is the leader in the producing of such goods, and how does this influence the country itself in the sense of its designers? What is so different in China that it could become, and stay, a leader in this ambiguous trade? Second, how does it influence the fashion industry, in this research specified to the young designers, but also the people that are directly linked to this industry such as lawyers, teachers, governmental institutions and other experts in this field?

These two separate question fields come together in one research question:

To what extent and in what way are young fashion designers and their entourage in China protected and influenced by intellectual property laws concerning fashion and what, if anything, concerning education and policies should be changed so that China can support its young designers better in terms of intellectual property rights?

² <http://www.time.com/time/magazine/article/0,9171,1879189,00.html>

³ <http://www.fashionapparelblog.com>

Scholarly significance of the research topic

In an interview I held with Peter Chong, IP rights manager at the LVMH group that holds among others the Louis Vuitton brand and Fendi, I was told when asking about the way the LVMH group protects their IP rights “I can not discuss this. This is a very sensitive topic. You have chosen a niche subject to operate on and I am not at liberty to discuss this. All I can say is that Vuitton needs to keep innovating”. When asked if there were any numbers to look at I was advised to investigate the music industry. “They conduct research and have more information”. The fact that it was very hard to find people that had knowledge on this subject or that were willing to talk about this subject and also the difficulties to find statistics on these numbers made this a very challenging research.

What makes it even more interesting for the field of Cultural Economics is that most of the articles that are found on the topic of IP rights are law focused. They mainly describe the problems and the eventual collaboration between America and China concerning IP rights, but articles or books on the subject of IP rights in fashion in China are particularly hard to find. In other words, except for some articles on IP rights in fashion (Raustiala and Sprigman, 2006, Scruggs, 2007, Hilton, Choi and Chen, 2004) and little articles or books, in English, on IP rights in Fashion in China, there is little knowledge on this topic.

Involving the young designers is another interesting point in this research, since to my knowledge there is also little information about their knowledge of IP rights and the influence this has on them and their work and career. Also the small research done to investigate the courses given on design schools in China is new.

Division of chapters and methodology

This thesis will address several topics that will in the end provide a clear and coherent statement on the topic of Intellectual Property rights in fashion in Mainland China. First of all the historic perspective of fashion protection in mainland China will be described. What were the regulations in older times and how and why and how have they changed in to other regulations? This part of the thesis contains the most law focused information, together with the description of the current state of IP rights concerning fashion that follows in the chapter. To understand the current state of affairs we need to understand the history and the important events concerning intellectual property rights that have occurred. Also the view on the cultural aspects that play a large role in China will be discussed. The research method used here is mainly literary research combined with some information derived from the interviews.

The next chapter will take a look at the different types of protection that can be used to protect garments in China. In the chapter that is linked to that the similarities and differences will be pointed out by comparing the protection in China to the United States, Europe and Japan. These chapters make up for the first part of the thesis. Again the information is derived from literature research.

The second part of the thesis is concerned with the way IP rights can be implemented in fashion and the way the fashion industry works with those rules. The first chapter of this part handles the advantages and disadvantages of IP rights in fashion in general, the second chapter describes the problems of implementing IP rights in China. The third chapter of this part describes the fashion industry, while the fourth chapter is concerned with the young fashion designers in China. This second part is also mostly written using literary research.

The concluding part, the third part, consists of the information that is derived from the interviews that were held during the writing of this thesis with several different persons working or linked to the fashion industry or the implementation of IP rights in Fashion. These people can be again divided in to two groups. The first are the actual young designers, the second are the people around them, working in the fashion industry or linked to IP rights. For this thesis I interviewed 5 young designers from several Universities across Mainland China. The other group of people consists of lawyers specialized in IP rights, professors at universities, experts on the topic of IP rights in China and on the topic of fashion. A list of all the interviews with the people can be found in appendix 4 trough 13.

The interviews conducted were mainly half structured, but since not all of the people were available for a interview in person some questions were only e-mailed. This was one of the main disadvantages of the method, because interviewing people in person gives an opportunity to get a more elaborate answer to the questions. The elaborate answers given when interviewing in person is the main advantage of this method, because doing so, opinions and views can be given to a larger extent then when for example a questionnaire is filled out.

The selected respondents were chosen so that the two sections of the thesis were both covered by interviews and an understanding of the problems could be underlined. For the first part it was important to see how lawyers specialized in IP rights in China viewed the problems of IP rights in fashion in China and how other experts were involved in such problems. Also the solutions they would implement were a great part of covering the problems. The second part of the thesis was covered by interviewing young designers from several schools in China, and interviewing teachers of spokespersons from design schools. To get more depth in the interviews one of the young designers was a designer from Milan who moved to Shanghai to set up her own brand.

Subquestions

To answer the main research questions it is necessary to answer several subquestions. Again these questions can be divided in to two parts. The first part considers China and the themes relevant and connected to the country itself. This means governmental laws, differences with other countries and the approach of problems concerning IP rights of the country. The second part investigates the knowledge and opinions of young designers and the people involved in fashion around them.

Questions concerning China and its IP rights

1. *“What are the differences in laws between China and other countries that have signed agreements such as the TRIPS agreement?”*
2. *“What are ways to implement intellectual property rights in fashion in China and what is the most useful option?”*
3. *“What should be changed in policies in China so that piracy is a issue of less concern?”*
4. *“What developments have been made in China concerning IP rights and what are future plans to improve this topic?”*

Questions concerning fashion, young designers and their entourage

1. *“How did the fashion industry develop over the years and what changes has it gone through?”*
2. *“What is the current state of creativity in China, focused on fashion design?”*
3. *“What are the advantages and disadvantages of IP rights in fashion?”*

Hypotheses

The hypotheses can be divided in to two groups. The first one concerning the IP rights development and protection in China, the second one investigating the fashion designers views and the implementations of IP rights in fashion as perceived by the designers and their entourage.

Hypotheses concerning China and its IP rights

H1. With stronger intellectual property right laws, China will attracts more investments in fashion.

In the article by Peter K. Yu, the China Puzzle (2007), it is questioned whether strengthening IP rights will help China attract more foreign investors. Especially in this time of economic crisis, investments and economy need to be stimulated. In the mentioned article Yu states that the low wages, the fast production cycle and the quick distribution, along with the chance of penetrating a market with 1.3 billion⁴ possible customers make up for the lack of strong IP rights in the country. Businesses take the losses because of IP rights for granted. Although the way IP rights influence FDI are ‘complex and

⁴ http://en.wikipedia.org/wiki/Demographics_of_the_People's_Republic_of_China

subtle' (Maskus, 2000), Maskus proves in his article that strengthening IP rights does help to attract FDI in the long run. Glass and Saggi (2002) state, on the other hand that the difficulty of imitating goods is positively linked to the waste of resources and negatively linked the attraction of FDI and the amount of innovation. Because neither of these articles is specified on fashion, interviews will have to state the point of view of potential and current designers and experts in fashion in China for this thesis.

H2. The most useful way to implement stronger intellectual property rights in fashion is to strengthen and adjust in particular the copyright and trademark policies, but next to this also cultural and governmental adjustments are needed.

In a article by Peter K. Yu (2001), twelve steps are described to increase China's awareness and implication of the international standards of IP rights. Although this article is very much specified on the relationship between the United States and China, it is very helpful concerning the problems that China faces for the implementing of these types of regulations. The greatest problems that exist are the slow acting government because of high level of bureaucracy in the enforcement of IP rights in fashion that stands against the low level of power to handle pirates. In the book 'To Steal a Book is an Elegant Offence' by William P. Alford (1995) it is described how China's culture and history influence the difficulties for the strengthening of IP rights.

Hypotheses concerning young designers and their entourage and developments

H3. Intellectual property rights strengthen the fashion cycle instead of damaging it.

For this hypothesis two important articles for my thesis expose opposite opinions. In the Sprigman and Raustiala (2000) article it is stated that IP rights are a hazard to the fashion cycle and that by strengthening IP rights or even by making 'copying illegal' the fashion cycle would change very slow. In the article opposing this, "Should fashion design be copyrightable" (Scruggs, 2007), the author contradicts eight points on which Landes and Posner (2003) are proving why copyright protection is needed. The choice for the positive instead of the negative influence comes from the fact that Scruggs in his article has taken in to account new technologies and research such as the shortening of the "lead time" by the use of the Internet.

H4. Younger designers care and know little about intellectual property rights concerning their designs.

Although little research has been conducted on this topic, from my first interviews with young designers from Hong Kong and China I noticed that their knowledge of IP rights wasn't up to date.

Reasons for this are the lack of education from the Universities and the difficulties of finding the right information.

H5. Young designers are in more need of IP rights protection than bigger and already established companies.

In an interview between Susan Scafidi and Felix Salmon⁵ Scafidi states that the importance of IP rights for young designers, in contrast to the already established companies, is much larger. Since there is no incentive for a larger company to pay for the use of a designer because of poor IP rights, young designers cannot protect themselves. In the article she says “the designers who suffer from copying are the little guys – those whose designs are copied, while their trademarks are not”. Because established designers have the money to protect their trademark, investigate cases and, if necessary, act, young designers do not have these financial means.

⁵ <http://www.portfolio.com/views/blogs/market-movers/2007/09/19/susan-scafidi-on-copyrighting-fashion>

2. Development of Intellectual Property rights in China

Introduction

This chapter will involve the historical, social and cultural factors that have been of influence on the development of IP rights in this particular country. Since the history does not compare to the evolution of the Western culture, differences will be pointed out that have had an effect on the IP right protection. Next to this, Chinas IP rights system will be outlined with the help of the different legislations that have been signed to level with international expectations. Since it is difficult to find information on the history of IP rights of fashion specifically, this chapter will view a broader scope of IP rights as they have been implemented in China. Most of the literature (amongst others Mertha, 2005, Yu, 2001) that involves the historical path of IP rights protection in the Peoples Republic of China picks up the legislation from March 3, 1980 on when the Chinese government applied for an admission at the WIPO and became a member on June 3, 1980. In the book “To Steal a Book is an Elegant Offence” by William P. Alford (1995) he approaches the history from a more social and cultural perspective by starting his historical search for IP rights from the rise of printing during the Tang Dynasty from A.D. 618-906, and together with an article by Peter Yu this will serve as a red thread in the research of the history of IP rights in China. After having viewed the history of China’s IP rights and the reasons why they differ so much from the development of IP rights knowledge and implementations in other, Western, countries the current regulatory process of IP rights will be investigated. Since the signing of the different conventions and legislations such as the Paris Convention and the Berne Convention China has made some significant changes, not only to adjust its policy to international expectations, but also to educate and inform the Chinese people concerning this topic. To start, we will look at the triple system China is currently using, which consists of legislative guidance, administrative control and judicial enforcement (Yang, 2003). Second, the recent education of Chinas inhabitants concerning IP rights will be discussed.

Historical notes IP rights

In an article by Peter K. Yu ‘Piracy, Prejudice and Perspectives’ (2001) it is described how China’s history played a part in the changing of IP rights. According to Yu the earliest notion of IP protection occurred during the Tang dynasty in A.D. 835 when emperor Wenzong “prohibited the unauthorized reproduction by persons of calendars, almanacs and related items that might be used for prognostication”. This was necessary to keep the servants as slaves and make sure the downfall of this emperor was prevented. At the end of the dynasty this regulation was extended by “prohibiting the unauthorized copying and distribution of state legal pronouncements and official histories, and the reproduction, distribution and possession of ‘devilish books and talks’”. We can say that this first acknowledgment of IP rights wasn’t to protect authors, but more the emperor and its power.

After the Tang dynasty the Song Dynasty expended the knowledge of ownership, but again it was merely set up to control the expansion of ideas. Special attention was given to trademarks, that could not be used by non-officials. Yet no official property rights protection came in to China until the early twentieth century. In 1910 the first official copyright law was introduced and a patent law followed in 1912. The first trademark law passed in 1923. The knowledge of IP rights wasn't very important by these times. This became different when China opened it's gates to foreign trade in 1940.

In 'To Steal a Book is an Elegant Offence' by William P. Alford (1995) another take on the subject of the history of China's IP rights is taken. In this book the author puts the history of the lack of IP rights history in China in another perspective by pointing out differences in culture. In old China the government was almost being replaced by the family and some influential people in the village, who carried out the same values and morals as the government, but where not directly in line with it. The most important consideration he addresses is the influence of the political culture through out imperial China. The power of the past was viewed as an important asset in the Chinese culture. "Rites" defined morality and propriety. Alford states that "in essence, it involved the expectation that current rulers would carry out their responsibilities in a manner consistent with their moral standards set by their most worthy predecessors". Because of this power of the past, the legal system stayed fairly unchanged. Another influential part of the past was derived by the thought that copying in the arts and in poetry was a compliment for the copied artist or writer, because it "evidenced the user's comprehension of and devotion to the core of civilization itself, while offering individuals the possibility of demonstrating originality within the context of those forms and so distinguishing their present from the past".

What the book by Alford points out is that the reason that China lacks certain understandings of IP rights might be traceable to their heritage and culture. As the author also suggests, there should be more research be conducted on this topic, because mostly the research topics are law focused.

Impact of Confucianism on the development of IP rights

Another important reason that the development of China's IP rights was implemented in a slower pace than in the west was the influence of Confucianism in China. Confucius (551–479 BC) developed a school of thought that put emphasis on the moral development of the individual so that a state could be government by moral virtue rather than laws. Both the statements that "copying is a virtue in the arts" and that "profiting from knowledge and artistic production is immoral"⁶ are closely related to this school of thought, where in Confucius himself claimed that he "never created or wrote anything original"⁷. In the book *The Enforcement of Intellectual Property Rights in China* by Jianqiang Nie (2006) he suggests that Confucianism had a great impact on the development of IP rights. "Nobody

⁶ <http://en.wikipedia.org/wiki/Confucianism>

⁷ <http://pnclink.org:8080/pnc2006/Presentation%20material/e-publishing%20--%20John%20Lehman.pdf>

claimed they created knowledge and therefore privately owned it”. This did not prove to be a positive starting point for the development of such rights. The introduction of international IP right laws and the enforcement under the observing eye of the West set China off to get to the equal standard that was set by the western world.

Introduction of international IP right laws

As was said before, most literature begins with the start of IP rights in China when they applied and became a member at the WIPO. This was the beginning of the straightening out of international standards of IP rights in China. After the WIPO membership, China adopted The Trademark Law of the Peoples Republic of China, at the 24th meeting of the Standing Committee the Fifth National People’s Congress on August 23, 1982, which took effect on March 1, 1983. China hereby established the first real modern legal system to protect IP rights (Nie, 2006).

After the Trademark Law, the Patent Law was adopted on March 12, 1984, which took effect on April 1, 1985. This law was amended in 1992 and again in 2000. Under the Patent Law also designs and utility models are dealt with in China, which differs from countries as the US and Britain where they are dealt with in separate legislation (Ordish & Adcock, 2008). On March 19, 1985, China became a member state to the Paris Convention for the Protection of Industrial Property to the WIPO. On January 1, 1987, the first law in China took effect in which citizens and legal persons were affirmed right of authorship. In these General Principles of the Civil Law of the Peoples Republic of China, the general principles of IP rights are defined. As of 4 October 1989, China is also a member of the Madrid Agreement for the International Registration of Trademarks tot the WIPO. On June 1, 1991, the Copyright Law took effect, and after that China became a state member of the Berne Convention for the Protection of Literary and Artistic Works to the WIPO and of the Universal Copyright Convention to UNESCO, both on October 15 and 30, 1992 respectively (Nie, 2006). A list of the most important international treaties on IP rights and the status of China concerning these treaties can be found in appendix 2.

Impact of the new laws

Adopting the international treaties concerning IP rights have made significant changes in the implementation and observing of these rights. Numeral changes have been made and adaptations of the previous laws have been constructed. In a book by Nie (2006), he concludes that “China’s obligations regarding the enforcement of intellectual property under the TRIPS agreement and China’s WTO Protocol are generally honoured. The system of protection of intellectual property rights in China has come to a new stage”.

China’s current approach

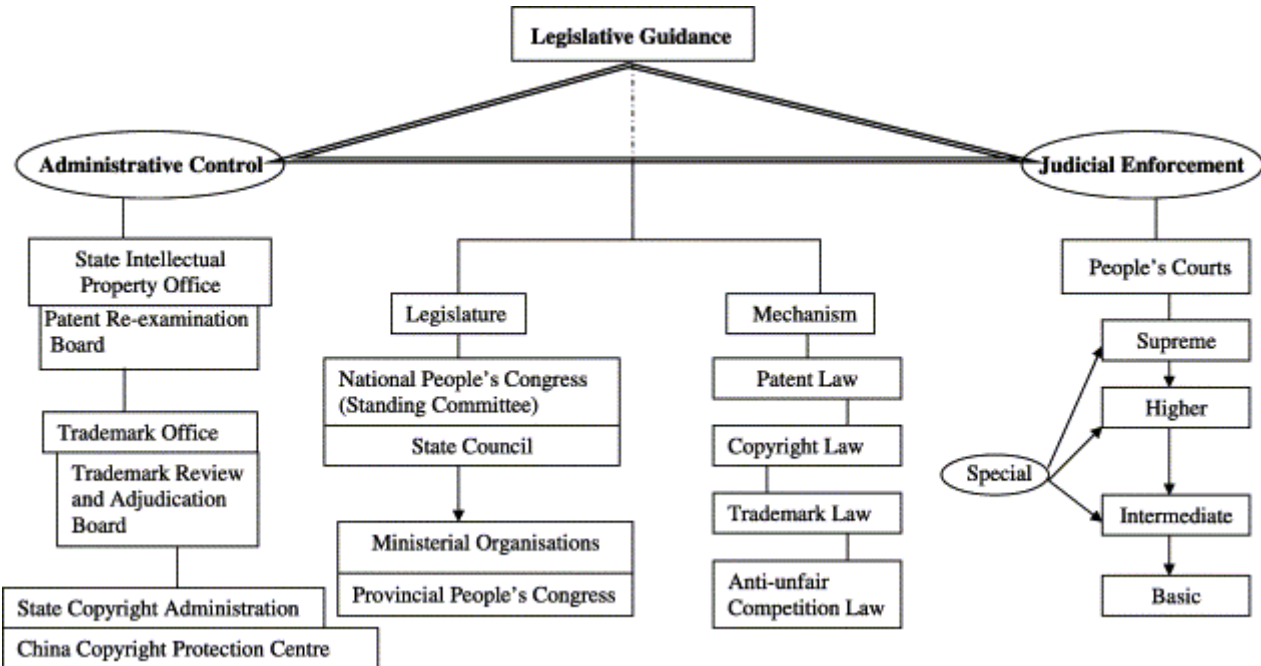


Fig. 1. China’s Triple IP System. State IP Office was formerly Patent Office. (Yang, 2003)

As was pointed out in the introduction, China has made significant improvements to keep up with the international expectations and regulations concerning protection of IP rights. In Figure 1 the current state of affairs is shown. What becomes clear is that the Chinese IP system is a triple system, with the three powers of legislative guidance, administrative control and judicial enforcement at the head of each. Legislative guidance will be partly explained in the next chapter, where the Chinese rules on the different types of IP rights concerning fashion will be lined out. Next to the different types of laws, the legislative guidance also exists of the National People’s Congress, State Council and other state regulated organizations. The Judicial enforcement handles the court system and thus the legal suits that are being pursued. As is shown, there are five levels in the court system that vary from ‘basic’ to People’s Court. The administrative control is the one part of this triple system that lies closest to ‘the people’ (Yang, 2003). In these particular offices and centers the applications for the separate protection types are being requested, investigated and granted or denied. Because the administrative control consists of the first contact with people who are seeking IP rights protection we will investigate this in more detail.

State Intellectual Property Agency

The State Intellectual Property Agency (SIPO) was established in 1998 with the thought that it could bring together patent right, copyright and trademark enforcement and combine them in one authority. This has not happened yet, and SIPO busies itself with granting patents, registering ‘semiconductor

layout designs' and enforcing patents. The first two affairs are dealt with on a national basis, the last is a matter that is dealt with on a local scale by the concerning local SIPO offices.

State Administration on Industry and Commerce (SAIC), Trademark Office

The Trademark Office is concerned with the authority of trademark registration, administration of well-known marks, and the protection of trademarks. If infringement of trademarks occur, SAIC has the authority to investigate the case and take proper measures to stop or prevent it, such as the ordering of all the infringed goods, the destruction of such goods and also the imposing of fines.

State Copyright Administration (SCA)

This part of the State's IP rights protection is founded to ensure copyright administration and enforcement. Next to this, the SCA is also laden with the responsibility of copyright issues nation wide. This again includes the investigation of cases and taking the most suitable action against infringement. Also foreign related issues belong to the business of the SCA.

As can be seen above, as well as in Figure 1 as in the explanation there of, it shows that there is an overlap between the Administrative control and the Judicial enforcement. Both of these sections have the power to investigate and take action of the infringement of goods if there are IP right violations.

Current legal figures

The newest developments in the protection of IP rights in China are described in the White Paper 2008 as given out yearly by SIPO. In this paper it is said, amongst others that in 2008 828,328 patent applications were filed and 698,000 applications for trademark registration. Also it is stated that

“ In 2008, local IP administrations nationwide received a total of 1,092 patent disputes over infringement and 34 other types of patent disputes. They investigated and handled 59 cases of counterfeiting patents and 601 cases of passing off others' patents. In law enforcement actions, 17,056 officers/times were dispatched to inspect and investigate 7,671 commercial premises, checked 2,110,822 pieces of goods, handed over 21 cases to the police and received 11 cases from other authorities to them. 327 joint law enforcement actions were organized and 262 cross-region actions were launched.

In 2008, Administrations for Industry and Commerce (AICs) at all levels across China investigated 56,634 cases of trademark violations, 47,045 of which were infringement and counterfeiting and 9,589 of which were general violations; 10,965 of which involved Hong Kong, Macao, Taiwan and foreign trademark holders. AICs seized and removed 19.63 million sets of illegal trademark labels, seized and destroyed 22.87 million pieces of goods, imposed

467.4 million yuan in fines, handed over 137 cases and 145 suspects to judicial authorities for suspected criminal violation.”

When looking at the amount of cases brought to the juridical system in China, the following table shows us the percentage of cases per industry. The data comes from a research investigating 179 cases between 2002 and spring 2008 (Sepetys and Cox, 2009).

Industry	Percentage of Cases	Median Award	Percentage of Cases Cases in Which Non-Chinese Company is Plaintiff
Clothing	20%	\$11,428	80%
Computer Software	8%	\$32,000	50%
Food	8%	\$25,252	57%
Automotive	5%	\$3,884	67%
Electronics	4%	\$14,579	50%
Electronics without Chint/Schneider	4%	\$6,658	57%

Table 1. Percentage of cases in China per industry (Sepetys and Cox, 2009)

Another table from their research shows the companies that appear most frequently in the data. The table below shows that, except for Dunhill, all the companies are in the cultural industries and six out of fifteen companies are fashion related.

Number of Observations in Data	Company Name
8	Columbia Picture Corp.
7	Paramount Pictures; SONY; Walt Disney
6	Alfred Dunhill; Universal City Studios; 20th Century Fox; Puma; Warner Music
5	Lacoste
4	Adidas-Salomon AG; Parker Pen; Louis Vuitton
3	Nike; Levi Strauss & Co.

Table 2. Number of observations in the data (Sepetys and Cox, 2009)

From this research it can be concluded that although China is said to observe the international treaties, it is still world leader in the production of infringed goods. Next to the signing of treaties and the development of bureaus concerned with the proper exercise of IP rights in China, a significant part of

the cultivating of these rights in China is linked to society. What was also shown in this chapter is that through out history the Chinese civilization was not used to the thought of owning rights to their own ideas and inventions. To solve this problem, the government of China has made several plans to educate their inhabitants.

Teaching the Chinese society

Great importance is attached to making “the people” aware of the importance of IP rights in mainland China. Amongst other events is the “week for publishing the importance of IPR protection”⁸. The latest IP publicity week was held from April 20th through April 26 and included amongst other SIPO, several Ministries and the Supreme People’s Court⁹. The China Intellectual Property Training Center is mostly loaded with the development of awareness in society. This Center, established in 2007, has adopted as goals to raise awareness among universities and “publicize the importance of IPR protection to the public”. Several campaigns such as the “daily Anti-piracy campaign” and the “100 day campaign against piracy” were and are a great success and influenced SIPO to take part in and sponsor amongst others the “CCTV Innovation Gala” and the “Chinese Patent Award”¹⁰ that are more focused on educating the local intellectual property industry. This is in close resemblance to one of the action points Peter Yu describes in his article “From Pirates to Partners” (2001). In his twelve step action plan he describes in step six how to promote IP rights so that the local industry can benefit from these changes. With an unemployment rate of 4.3% in 2008 and a probable rise in this number because of the current crisis, adapting and implementing stronger IP rights can prove to be a significant improvement of the industry.

Future plans

In the eleventh five-year plan of the People’s Republic of China, which runs from 2006 through 2011, four different campaigns have been developed to improve the knowledge and enforcement of the legal system, the enforcement of responsibility and cooperation and to seize infringers. The four different campaigns all have a different goal. The first campaign will focus on copyrights infringement, where the Public Security Bureau will investigate and approach cases as well as local copyright agencies. The second campaign is focussed on eliminating piracy in the audio- and visual field. Three target groups are approached in this campaign, namely youngsters, wholesale companies and the Chinese movie industry. The third campaign is aimed at stronger IP rights during exhibitions. This is possible with the sponsoring of seven different governmental departments as sponsors. The fourth campaign

⁸ http://www.gov.cn/english/official/2005-07/28/content_18131.htm

⁹ http://www.sipo.gov.cn/sipo_English/specialtopic/latestspecialtopic/PublicityWeek/newslist/200904/t20090423_455942.html

¹⁰ <http://www.ipr.gov.cn/en/activities.shtml>

consists of two separate actions on Consumer's Day (March 15) and on World IP Day (April 26) to generate more public knowledge on IP rights and carry out wide-scale enforcement.

Conclusion

This chapter focussed on the development of IP rights in China. As shown, China has come a long way from having a history and a strong belief that IP rights were not essential in the development of an economy, to a willing turn to the Western world where IP rights are at the roots of the economic growth. Not only has China signed several international treaties concerning IP rights, also the education of inhabitants can be felt. This change has brought international positive remarks and thus assurance to the People's Republic of China, and with perseverance it seems that China has more than one incentive to keep strong IP rights in their industries. This perseverance is necessary to limit or extinguish the name the country has made as first place provider of infringed goods, as was shown in the graphs and numbers in this chapter.

An important part for the improvement of IP rights in the country is to get the inhabitants of China involved in the process of implementing stronger and more accurate IP rights. There are several plans and actions taken to achieve this, but no research has been done yet to investigate the impact this has.

It is also shown that the future plans of China in terms of IP rights have been set, but the establishment of the goals will only be researched after the end of the five-year plan. It can be already said, however, that China has gone through a significant change, that will bring the country more level with the expectations of the West. Not only the impact of the more IP rights minded West has caused changes, also the new found importance for the protection of IP rights has caused the country to make a change in their opinion and plans.

3. Types of IP rights protection in fashion in China

Introduction

Although a lot has been written about protection of fashion in America and the European Union, little can be found on the impact on economies and culture of the rampant copying in the countries where most of these goods are produced. Not only the low wages but also the fast pace in which the People Republic of China is catching up with Western countries in terms of knowledge and engineering make this country an interesting choice when producing high quality goods. After having discussed China's struggle with the Intellectual Property Rights in the past, we will now discuss the different types of IP rights in fashion in China. In the article 'Tearing Fashion Design Protection Apart at the Seams' (Hedrick, 2008), the current types of IP protection are mentioned and also the ways in which they do not fit the fashion industry. The types are patent, copyright, trade dress and trademark. They will be discussed in this order.

Patent Law

Overall there are three patent laws available, which are utility, invention and design. Utility patents are available for people who 'invent or discover any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof'¹¹. The 'Practical Guide to IPR protection in China' summarizes 'Design patents refer to the new designs of the products shape, pattern or combination thereof, as well as the combination of colours, shapes and patterns, which have aesthetic value and are suitable for industrial application'¹². A prerequisite need to be met so that a utility patent can be granted. This prerequisite is that the design needs to possess novelty, meaning the patent design can not be identical to a product that is already existent. In the article by Hedrick it is stated that fashion design can never obtain utility patents because very few fashion designs can be seen as novel. The reason for this is that many designs are reworkings of another design.

The invention patent is available for 'inventions, including products and processes, that are 'novel' and not obvious and which have been developed to the point where they can be utilized in industry' (Ordish & Adcock, 2008). Again we come across the novelty prerequisite, which implies that fashion design can not obtain an invention patent.

The last patent that is recognized by China is the design patent. This patent is available for the functional elements in a design or in other products. As we will come across in the next section, copyright, we see that China, like most other countries, makes a distinction between functional elements that can be protected by patent law and aesthetic characteristics that can be protected by copyright.

¹¹ Tearing fashion design down at the seams pg. 222.

¹² How to protect your brand pg. 78

The downside of Patent Law is that registration takes up to four years, but it depends on the type of patent that is being acquired. Again, this is a problem, next to the novelty prerequisite, because in the fashion industry fashion alters every half year, when the fashion houses are showing their new collections during the fashion weeks in Januari (Spring/Summer) and Juli (Fall/Winter). This fashion cycle is also described in the chapter ‘the fashion cycle’. A registration that takes such a long time is not suitable for an industry that has such a fast turnover.

Copyright

As has been pointed out in the chapter on the developments of Chinas IP laws the country struggled the most with the copyright legislations. After signing important conventions such as the Berne Convention and the Universal Copyright Convention and becoming a member of the WTO TRIPS Agreement some positive movement was made towards respecting this particular IP right. By amending the Copyright Law in 2001 China, the contrast in protection of copyright has grown. It now involves the confiscation of infringed goods, the destroying of these copies and also the confiscation of the tools that are used to produce these copies.

Overall copyright is considered a “natural right” (Ordish & Adcock, 2008) because it can be obtained whenever creating an original work. The list of creations that can obtain authorship is long and includes books, compositions, TV programs (formats), architectural designs and websites. When a work is “original” (in stead of “novel” in patent law) it can enjoy copyright protection. In addition to the “natural right” of ownership that is granted, a voluntary registration procedure can be completed with China’s National Copyright Administration (NCA) to make sure ownership is being established¹³.

But there is another important decision point when distinguishing the availability of copyright protection for a good. This particular point makes it impossible for fashion designs to obtain copyright protection. Copyright protection does not extent to ‘useful articles’. This means that, for example, protection can be given to a broche that is attached to a t-shirt, because it is only ‘separable’ from its useful function. This is an example of physical separability that makes a fashion item copyrightable. The other form of separability is conceptual separability. In an article by Brandon Scruggs (2007) the following example is given:

“In *Kieselstein-Cord v. Accessories by Pearl, Inc.*, a jewellery designer created a line of decorative belt buckles inspired by works of art and obtained copyright registrations on the designs. When the line was successful, a competitor copied the designs and marketed its own versions. The copying competitor argued that the belt buckles were not copyrightable because they were “useful articles” with no pictorial, graphic or sculptural features that could ne identified separately from and were capable of existing independently of the utilitarian aspects

¹³ <http://www.mac.doc.gov/China/Docs/BusinessGuides/IntellectualPropertyRights.htm>

of the buckles. The second Circuit dismissed this argument. While the Second Circuit did not establish a specific test for conceptual separability, the court focused on the primary and subsidiary elements of the article and concluded the belt buckles had “conceptually separable” elements since the wearers had used them as ornamentation for parts of the body other than the waist. Thus, their primary function was ornamental and their secondary function was utilitarian.”¹⁴

Although this example is derived from the American court the laws are similar due to the mentioned amendments and signed conventions mentioned in the previous chapter on China and their development of Intellectual Property rights. The duration of protection is the life of the author plus fifty years or in some cases fifty years after the date of the first publication.

Trademark

The newly amended Trademark Law (last amended in 2001, after China joined the WTO) is now in line with international standards. A trademark is “a visible sign capable of distinguishing the goods or services of a manufacturer or supplier from those of others” (TDC Research, 2005). These signs include words, graphics, alphabets, numerals and 3D signs. The origin of the goods and services need to be indicated by these visible signs. Certain kinds of trademarks are distinguished:

- Goods trademark: trademarks used on goods
- Service mark: trademarks used in respect of services
- Collective mark: signs registered by groups to indicate commercial activities
- Certification mark: signs that indicate the certification of the owner

The difference between the Peoples Republic of China and other WTO members such as America is that China files trademarks according to the ‘first-to-file’ principle instead of the ‘first-to-use’ principle. This means that the first person to register the trademark has to right to use this.

Sometimes a trademark can be integrated in such a way that this becomes a part of the design. Examples are the Burberry plaid, and the LV logo. Because this trademark is integrated in the design, these kinds of products are better protected against copying. Figure 1 below shows the links between design copying and trademark counterfeiting (Raustiala & Sprigman, 2006).

Trade dress

Next to trade marks there is also the overall visual image that a product presents. This is called trade dress. The whole design of a product, including shape, colour, packaging and label is included in this. In line with the rules for trade marks, to apply for protection of trade dress, it must be distinctive and

¹⁴ Kieselstein – Cord v. Accessories by Pearl, Inc., 632 F.2d 989, 990 (2d. Cir. 1980).

like copyright, it is limited to purely non-functional design. More important, trade dress can only be granted for pieces of design that are “source designated” (Raustiala & Sprigman, 2006).

Translations

To ensure the protection of a trademark, brand or design it can be necessary to register the translation of the brand name in Chinese characters. The Director and Corporate Counsel at Starbucks, Kim Teraberry advises in an article (*SOURCE*):

“When choosing a Chinese mark, Teraberry said that a company should consider marketing objectives, multiple dialects, traditional and simplified characters, and trademark clearance”¹⁵

The two main reasons to translate the name into characters are that most Chinese people are not able to speak or read a foreign language. The other reason is that the use of a foreign name in China can lead to the translation of that name by Chinese people themselves. This again can get picked up by another organization who will register that Chinese name. This causes a loss for the firm that didn't translate the brand name in the first place.

Protection for well known marks

In most developed Western countries such as America and also the membership countries of the EU, a well known trademark can be protected when it is used by its brand. In a article by Cahan (2004), it is stated that there are some commonalities in the definitions of well-known and famous marks:

“Well-known mark is known to a substantial segment of the relevant public in the sense of being associated with the particular goods or services. Famous mark is known to a large section of the public., e.g., a mark which is extremely widely known in the country concerned to at least 80 percent of the potential purchasers of the goods or services which it is known and to at least 90 percent of the relevant trade circles. Furthermore, a famous mark must be registered at least in its owner's home territory and have a value, calculated by an internationally accepted method, These marks have a higher degree of reputation than well-known marks and therefore deserve broader protection, e.g., a protection against use or non-competing goods/services.”

China is a country that has difficulty protecting famous marks. In Shanghai at least two stores are using a mark similar to the Lacoste crocodile. Although Lacoste registered its “world-famous” crocodile mark in 1980, recently took three Chinese companies to court for infringement of the mark

¹⁵ http://transnationallawblog.typepad.com/transnational_law_blog/2006/09/advice_from_sta.html

and won¹⁶, China still cannot seem to improve the level of protection. For pictures of the two stores, see appendix 1. The reasons for the lack of protection of foreign famous brands in China are explained in the previously mentioned article by Cahan. She suggests the main reasons are the lack of regional protectionism, ideological difference between China and the Western world, the enforcement of written laws and the transliteration of marks from Chinese to other languages. These problems will all be discussed in a more observant manner in the chapter “Problems of IP protection in fashion in China”.

Conclusion

In theory there are several ways to protect fashion designs through intellectual property right. But in practice two things are wrong, the first one being the actual types of protection that can be granted and the second is the lack of influence of these rules and regulations in Mainland China. Each of the types of IP rights show a lack of protection for fashion designs, which caters for the difficulty in protecting such goods. The most suitable IP rights type possibly is a mixture between Trademark Protection and Copyright Protection. Although in the following chapters we will see that in other countries there is also a defect in the protection of designs in general, it seems that China, although having signed several international treaties, is still not able to protect designs, trademarks and copyrights as it should.

¹⁶ <http://www.internationallawoffice.com/Newsletters/detail.aspx?g=83c1fa56-4a99-4fe8-8d3d-34bb431fbfe5>

4. The comparison: the United States of America, the European Union and Japan

Introduction

To understand the IP rights policy in China better, it is helpful to compare those regulations to other IP rights policies in other countries or continents. Here the IP rights policies in the United States, the European Union and Japan are described in their way of protecting IP rights in fashion. Since they all differ a lot in the IP protection for fashion designs, but still have a fair amount of protection for the designers, these three choices can serve as lead examples for the development of IP rights in fashion in China.

United States of America

The Constitution of the USA grants, like in China, no copyright protection to fashion designs since they are “useful articles”, meaning articles their aesthetic form cannot be separated from their physical form. Also the “originality” aspect is of importance for not granting copyright to fashion designs. Courts in America have the consensus that the aesthetic aspect of a design is too closely related to the functional aspect of a design to protect it under this right. The problems with the granting of patents for fashion designs are even more numerous, and similar to the problems in China. The novelty, non-obviousness, ornamentality, and non-functionality problems arise, just as the long time span to get apply for a patent are the reasons that this type of protection is not suitable for designs in the US. For trademark protection, the Lanham Act, signed in 1946 and recently amended in 1996 defines a trademark as “any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others”. But since trademark protection only applies to a part of a design and not the design as a whole, this again brings no “rights of exclusivity” (Preet, 2008) for fashion designs.

Trade dress could prove to be to most suitable for the protection of IP rights in fashion, since it focuses on a products overall appearance. The designs need to be “inherently distinctive” or have acquired “distinctiveness through secondary meaning” and the trade dress must not serve any “utilitarian or aesthetic function”. This last prerequisite is the reason why fashion designs cannot apply for trade dress protection. When a design is being recognized by its design features, it cannot be granted protection.

Design Piracy Prohibition Act

The protection by the standard options for IP protection do not offer a sufficient solution for the IP rights in fashion in the United States, similar to the situation in China. But the US, under pressure of The Council of Fashion Designers, introduced in 2006 the Design Piracy Prohibition Act, H.R. 5055. This act is introduced to increase the protection of fashion designs by extending copyright protection.

The protection is granted for four years beginning on either the date of publication of the registration or on the date the design is first made public, whichever is earlier. If this act will be passed it would amend the Protection of Original Designs under Section 1301 of title 17 in the United States Code so it would also fit fashion designs. This section provides protection for ‘an original design of a useful article which makes the article attractive or distinctive in appearance to the purchasing or using public’ and ‘the design of a vessel hull, including a plug or mold’ (17 USC §1301(A), 2007). Fashion designers in the US are thus claiming a similar protection for their designs as is given to boat hulls. This change in the Copyright Law will protect designs that are “useful products”, while the current law does not grant protection for such articles. The downside of this act is that it doesn’t acknowledge the necessity of trade mark protection, since designs can also serve as source identifiers. With only the copyright protection in place the piracy of counterfeited goods can be prevented, but with the difficulty in the US to protect trade marks, infringed goods, or knock-offs, can still be produced.

European Union

The European Union offers firm IP rights protection for apparel designs, including handbags, watches, shoes, sunglasses and other accessories. In an article by Kamal Preet (2008) he states that “the Registered and Unregistered Community Design laws in European Union is the ideal solution for fashion design protection”. To claim registered rights, filing of papers is necessary, whereas unregistered rights already exist when a design is being ‘recorded’, in other words, made available to the public. Adopted in 2002, the Community Design Laws have been a great influence on the IP rights protection in other countries. Protection that is granted lasts five years for registered designs and three years for unregistered ones and it protects “the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colors, shape, texture, and/or materials of the product itself and/or its ornamentation” (Tsai, 2005). The designs that can be granted protection need to be new and not similar to designs already in the public domain, it does not have to be a non-functional product without aesthetic qualities, but it does have to incorporate an other function than that of the product alone. The last requirement is that the design should not be in contrast with morals of the public or its policy.

Registration can be filed at any of the 25 Industrial Property Offices and costs €350,- for a single application. Newly registered designs are published bi-monthly in the EU’s Community Design Bulletin, which also offers a database in which registered designs can be found. Another design right in the EU is the “grace period” of one year, in which a designer can test its design in public. If the design catches on, the designer can register it, while having kept the protection for the garment during that year.

Next to the Community Design Laws the EU also grants the option of combining these laws with other IP protection forms. So the combination of trademark and Community Design Laws is an option, as

long as the garment meets the necessary novelty prerequisites and at the same time serves as the indicator of the source.

Although the EU Designs Laws are perfect in theory, in practice they seem not so useful. In an article by Susanna Monseau (2009) she shows that while the fashion industry in the United States and the United Kingdom have grown with a steady pace, the same industry in the European Union has declined. The reason the author gives is the low level of legal protection for IP rights in fashion. In 2007 the French fashion industry would be worth \$36 billion, where as the UK industry, with its similar size, was worth \$62 billion (resp. France and U.K. Marketline report, 2007). The following table shows the growth of the fashion industry of the US, UK, France and Italy.

	Womenswear	Menswear	GDP Growth Rates - ('03-'07)
US	2.0%	2.4%	2.80%
UK	3.5%	2.4%	2.65%
France	0.7%	0.7%	1.50%
Italy	0.3%	1.7%	0.95%

Table 3. Growth of the fashion industry per country. Source: Marketline reports and www.nationmaster.com

Next to the stagnating growth of the fashion industries in these countries, whether this has to do with the stronger IP rights or not, the numbers of actual registration of designs in the database are disappointing. Although between Januari 1 2004 and November 1 2005 1, 631 garments were registered (Sprigman, 2006) and in 2006, 6,430 designs for clothing, shoes and accessories were registered (Smith, 2008), Sprigman states that most of the designs that were registered were “plain T-shirts, jerseys, [and] sweatshirts with either fixed trademarks or pictorial works.”

Japan

Under Japan’s Design Law, revised in 1999, a design can apply for protection when it meets three prerequisites being industrial applicability, novelty and creativity. A design is defined as “form, pattern or color of an object or a combination of these, which appeals visually to the viewer’s sense of aesthetics” (Asahi Koma Law Offices, 2003). A design right is active from the moment it is registered and the term for the protection is 15 years. Next to the normal registration Japan also offers a “secret design system”¹⁷. This system offers a protection without registering the designs so they can be seen by other people. The reason for this is that designs are very much influenced by other designs and because the length of popularity of a design can differ. This secret system is not used much, since it limits the litigator’s options to a certain extent.

¹⁷ http://www.jetro.go.jp/en/invest/setting_up/laws/section5/page7.html

Although this IP rights approach resembles the possible future outcome of the Design Piracy Act, Wash and Lee (2008) suggest in their article that Japan's IP rights protection for designs is closer related to patent protection in the US. Since the designs still should be 'novel', meaning here "no identical or similar design", a fair amount of designs cannot be apply for such protection. Also, the length of the registration is not in favor of designs, since it takes an average of six months for the designs to get registered and another additional two months for the actual registration process. When the authors browsed through the online Design Gazette, similar to the EU's Community Design Bulletin they found designs such as "a toothbrush, a plastic storage container with lid, a fish tank filter, a sink with moveable cooking stove and a lace pattern, but not fashion designs".

Conclusion

Comparing three different IP rights protection standards makes it obvious that the right protection form yet needs to be found. Since the United States has still to decide whether or not to approve the Design Piracy Act because there is a lot of disagreement from experts such as the American Apparel Footwear Association¹⁸ and Raustiala and Sprigman in their article the Piracy Paradox (2006). It is said that the firmer IP rights protection will stifle innovation since fashion has long thrived on the copying of other designs. The AAFA states that by approving the Design Piracy Act a huge burden will be placed on the companies since it is difficult to verify who designed what first. "Frivolous lawsuits" will be the outcome¹⁹. The state of affairs in the European Union has also been ambiguous, since people in favour of stronger IP rights see this type of protection as the current Holy Grail (Wash and Lee, 2008, Scruggs, 2007), while their opposites see the downsides, as described. It might seem clear that the true path to IP rights protection for fashion has not been found yet.

¹⁸ <http://www.fashionnewspaper.com/articles/1021/1/Fashion-Police-Bill--AAFA-Leads-Charge-Against-Bill/Page1.html>

¹⁹

<http://www.metrocorpocounsel.com/current.php?artType=view&artMonth=July&artYear=2008&EntryNo=8525>

5. Advantages and disadvantages of IP rights in fashion

Introduction

The industry of fashion is one of the industries that has troubles getting proper protection for the products that are being made. Other industries that have problems with this too are the food industry and to a certain furniture designs (Scruggs, 2007). Several advantages and disadvantages can be derived from the lack of suitable Intellectual Property rights in the fashion industry. Opinions on either side of the spectrum are unmistakable in the literature and a definite answer to the question whether or not IP rights in fashion are useful can not be given yet. In the article “The Piracy Paradox” (Raustiala and Sprigman, 2006), one of the main questions that is being answered is “Why is copying in the fashion industry treated so differently from copying in other creative industries?”. The authors state that although there is no significant protection in use, as will be elaborated on in several other chapters in this thesis, it seems that the industry is benefiting from it. This is in contrast to what authors such as Scruggs (2007) and Scafidi (2001) state in their articles. The advantages and disadvantages of IP rights in fashion will be discussed and evaluated in this chapter. It should be said that this chapter only serves as an introduction to the field of IP rights and that more in depth information will be given in subsequent chapters.

Advantages of IP rights in fashion

The advocates of IP rights in fashion claim that the protection of the designs is necessary so that the quality of the designs can be guaranteed, there is more grasp on the origin of the original designs, there is less financial loss for the brand itself when the garments are copied and these three arguments combined make for the advantage that there is less disappointment in the brand from the consumers point of view. The advantages will be explained below.

Quality of designs

Knock offs from designs that are not being sold through official selling points from the brand are mostly of lesser quality (Scruggs, 2006). In general, there are several points that can be evaluated so that real designs can be distinguished from the fakes. Firstly of course the trademarks and brand names that are displayed on the garments. Although pirates are often smarter than putting Prada in stead of Prada on the bag or garment, this still happens. The fabric, the lining, the zippers and clasps should also be of good quality. On several websites such as www.hilary.com and www.fakesareneverinfashion.com there are pointers that show how to distinguish the fake bags from the real ones. These pointers only show how to distinguish a counterfeit design from a fake one. Counterfeit designs are the fake Gucci bags, Prada wallets and Rolex watches including the use of the logos, in which it is hard to see differences between the real product and the fake product. (Mertha, 2005). Not only the quality of the designs itself can indicate the descent, also the place of purchase is

an indication whether the design is fake or real. On the internet, several websites are selling fake bags, or claiming to sell real bags with a significant discount. Prices of the designs are mostly an indicator, as are the websites the goods are sold on.

More grasp on the origin of the original designs

Next to the counterfeit designs, “design copying” or “infringement” (Raustiala and Sprigman, 2006) is another type of copying in the fashion industry. In the Raustiala and Sprigman article “The Piracy Paradox” this type is described as

“Some, however, copy designs rather than trademarks. Similarly, all goods sold by retail copyists like H&M, or by copyist designers working in major fashion houses, are not counterfeits in terms of trademark. These goods are instead sold under another trademark but freely appropriate the design elements of a fashion originator.” (pg. 1701)

When there is a more stern approach of the origin of designs, such copying will occur less. This will solve the problem of the copying of large and established fashion houses by more fast moving fashion brands such as H&M and Zara. On websites such as www.counterfeitchic.com these infringement cases are being displayed and reserved. In the chapter “The Nature of the Fashion Industry”, the way designs follow from the top designers to lower end brands such as the ones previously mentioned will be investigated closer. Intellectual Property rights can make sure that original design can be protected so that they can be traced back to their designer.

Less financial loss for the original brands

The third advantage of implementing stronger IP rights in fashion is the significant lowering of the financial loss of brands who bring their designs to the public. The fighting of pirates who put “pirated goods”, the covering term of counterfeit goods and infringed goods (Scafidi, 2004), is a costly business, but when there are stronger regulations on manufacturing fakes, it is likely that pirates will be discouraged (Ha and Lennon, 2006). This is especially important when looking at counterfeited designs, because here it is very obvious that the manufacturer is trying to free ride on the success of the original designer. Fashion houses spend a significant amount of money and time on the development of new garments for a new season, and due to the copying of other brands, the uniqueness which makes the designs so interesting and important are be decreased. This is of course closely connected to the previous argument, the tracing back of garments to the initiating designer or fashion house.

More consumer confidence in the brand

With the use of stronger IP rights the consumer will get stronger confidence in a brand. In a research conducted by Ha and Lennon (2006), it is concluded that counterfeit goods not only diminish brand equity and brand prestige, but also harm the confidence of consumers in the brand. This generally happens when the purchaser is not aware that the design is a fake. Counterfeiting also has an influence on the way the consumer perceives the brand. Because of the large amount of, for example, fake Louis Vuitton bags the high end position of the brand is being damaged. The bags are no longer a status symbol for consumers who are looking for a high end status. Now the symbols, although they are fake, are also available for people with less money (Nia and Zaichkowsky, 2000).

Disadvantages of IP rights in fashion

The most influential and extensive article on the disadvantages of IP rights in fashion is The Piracy Paradox by Raustiala and Sprigman (2006). The article explains how it is possible that without strong IP rights, the fashion industry is the only industry in creative goods that is thriving. They state that although fashion houses make large investments to protect their trademarks, they seem to accept the fact that the copying of designs occurs often. It is celebrated more as “homage” than it is being downgraded as “piracy”. The disadvantages that are described are the expensive costs of implementing IP rights in fashion, the stifling of innovation in the industry which is connected to the granting of a monopoly on designs.

Costs of implementing IP rights in fashion

Registering a trademark is an important and not very costly event. But the development of integrating a system where designs can be registered and compared so the origin of the design can be detected is extremely expensive. Besides that, the lawsuits that accompany those comparisons are not affordable for most fashion designers and thus not very helpful (Yu, 2004). In other words, the implementing of IP rights in fashion will not only cost a lot of money for the countries that want to accomplish such a system, the use of the system and the outcome is another point of concern.

Stifling innovation

The most important disadvantage that is being described in “The Piracy Paradox” is the concern that by adjusting the IP rights protection in fashion, the protection will only stifle the innovation cycle, or in this industry, the fashion cycle. This cycle is further explained in chapter 7. The authors of the article argue that a low IP regime is not harmful for the industry since it may promote innovation and benefit originators.

With the adjustment of stronger IP rights it could be true that with the registration of patents of copyrights for a design the initial designer maintains a monopoly on the garment. This could be one reason for the stifling of innovation, since a large share of creativity in the fashion industry is linked to

the copying and adjusting of other garments. With the existence of a global manufacturing and shipping capacity and the growth of the internet as a source of information the gap between copyist and originator is a very small one. This is a critical note in some industries, but in an industry that absorbs copies and small adjustments of other garments as points of innovation the cause of enforcing IP rights does not seem the right one (Raustiala and Sprigman, 2006).

Conclusion

There are obvious advantages and disadvantages when it comes to IP rights in fashion. In this chapter the most important ones have been explained by using relevant literature. Although valid arguments can be given for both sides it is clear that implementing stronger IP rights will take a fair amount of time and money. It should also be taken in to account that IP rights can vary per country, depending on culture, economics and politics. It seems that the differences between East and West account for a fair variety in the approach of IP rights in fashion, and that not only the countries have a share in the difficulties surrounding the subject, but that also the nature of the fashion industry can be pointed out as a difficulty. For more information on the history of the fashion industry and its struggle for IP rights see Raustiala and Sprigman, 2006.

6. Problems of implementing IP rights in China

Introduction

After reading the chapters on the development of IP rights in China, the problems of IP rights in fashion, the nature of the fashion industry and the ways to protect IP rights in fashion, in this chapter it will be discussed what can be seen as the conclusive problems of the implementation of IP rights in fashion in China. As was discussed in the last paragraph of the chapter ‘Types of Protection’, Mainland China, according to Cahan (2004), copes with three significant problems that hold back the opportunities to protect to a certain extent the garments of designers. This holds a tight relation with the article by Birden (1996), who also states that the protection of trademarks in China is a difficult case, and offers several improvements. Last, a article by Yu (2001) offers a twelve step plan for the improvement of IP rights in China. These three articles will serve as a guideline to research the problems of IP protection in fashion in China.

Regional protectionism

The first problem that Cahan raises is the lack of a even protection between provinces. Although the Chinese government was urged by, amongst others, the US to develop a plan to coordinate IP rights protection regionally, this has not happened yet. Although the SIPO and other IP rights related organisations have a significant part of the power, local governments in provinces are still able to alter their believes of IP rights to their liking. In Cahan’s article she states “internal rivalries among government ministries, in which some ministries support increased protection while others resist it, persist. And local authorities are slow to promote compliance, fearful that their efforts to support enforcement will increase unemployment and weaken the local economy”. The latter reason, unemployment, was also brought under my attention during on of my interviews with a lawyer specialized in IP rights. He held the opinion that the Chinese authorities allowed the violation of IP rights because so many people were working in that field. In 2008 4.3% of the labour force of China was unemployed²⁰, figures can be found in appendix 3. This unemployment rate has been rising from October 2008 and has not been this high since 2003. It could thus be possibly true that unemployment plays a big part in the incompliance of IP rights, for the mere fact that it brings employment with it. This is related to on of the reasons in Birdens article (2006). He states that the Chinese government might support “government acquiescence in the illegal activities on one level or another” because in a socialist country in China, activities are closely viewed by the government. It can thus be concluded that there are two problems when it comes to regional protectionism, the first being the differences between provinces in terms of the approach of protection of IP rights, the latter being the incorporation of the government in making the criminal acts possible for several reasons. Cahan writes in her article

²⁰ <http://www.tradingeconomics.com/Economics/Unemployment-rate.aspx?symbol=CNY>

that efforts are being made how ever that will solve these problems. In June 2001, the SIPO and the WIPO held a series of seminars with the goal of bringing knowledge on IP rights and enforcement to foreign and domestic participants.

Ideological differences between China and the western world

Copying as a form of flattery is part of Chinese history (Soocher, 1995, Cahan, 2004), and because of this point of view China lagged behind for a long time to develop a system for intellectual property. Both Yu (2002) and Cahan agree that Confucian believes have had a great impact in the sense that the socialistic economy, the scepticism towards the western world and the nationalistic sentiments and information control policy are all underlying reasons for the lack of IP protection. For more information on the development of IP rights and Confusiusm see chapter 2.

In the twelve step plan that Yu offers to bring together the US and China in terms of IP rights step four gives a solution for the problem that Cahan raises. This step is called “Convince the Chinese leaders why Intellectual Property Protection Will Benefit China”. According to Yu China’s view of the western world is a mixture of admiration and scepticism. The view of the West on IP rights and their enforcement of these believes on China are not being welcomed by the Chinese government, and in some examinations the Chinese government even view IP rights as a instrument to drive China apart, to erase its cultural identity (Huntington, 1992) and to establish a less stable economic, social and political country (Harding, 1997). The solution Yu offers is to show the Chinese government that the western idea of IP rights can be adjusted to the Chinese culture, since “different countries have different needs”. Showing the government that the enforcement of IP rights might be very helpful to the country. Positive changes that are linked to (stronger) enforcement of IP rights are the creating of incentives for domestic authors, artists and designers and the increasing of foreign investments. With the strengthening of IP rights the creative industry will grow, since with the specific rights the creators will capture more benefits of their work.

Enforcement of written laws

The third problem that is a problem in the enforcement of IP rights is the enforcement of written laws. In Cahans article it is simply stated that laws cannot be effective when not enforced, and a consistent enforcement of new laws in China is a problem. The legal system in China is historicly built on principles of “rule by man” or “rule by law”, while “rule of law” and civil society should be their replacements (Moga and Raiti, 2002). To do so, the legal education system should be reformed. Burke (2001) researched in his paper that a law degree in China can be obtained in just two years, where only one and a half years is spent studying law. This lack of expertise together with the fairly new system of law accounts for the larger amount of judges that are needed to keep up with the cases and the enforcement of laws. When looking specifically at the area of IP rights laws and their enforcement

Cahan also encounters some problems. Since the signing of several international treaties, China is expected to work conform international standards. Amendments concerning these standards went in to effect on January 1, 2002. Improvements in training of judges to comply with these trainings have been an important interest of the Supreme People's Court (Burke, 2001). Professional judges have been assigned to "assure the justice of decisions" (Zhipei, 2002), but little research has been conducted on the outcomes of these changes.

In the article by Birden (1996) one of his solutions for the IP problems concerning law is the training of more IP professionals. Not only China should train their professionals, also foreign investors should send in their own professionals. The mixture of Chinese and foreign IP rights professionals, he states, would cause a mutual understanding of culture, social factors and law.

In Yu's twelve step plan two steps go into the subject of the enforcement of laws. The first is to assist China to reform its IP laws, as was also the idea introduced by Cahan, and the second is to develop a new and harmonized international intellectual property regime. Again Yu points out the maybe insurmountable differences between China and the West, since "a Western intellectual property regime may contradict the economic policies of the less developed countries". A adjusted law system concerning IP rights is his solution.

Conclusion

The above standing three problems are conclusive to the trouble China is having to implement Intellectual Property rights to the expected international standards. The main issue is the large difference between the West and China and the problems that arise from these differences. With the implementing of international IP rights the problems are more likely to be solved, but the solutions are dependent on the willingness of China to adjust and adapt to the new rules and regulations. As Yu states several times in his article it is important to not enforce the laws on China, but adjust them so they can be truly understood and implemented. Using three different articles to make conclusive remarks on the difficulties of establishing international standards for IP protection is an interesting point of view, because the examinations complete each other.

7. The nature of the fashion industry

Introduction

The fashion industry is one of the fastest changing industries in the world with numerous designers and styles. In this chapter the term of designer apparel will be adopted. This definition is derived from Scafidi (2001):

“Apparel, including bags, pants, sweaters, t-shirts, shoes, wallets, belts, watches and jewelry that are produced by fashion houses and designers who enjoyed an education at an art school or design academy and are shown in their collection, either in fashion shows, in their online stores or in a real store.”

With the use of magazines, fashion blogs and celebrities the trends are being dictated. In an article by Hilton, Choi and Chen (2004) it is said that the fashion industry thrives on ‘credence goods’, which are on the other side of the spectrum with search goods at the other end and experience goods in the middle. This means that credence goods have a value that is hard to address before and after purchase and use. The authors state the value does hardly depend on the designs itself, but more on the value judgement of other people. In this chapter the fashion cycle that includes the trendsetters and trend followers will be discussed, as will the way the fashion industry has changed by “fast fashion” and the impact this has on the industry.

The fashion cycle

The most important way the fashion cycle is being influenced by designers is by the fashion weeks that are being held twice a year. January through March the new autumn/winter collections are being shown, and September through November spring/summer collections are on the catwalks. The most important fashion cities with the most influential fashion weeks are New York, London, Milan and Paris. This is also the order in which the fashion weeks are being held. Next to these cities, there are a fair amount of less influential fashion shows, that show local and international designers. The Amsterdam fashion week the London fashion week are two of the most important fashion events in Europe²¹. The Beijing fashion week is one of the biggest fashion events in China.

The seasons are very important to the fashion cycle which always develops in three stages. The first part is the “emerging trend”. The American Marketing Association refers to this as the “distinctive” stage of the cycle. On this stage, the garments are just on or off the runway or on the high end of the fashion industry. The group concerned with this stage are the innovators. The second stage is the

²¹ http://en.wikipedia.org/wiki/Fashion_week

“emulation phase”, in which the trend is getting more spread out. Music videos, magazines and the Internet are places where the new trends are shown. Early adopters jump in on the trend. The final stage is the saturated stage, where not only early adopters, but also followers catch on with the trend. The garments and accessories from the runway are being fabricated in larger quantities, but with different fabrics and for a lower price. When this happens, the innovators once again have to look for another trend to set²²²³.

In the book “Not your Mama’s Stitching” by Kate Shoup Welsh (2007), it is explained that there are more precise phases in the fashion cycle. She distinguishes “innovation, rise, acceleration, general acceptance, decline and obsolence”.

For this fashion cycle, Pesendorfer (2005) presents a model with two possible outcomes. The model predicts “deterministic fashion cycles of fixed lengths”. Pesendorfer states that when there are large fixed costs involved, the fashion cycle will be longer. When this is not the case, and the fixed costs are smaller, the cycle will be short. To be able to create a new collection each season, the fixed costs have to be zero. The two outcomes are the “egalitarian” case, that resembles the third phase of the fashion cycle as described above, and the “elitist” case, that resembles the second phase, and in which the designs are only sold to the “high types”. Furthermore, the author discusses that the profit of a designer is higher when the fashion cycle is longer, since “short periods reflect his inability to commit to a fixed time interval between price changes”. This commitment does not have to exist of time alone, reputation is another influential factor. When a designer or fashion house has the reputation of being fashionable, this can well make up for the fact that their fashion cycle is shortened. This can happen because the early adopters will always buy the new collection of the “fashion czar” (Pesendorfer, 2005).

The previously stated three groups in the fashion cycle are in close resemblance of what Pierre Bourdieu refers to as high and low culture. In his book “Distinction” (1979), he distinguishes these two cultures and describes how the high culture fences off the low culture by their education, their lifestyle and their knowledge of culture. Once the lower culture infiltrates in what is seen as high brow culture, the latter will start a quest to find other types of culture. Simmel (1957) describes this in the fashion cycle as “Fashion satisfies the need to differ for different classes – the fashions of the upper stratum of the society are never identical with those of the lower: in fact, they are abandoned by the former as soon as the latter prepares to appropriate them”. Another distinction between ‘high’ and ‘low’ has been made by Leibenstein (1950), who distinguishes the “bandwagon” effect and the “snob” effect. The bandwagon effect describes the raise of awareness and consumption of a good when other are consuming it, while the snob effect stands for the opposite; while more people consume the good, the demand or value of a good decreases. These examples from the literature play a large role in the

²² <http://fashion.about.com/od/latesttrends/a/trendover.htm>

²³ <http://www.westburnpublishers.com/marketing-dictionary/f/fashion-cycle.aspx>

development of a fashion cycle, since the consumption of fashion by certain groups can have an important influence on the cycle.

The fashion pyramid

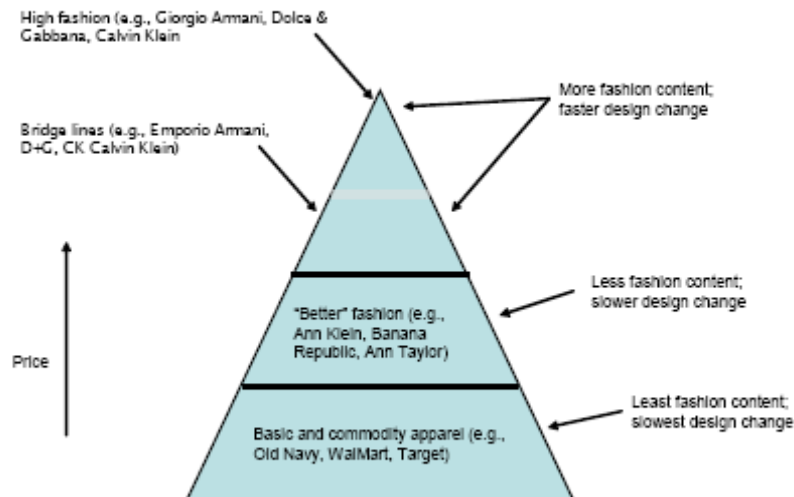


Fig 2. The Fashion Pyramid (Raustalia and Sprigman, 2006).

In their article *The Piracy Paradox* (2006), Raustalia and Sprigman discuss why the copying of garments and other fashion related items such as bags, shoes and watches, is a necessity for the fashion industry. In the above standing figure 2, they divide the fashion industry in three layers. The first one is the designer category that exists of the big fashion houses such as Prada, Chanel and Vuitton. The second layer consists of the “better” fashion, as made by Balli, Armani Exchange and Ann Klein. The third and final layer is the ready to wear apparel, that makes up for the majority of clothing brands in stores. Think here of Gstar, EDC, Diesel and so on. The differences between those layers consist of several factors. The first one is price. The lower in the pyramid, the cheaper the garments and accessories. To solve the high price ratio that a lot of people cannot afford, fashion houses have a way of operating in different levels of the pyramid by marketing “bridge lines”. Examples of these bridge lines are Armani Exchange, for Armani, DKNY for Donna Karan and CK Calvin Klein for Calvin Klein. But this division is influenced by another factor, “the amount of fashion content, or design work, put into a garment” (Raustalia and Sprigman, 2002). The authors state that the higher in the pyramid, the faster the change of fashion content is. They conclude in this part that “Generally, apparel in the “better” and basic categories contain less design content and experience slower design change”. But both the points the authors raise seem to be more and more invalid in the recent fashion world. The positive effect of designers on the price range has been altered when H&M

began working with several renowned designers and made their garments affordable. Viktor and Rolf, Cavalli and Williamson are star designers that boosted H&M's image by designing a collection that was sold out in a day and that took the unaffordable haute couture to the masses. After H&M's ground breaking idea other brands took it over such as MNG with Penelope and Monica Cruz, Topshop with Kate Moss and Uniqlo with their Designers Invitation project.

Fast fashion

The slower design change has been changed by what is called 'fast fashion', the increasing fast pace in which brands adopt and reproduce clothing and accessories from the higher levels of the fashion pyramid. The brand that is market leader in this fast fashion business is Zara. In the book *Zara: Fast Fashion*, by Ghemawat, Nueno and Daily (2003), it is explained how Zara could become market leader in this new segment of fashion. Important factors are timing, low costs and a fast buying cycle. These factors combined produce apparel, shoes and accessories that are stylish, cheap, and can be bought frequently, maybe even every week (Bruce, Daly, 2006). The time in which Zara can design, produce and deliver a garment is an astonishing 15 days (Ferdows, Lewis, Machuca, 2005). But this fast turn over of course means that a run way dress that is the new it-dress will be in stores 15 days after the run way show, for a price that is nothing compared to the real price. Of course the garments are different in colour and fabric, but the look will be the same. And this brings us to what Raustiala and Spregman (2006) call 'the process of diffusion' of 'credence goods' (Hilton, Choi, Chen, 2004).

Raustiala and Spregman state that the "positionality of a particular good is often two-sided: its desirability may rise as some possess it, but then subsequently fall as more possess it". This "particular good" is expressed as a "credence good" in the article by Hilton, Choi and Chen (2004). These types of goods have a value that is "difficult to assess before or after purchase and use" because "their value is dependant on the credence given to them by others". The positioning of such goods is particularly difficult, because the value is hard to judge, but the fact that this value is reliant on trends and the credence of other people, plus the line between "some" who possess it and "more" who possess it is very hard to define. Zara plays a large part in taking run way garments to the masses, and by doing so the exclusivity of a credence good, in this sense a clothing item, will likely decrease, so that "early adopters" (Raustiala and Spregman, 2006), people who buy the goods first, will have to look for another style. For the designers, or counterfeiters, the fact that "nobody knows" (Caves, 2000) does not apply. The fact that "nobody knows" means that it is difficult to predict how consumers will react to a new product, or garment in this context. Zara knows, because it was on the runway, and for that reason, it could become a hit. Real counterfeiters have a more certain knowledge about their hits, because they mostly remake bags that are proven to be fashionable, like the famous Louis Vuitton Neon bag and the Fendi Baguette bag.

Conclusion

As was researched in this chapter the fashion cycle exist of three large parts, that also can be divided in to six more precise phases. These phases help us understand how the fashion industry provides high class products for a larger price while they are also able, trough their bridge lines, to bring their fashion to a larger part of the masses. Trough fast fashion everyone is able to enjoy the haute couture, since there are no rules for the copying of designs in this industry. Although there are various arguments about the copying of garments in the industry, the stores at the bottom of the pyramid seem to be thriving because of it.

8. Creative industry in China

Introduction

China is often referred to as a ‘manufacturing country’ (Keane, 2006), and is also the top manufacturing country of the world, according to a research by Global Insight²⁴ (2008). In his book “Creative Industries are Changing China” (2008), Li Wuwei discusses how it could be possible that after the purely “Made in China” label, the country is starting to make a growth in setting up its own cultural industry. An example of this rise is the releasing of the top 10 favourite Chinese designers²⁵ on their website, inspired by trend predictor WGSN, showing that China is putting itself on the fashion map. This is not surprising when looking at numbers taken from the website of the Ministry of Education of the People’s Republic of China. They show that China has around 180 universities that offer courses on fashion design. Since the list of universities consist of around 600 Universities, where Beijing alone has around 80 universities this is a significant number. With so many creativity in a country, how is it possible that China is seen as purely manufacturing, or is this image about to change?

Designing in China

Reading articles on fashion in China (Reinach, 2005, Parker et al, 2004), it is obvious that the fashion industry is growing in almost the same pace as the economy. In an article on www.pressit.nu²⁶ (2008) it is stated that Chinese have a better fashion sense than Europeans because of their unique mix between the West, the influence of Japan en their own history. As was said in the introduction, the amount of fashion and design institutes in China is astonishing, although not very surprising.

From “Made in China” to “Created in China”

The change in China, from a manufacturing country to “worlds top exporter of creative goods”²⁷ is astonishing. According to The Creative Economy Report 2008 released by the UN China’s export of creative goods was a mere 18.4 billion US Dollar in 1996, but rose to 61.3 billion US Dollar in 2005. This accounted for 19% of the world trade in such goods and thus made China the number one in the world. The primary reason for this is the changed policy of the Chinese government, to make creative development one of their priorities. With the opening of the Shanghai Creative Industry Center in 2004, the starting sign was given for more creative parks and districts.

This development, next to the large amount of fashion and design schools in China, the creative industry parks also play a large role in the development of the fashion industry in China. In Shanghai alone there were more than 75 creative parks in 2006, with a total floor area of 2.21 million

²⁴ <http://english.people.com.cn/90001/90776/90884/6473390.html>

²⁵ <http://www.vogue.co.uk/news/daily/090429-top-10-chinese-designers.aspx>

²⁶ <http://www.pressit.nu/index.php?n=1350>

²⁷ http://www.chinadaily.com.cn/china/2008-04/25/content_6645161.htm

square feet. These parks are mostly old factories and warehouses that have been preserved and developed as units that offer a home to over 3,500 creative companies such as architects, artists and fashion designers²⁸. One of those companies is Warehouse Studio²⁹, founded by Lucas and Olivia Gurdjian.. Warehouse studio offers a place for fashion, music and art and adds to this an extensive network. Cheap rents, although going up now³⁰, are one of the biggest assets of such parks, where old buildings are being reused for the sake of design. In one of the Creative Parks that belongs to Renmin University in Beijing, the rents for a 40 square feet unit are free, except for “management costs”. Student from the University receive a subsidy of 0.50 yuen per day (5 eurocent)³¹. One of the young designers I interviewed lived in Hong Kong before she moved to Shanghai. She told me it is very common in this time to have your own working space in a building like the one Warehouse Studio or at any other creative park and that a lot of young designers find it easy and convenient to find their own place in those Creative Parks. This makes the Creative Parks influential places in the development of the already thriving creative industry.

The possibilities of establishing a creative industry

Unesco (2005) stated that ‘contemporary art’ is one of the fastest-growing cultural exports from China. But in contrast to the jubilant examples that were given O’Connor and Xin (2006) state that the main difference between arts and designs in the West and those creative goods in China is that the cultural profile of China “lacks real weight”. A new turn to adapt tastes to the new millennium is absent, and this concerns the authors. The engagement with the past seems to be the difficulty that withholds China from a new future in the arts. Although the government is fully aware of the influence and importance of a thriving creative culture in the country, the creative parks do not seem to be influential enough. O’Connor and Xin state that there is not yet a definite answer to the question what the urban context of cultural and creative industries in China are. Michael Keane (2004) raises the option “control the big, let go the small”. A long term economic vision in this sense is one of the main point of interest of the Chinese government, which seems to have gotten the idea that Throsby (2001) earlier proposed. “The arts” are at the core of the influence of creative industries, that can attract all other industries once positioned. But again in contrast to the previous message, O’Connor and Xin ask themselves if China is capable of developing an innovative entertainment and leisure sector without the artistic environment that is needed and without the sensibility it would have to be built on.

Keane (2006) has a more positive approach on the question whether or not China will be able to change from “made in China” to “Created in China”. The author takes in account the enormous surface of the country and the amount of inhabitants of China, and is positive the country could be one of the main providers of creative content for international markets. Yet he also concluded that once

²⁸ <http://scenery.cultural-china.com/en/148Scenery2741.html>

²⁹ www.warehousestudio.org

³⁰ http://china.org.cn/living_in_china/life_in_pictures/2009-02/24/content_17326245.htm

³¹ <http://www.cspruc.com/about.do?id=14>

China is ready to get involved in the international market, the problems that have been haunted the country such as political control and the violation of IP rights will be likely to hold them back. As can be seen in the next chapter, one of the solutions for these problems lies in the adjustment of the education system.

Conclusion

In this chapter the possibilities of establishing a cultural/creative industry in China were researched. It seems that there are several problems that could hold China back when competing in the international market, yet China also holds significant advantages. In the literature that was researched it was obvious that China as it is now does not have a good chance in becoming a leader, or even a follower in the cultural market, yet with adjustments it could become a big player. Keane (2004) even wonders why China not yet has seized the opportunity. The government of the country is starting to see the importance of a thriving creative industry, and the building of the parks is an interesting and important asset in the change China wants to make from being a manufacturing country to a creative source.

9. Empirical research through interviews

Introduction

As was indicated in the first chapter, the research done for this thesis is purely qualitative. By holding interviews with several groups of people involved and familiar with the topics of Intellectual Property rights and fashion. The combination of these two subjects will be covered in this chapter, where the qualitative research done during the thesis and the literary research will meet and the interviews will complement the latter research.

This chapter will be written in two parts, since the main question and the thesis are also divided in to two parts. The first part will handle the information derived from interviews with experts in the field of Intellectual Property rights and the second part will cover the knowledge gained from young designers and experts on the topic of fashion. In the last part, the two segments will be put together to give a complete answer to the main question this thesis is built on. After each sub question an analysis will be given to understand and conclude the question at hand.

Experts on Intellectual Property rights in China

The interviewed experts on the topic of IP rights in China consist of owner of and writer on the blog ipdragon.com, one of the leading IP blogs on the internet Danny Friedmann. Paul Ranjard, the second expert, has built up an impressive resume as an IP rights lawyer for amongst others Lacoste, and is the co-author of several books such as “Roadmap for the protection of Trademarks in China” (2003) and “Actions Speak Louder than Words” (2007). At the time of the interview he was co-chair of the EU China Chamber of Commerce in Beijing and a representative of Unifab, the textile industry’s international IP rights organization. The third expert on the topic of IP rights in China is Intellectual Property rights lawyer Paul Schmidt, who works at Baker and McKenzie. This law firm has several offices in China and Hong Kong.

Difficulties and improvements in IP rights in China

What came forward when the interviews were put together was that the experts were very consistent in the solutions they proposed for the improvement concerning IP rights in fashion in China. They all acknowledged the problems concerning counterfeiting of designs, but there was a great consent in the opinion that China did not act to their best to solve the problem. Paul Ranjard identified several practical issues that cause difficulties in terms of IP rights for business that operate in China:

1. The current calculation method for the threshold for counterfeit goods with three different possible methods (value based on the labels on the goods, valued based on the infringers goods or value based on the value of the genuine goods depending on the circumstances of the

cases) is complex. When the method based on the value of counterfeit goods is used, the threshold is not reached even if considerable quantities of counterfeit goods are found. The existence of three possible calculation methods created uncertainty and long discussions with local authorities, which delay or make very difficult the transfer of cases from the administrative authorities to the police.

2. The transfer of cases between the administrative authorities and the Public Security Bureau is often delayed because the administrative authorities often insist of first handing out an administrative sanction, and then only transferring the case to the police. When the case is transferred, the case is ‘cold’ and the counterfeiters have had time to disappear.
3. The administrative authorities have only limited investigation powers and, for instance, do not have the right to arrest criminals. The participation of PSB is therefore essential to a successful raid on a large operation. However, despite their good cooperation, the PSB resources are limited and they have other priorities to follow. As a result, in many cases, even when the threshold is reached, the criminals are allowed to escape and prove impossible to catch later.
4. There are wide disparities in the level of fines imposed by AICs (Administration for Industry and Commerce) between different cities and different regions and the right-owners do not have the right to receive a copy of the fine decision. In some cases, local protectionism (or even corruption) results in very low level of fines. As a result, it is very difficult for the right owner to rely on administrative sanctions as an effective deterrence tool.
5. Counterfeiters very often not just infringe the trademark law, but many other laws: poor hygiene, absence of business license, non payment of taxes. The costs for the Chinese society are compounded by the number of violations of the law committed by counterfeiters. They are however very rarely sanctioned for these other infringements due to the lack of coordination at local level between the different administrations.

Next to these difficulties Paul Schmidt also brought up that China might benefit from the poor enforcement of IP rights, as also came back in the literature (Birden, 2006) and in the chapter “Problems of implementing IP rights in China”. His answer to the question why China could get away with counterfeiting he answered:

“One of the reasons for this is the low number of cases on IP rights infringement. My estimation is that there are about 100 cases a year. Either people don’t want to pay for the

costs or see it as an inevitable loss when their goods get counterfeited. It depends on the kind of goods that get counterfeited of course, and how important this is to the government or the brand itself. Health products like medicine and food, or technical products such as car parts are more important to the government and the brands than pirated fashion goods.

Also, a lot of things happen without the knowledge of the government, or the brand itself. A client of mine had a factory in America, where car parts were made. Some of the workers took the original car parts and replaced it with counterfeits. No one knew about this, but the client got sued for not delivering trust worthy, well working cars.

I think another big cause of the counterfeiting and the tolerance of the counterfeiting is the unemployment rate. My guess again is that its between 15 to 20 percent. If the government has to choose between taking away peoples incomes and creating a huge turmoil under the people, or letting them do their slightly illegal affairs, I know what I would choose. No one is getting killed here, no one is doing bad or evil. This also has to do with the social safety net that is provided for the Chinese. There is none. So if you had to choose between having no job, or a counterfeit job, that's an easy choice."

Next to these difficulties Ranjard also mentioned some possible solutions for the problems concerned with counterfeiting.

1. The method of calculation based on the value of the counterfeit goods should only be possible as a second alternative when full sales ledgers are available over a period of three years and the counterfeiter fully cooperates with the authorities.
2. Instruct the local administrative authorities to transfer the cases when the threshold has been reached immediately and not later than within five working days to the PSB. Create an efficient and quick procedure to raise refusals to transfer to PSB to the higher administrative echelon or the central authorities.
3. Increase the resources of the PSB allocated to anti-counterfeiting at the every level. Increase the level of priority given to anti-counterfeiting.
4. Notify right owners of administrative fines, increase the maximum level of administrative fines in the new Trademark law, issue public guidelines after public consultation on the method for calculating fines, make more use of non financial sanctions such as temporary business closure or revocation of the business licence.
5. Create anti-counterfeiting task forces at the local level to increase coordination between the different actors involved (AICs, PSBs, Procuratorates, CIQs, TSBs, tax bureau, etc.).

Analysis difficulties and improvements in IP rights in China

The experts are not far apart when talking about the difficulties and improvements China faces in terms of implementing and governing their IP rights. The reasons vary from the way the different authorities handle the registration of trademarks and thus create a problem, to the social unrest the bettering of the situation can cause. Improvements in this case are offered by Paul Schmidt, who insinuates that there is no improvement because the country can not handle the change, and by Paul Ranjard, who searches for solutions in the administrative region and the coordination between the different regions.

Reasons for counterfeiting fashion in China

Another one of the questions that was asked to the experts was what they thought were the reasons for China as the leading country in counterfeited fashion products. Since the literature that was studied did not go in to this questions other than the fact that China is a leading manufacturing country (Yu, 2002) the answers to this questions were very interesting to the research. Next to the earlier mentioned difficulties in the protection of IP rights in China, Friedmann gave a well thought answer to the question why China is the top counterfeiting country in the world (United States Customs and Border Inspection 2008).

“China can manufacture clothes relatively much more cost-effective compared to companies in the West. And the distribution of wealth in China is uneven and much lower than in the West. Even in the West fashion is copied very frequently, or to put it differently: fashion designers are inspired by other fashion designers. And maybe fashion is not so suitable for copyright protection, because by definition fashion designers build upon the designs or remix the designs of others. And fashion trends change so quickly anyway, first mover advantage is probably more important in fashion business than intellectual property protection.”

Schmidt has an addition to make to the opinion of Friedmann, because he mostly states the human side of the development of counterfeited products:

“Although IP rights are not being enforced that well, China is a country that mostly just produces. Less development, more producing. In a fast pace, on a low budget. And that the enforcement of IP rights does not play a big role in that is one of the things that are mainly taking for granted from the foreign businesses. For local entrepreneurs, it is different. Chinese businesses are even heavier damaged, because they don't have money for protection at all. When Chinese start up a business with a good plan, there just has to be one person who leaves that company, takes trade secrets with them and starts its own company with the same plan or

product, for a cheaper price. Of course the first business has to lower its standards then and so on and so forth. This way, there is not a lot of money being made. Every once in a while the Chinese government will pick 'winners'. These winners get special attention and care, and thus money to protect their products and improve it. But this seems to be unfair competition."

Analysis of reasons for counterfeiting in China

China as a low wage country and a fast pace, fast moving manufacturing entity are considered to be some important reasons by the experts. The fact that the fashion industry is secured by little IP rights together with the previous rights together with the previous reasons can be considered the main reason that China is so keen on making counterfeited products. The additional reason that Paul Schmidt gives, that trade secrets are not well kept, is another point. The solution of 'winners' does indeed not seem the best.

Importance of IP rights for businesses

To find the answer to the question for which business IP rights were more important, young, new fashion businesses or established ones was a bit harder than expected. Paul Ranjard did not dare to answer the question at all, but Friedmann and Schmidt were a bit more open about their opinions. Both had difficulties choosing, and concluded that it was equally important, but for different reasons.

Friedmann stated:

"Large companies in general have more famous brands. Therefore, probably in more cases, they will be targeted by trademark counterfeiters and copyright pirates. Then again, large companies can have more budget to protect (via design rights and copyrights) and enforce their intellectual property rights."

Schmidt:

"I think that it is important to have stern rules on IP rights, for everyone. You cannot choose for who it is most important, but for young businesses it is often a struggle of course. What I always tell my clients, is that registering a trademark only costs \$1500 US. That is of course a lot of money, but it is nothing compared to the amount of money you can lose when you don't register the trademark."

Analysis Importance of IP rights for businesses

The sternness of IP rights seems to be an important part of the question on the importance of IP rights. Whether for young or established companies and small or large ones, IP rights need to be the same for each company. Although the registration of a trademark only costs \$1500 US, the enforcement of

your own IP rights when going to court is very expensive. It seems that registering a companies rights is a first step to simple yet efficient protection.

Future of China in terms of IP rights

The questions asked to Friedmann and Schmidt concerning the future of China and the future of fashion with little IP rights complement each other. Schmidt involves the US in the solving of problems concerning IP rights in China:

“There are so many things that need to be changed. Rules, regulations, the governmental way of looking at such problems, the views of the Chinese themselves on IP rights. It will take a long time, but I think China already has done a great job, mostly thanks to enforcement from the United States. China is just a different country then other countries, and they are finding a way to survive.”

While Friedmann is more concerned with the specific topic of IP rights in fashion:

“Fashion trends will change even faster. I can speculate that consumers will start to look more at quality. Trends in fashion infringements: first brands and designs were copied. Now, although this still happens, a new category of infringements is becoming more prominent: only the design is infringed under a Chinese brand name. In other words, the trademark counterfeiters/copyright pirates are becoming only copyright pirates because they start to build their own brand name.”

Analysis of the future of China in terms of IP rights

The interesting share of this specific topic in the research is that in their answers the studied literature can be traced back in several points. The development of IP rights in China, as described in chapter 2 in terms of political, economical and social beliefs, but also the influence of the US, as described in articles by Birden (1996) and Harding (1997). In Friedmanns answer the evolution of the fashion industry is described in short, the fashion cycle and the new types of infringement. The latter could be a interesting topic for further research.

Young designers and their view on IP rights in fashion

For this part of the research four young designers, that either were still in a design school or just graduated from one were interviewed. The young designers are from different designs schools trough out the country. Next to these four young designers one designer from Milan, who moved to Shanghai gave her opinion on the differences of IP rights in fashion between the countries. It was interesting to see how the Chinese designers were contrasted by the European designer.

Taught knowledge on IP rights in fashion

It was interesting to see that the knowledge of the young designers in China did not differ a lot from each other. Either they did not receive any information through school on the subject of IP rights, or some information during one class. Gerr mentioned that she only knew one school that taught a class on IP rights in fashion, and that is the world renowned design school Central Saint Martins in London. Once contacted it turned out that the teaching of IP rights varies from course to course, but that it is part of the Personal and Professional Practice, which means that some students will receive talks on the topic as a part of their course. Also the University of Arts London, which CSM is a part of, set up an organization and website called www.own-it.org. It is meant for students, but is available to all creative businesses in London. A section called 'own it uni' is specifically for free advice for current students. It may be obvious that such extensive information is not available for students in China, at least at the schools where students or teachers were interviewed.

Analysis taught knowledge on IP rights in fashion

There does not seem to be a large difference between the schools concerning the knowledge that is taught.. The differences between China and London are larger, it seems. No research has been conducted on investigating more of such differences, so it is impossible to state a well founded conclusion about this topic here.

Willingness to learn about the subject

Another interesting aspect from the interviews held with the young designers was their lack of interest in the topic of IP rights in fashion. They know that it is an important factor in the industry, and also in China, but since they have nothing to do with it and don't know where to look up the information the designers are not really interested. As Yin Shu stated:

“Information could be helpful, but also if designers need it. And if they need it, it is always possible to look it up yourself, on the Internet or in a library. I don't know if it is important for young designers to be taught about it in school. The subject might bore people, but a short introduction or some information could be helpful, just to start with.”

Sheila Pitigala the designer from Milan who moved to Shanghai has a different opinion:

“I think it is very helpful to designers to understand this subject. It can harm the label terribly when there is no protection for it. I think if there was a website with short statements that could help me I would very much like to read it. I tried to look it up here once, but either the

information is in Chinese, or it is not specified on fashion. I think it is hard to find the right information.”

Analysis willingness to learn about the subject

It seems that the willingness to learn about the subject of IP rights is based on a fifty fifty basis. Some of the students do not see why they need any knowledge of the subject, while others do see the importance in their future. Because some students have faith and trust in another party that can handle the topic of IP rights they feel there is no need for them to learn about the topic. It is interesting to see that the designer from Europe has a opinion that is the total opposite of some of the Chinese young designers. Again, for a well founded research quantitative research needs to be conducted to see what the differences are between young designers in China and for example Europe in terms of their knowledge and opinion on IP rights.

Vision on China and IP rights in fashion

It should not be a surprise that with the lack of education concerning IP rights and their own approach on the subject the young designers did not have an elaborate vision on their country and the way it handles IP rights in fashion. Only two students had something to say on this topic, but their answers were very interesting. Gerr expressed a typical concern, which is very close to the Confucian approach:

“I do feel that if there is a lot of copying in China, they only copy the famous and interesting pieces, so if they copy me there it would mean that I am famous and a trendsetter. By all the copying I also think that the production cycle is spurred, there is more ‘fast fashion’ if you look at H&M and such. I think the biggest difference between other countries and China is that China is so big, there is more space to think and developed, in for example Shanghai and Beijing. In China people treasure their spirit, Hong Kong treasures the foreigners.”

Ivan stated:

“I am aware of the huge amount of fakes that are being produced in China, but I don’t know what I should think of this. I know that China is very poor and that it is a fast way to make money. I think China is the most important country in the world in terms of the copying of designs, but I do not think this is bad for the industry. People have to make a living, right?”

When asked whether the young designers would like to keep working in China, they all answered yes. Although they know there are dangers attached to producing in China, the country is seen as an

inspiring and positive place, where creativity can flourish. Sheila agreed with this, but also spoke her concerns:

“We’re really scared they can copy our designs, because we’re producing for summer 2010 and that means they have a whole year to copy us...but we’re quite sure it’s very hard for them to understand the style beneath, as we can see dealing with factories.”

She and her business partner thought about this, and handled their problems in the same way the other designers would do. Let someone take care of it who has the knowledge:

“We have an American friend who works for a sourcing company that accepted to work with us and helps on searching factories, and gave us a document to sign which is an agreement ,or better say a deal with the factories that protects our designs legally.”

Analysis vision on China and IP rights in fashion

It seems that the Chinese young designers are still very much linked to their home country. Either through their Confucian approach or the advantages the counterfeiting brings with it they express their feelings towards their country. Despite the fact that they know or feel that there is little protection for their garments in China, they still want to keep designing and producing in the country. The European designer was also enthusiastic about designing in producing in China, although she was also expressed sceptic feelings. The solution she gave for her concerns was typically Chinese. She got someone else to take care of the IP rights business.

Improvements in IP rights in fashion

When the students were asked whether they thought there should be more information available for young designers so they could educate themselves on this topic or so that the school could do so, different answers were given. Although they might feel it is not useful to them because they find it either boring or think they have someone else who can take care of it they still feel it might be an important part of the fashion industry. This seems mainly linked to the fact that they can protect their own garments, when explained. It also seems to depend on the field of work you are doing, as Queenie stated:

“If young designers want to start their own brand then it would be interesting to know more about the subject. If this is not the case then I trust the company I work for to take care of that.”

Yin:

“Only if they need it. And if they need it, it is always possible to look it up yourself, on the Internet or in a library. I don’t know if it is important for young designers to be taught about it in school. The subject might bore people, but a short introduction or some information could be helpful, just to start with.”

A more positive answer came from Gerr:

“I would like to have a class on this topic, because I think it is very influential in the design world. Also I don’t know a lot about it and when you want to have your own label or business it is very important to know about this.”

Analysis improvements in IP rights in fashion

The knowledge of the interviewed designers is limited, so this question was difficult to get an answer to. When asked about their thought on the improvements they thought the educational system would play a large part in the improvement of knowledge on IP rights for young designers. Either by giving classes or making books on the subject available in the (school) library, more information should be available.

Education on IP rights in China by design schools

For the research on the part of education on IP rights two design schools were questioned concerning their courses or activities on IP rights. As it turned out, also in addition to the answers of the design students and young designers, there is little education on IP rights in the design schools in China. The spokesperson for Raffles University, which has schools in Beijing and Shanghai stated that they were one of the few universities in China, which she knew of, that gave courses on the topic. Her answers to the question whether the students were taught on the matter was very strict:

“Yes, we do. We educate them on this because we believe that this is an important factor of fashion. Without IP rights their future will be more difficult in the field.”

This is in contrast with what Ivan Yip, one of the young designers who studies at Raffles University that was interviewed, told me. He did not recall any courses on the subject. It might be that the courses changed over the years.

The other design school, the International Fashion Academy in Shanghai does not offer courses or information on IP rights in fashion. According to the Marketing and Business Development Director Dominique Simard it does not seem to be on the mind of the students. This of course is again parallel to the opinions of most of the questioned young designers, who do not seem to be involved in the

importance of the subject. This might be one of the reasons the school does not offer courses, although Simard states:

“I think that knowledge on IP rights in fashion is an important part of the industry. Especially in a country like China, where history dictates the future. The interest of young designers might not be in this particular field, yet they should gain more knowledge on this topic. If we cannot give it to them, they should be stimulated to look it up their selves.”

Analysis education on IP rights in China by design schools

It seems that the investigated schools all hold a different approach for the education on IP rights, although the topic is hardly one of their priorities. This is of course not surprising when looking at the needs and wants of the students, but of course this can be a vicious circle in which no one wants to do or change anything, so that the other party does not want this either. The schools also make a distinction between the teaching and the possibilities that students can look up the information themselves. But with the lack of interest and basic knowledge of most students, it would be smart to give at least an introductory course.

Conclusion

The interviews held have given an interesting new look on the literature that was studied and discussed in the previous chapters. By interviewing several experts in fields such as law, economics and fashion the first part of the thesis, which contains the view on China and its development of IP rights, an addition is being made. With the combination of the literature and the interviews, a more in depth view can be given that will help answer the main question better and certainly serve as a guideline for the recommendations later on. Surprisingly the opinions of the experts in the first part do not differ a lot from what the literature dictated. It seems that the difficulties and improvement for IP rights (in fashion) in China are very similar to the ones provided in the literature. A difference is that there is less interest in the cultural and social factors that are of interest to Yu (2001) and Birden (1996). This could also be the case because the experts mainly operate in the law field.

The young designers and their institutions have an interesting approach on the matter of IP rights. It seems that they lack knowledge on the topic, for two reasons. The first one is the fact that there is little education in their studies that works with this subject, the other one is their own lack of interest. When compared to Central Saint Martins, which is a leading design school in London, it seems that other countries are much more involved in IP rights, as is also concluded in the chapter which compares China, Europe, America and Japan. The views of young designers on the importance of IP rights are also interesting. Some resemble Confucian beliefs, while others are scared for the outcomes when their designs are not well protected. The willingness to learn seems to be a difficult

point, when some interviewed designers feel there is no need to gain knowledge on the topic, while others see it as an asset.

10. Conclusions

Introduction

This chapter will conclude the research conducted, while touching on the various topics that have been investigated in this research, as were handled in the chapters. The hypotheses that were stated in the first chapter of this thesis will be evaluated in this chapter, with the use of the found literature and the empirical research described in the different chapters.

H1. With stronger intellectual property rights China will attract more investments in fashion.

The strengthening of IP rights in China was discussed in the first part of this thesis. It seems that China is making a great effort to level with international standards by signing international treaties. It is still difficult for China to implement those new rules and regulations for several reasons, yet there is a great potential change. In the light of stronger IP rights for the creative industry, in particular the fashion industry, it seems that China is finally putting forces together so that those rights can be implemented.

With the use of China's new development concerning the setting up of a creative industry it is more likeable that China will attract more investments concerning creativity, also including fashion. In chapter 8 an interesting turn was shown as China was not longer a purely manufacturing country, but also a creative country. The top 10 Chinese fashion designers that Vogue has proclaimed is an interesting example of this. The intellectual property rights laws seem to still be a significant problem in China,

With the two solutions, the strengthening of IP rights and the supporting of the creative industry it is most likely that China will attract more investments in fashion. It can thus be concluded that this hypothesis is true.

H2. The most useful way to implement stronger intellectual property rights in fashion is to strengthen and adjust in particular the copyright and trademark policies, but next to this also cultural and governmental adjustments are needed.

In the chapters concerning the implementation of IP rights and the problems of implementing IP rights in fashion in China it is shown that the perfect way of implementing IP rights in fashion has not been found yet. Different examples have been discussed in the chapter on the comparison between China and several other countries and it indeed seems that in particular the trademark policies need to be strengthened and that copyright policies are most suitable for the protection of designs. Yet it is also clear that the implementation of new laws needs to be backed up by the government. The present involvement of the government is not sufficient in the way that the administration concerned with the

protection of IP rights in fashion is inaccurate and differs from province to province. Not only the governmental problems need to be solved, also social and cultural adjustments are needed. These adjustments all involve more information for the inhabitants of China, to raise awareness for the importance of IP rights. It can be stated that this hypothesis is also proven.

Hypotheses concerning young designers and their entourage and developments

3. Intellectual property rights strengthen the fashion cycle instead of damaging it.

The chapter concerning the advantages and disadvantages of IP rights in fashion showed that there is not yet a clear answer given to the question whether or not the fashion industry could suffer or benefit from changing the IP rights. While some authors state that the industry is best left alone with its low involvement with IP rights, others say it would be an even more vibrant industry with the adjustment of such laws. An example which proves this dilemma is ambiguous is the implementation of stronger IP rights in Europe. Although designers are offered stronger IP rights than in for example Asia and America, they make little use of it. It can be concluded at this point that more research should be done to answer this hypothesis.

H4. Younger designers care and know little about intellectual property rights concerning their designs.

While interviewing the young designers approached for this thesis it became clear that this hypothesis would be most definitely true. It seemed that young designers were not educated on the topic of IP rights, not did they care to enlarge their own knowledge. When working for an employer they were sure that employer would take care of the problems concerning IP rights, and when setting up their own brand they would most likely look for someone to deal with those problems. When speaking to the spokesperson of Central Saint Martins, a famous design school in London, the differences shown were impressive. While CSM had its own website to educate their students and gave courses on the subject, most interviewed design schools in China lacked courses to teach their students knowledge on the topic of IP rights. The lack of education on this topic accounts for some part the lack of interest and knowledge of the young designers.

H5. Young designers are in more need of IP rights protection than bigger and already established companies.

This question was one of the most difficult hypotheses to prove, since there was a lack of literature to base an answer on and the difficulty from the experts to deal with this question. Arguments are that

pirates more often go after the larger fashion companies since there is more money to earn by copying them, while those large fashion companies have more money to cope with the pirates by taking them to court. Young fashion designers have less money to protect their designs, but are less likely to get copied. But in the case they do get copied, they have more to lose since their designs will be produced for a lower price. Because of this last argument it is likely that young designers need stronger IP rights more than established fashion companies. More research needs to be conducted though, to have a stronger basis to prove this hypothesis.

Concluding the main question

To what extent and in what way are young fashion designers and their entourage in China protected and influenced by intellectual property laws concerning fashion and what, if anything, concerning education and policies should be changed so that China can support its young designers better in terms of intellectual property rights?

It seems that China in its struggle to offer better protection concerning IP rights in fashion, despite the country's historical difficulties, has made significant improvements to come level with international standards that were previously imposed by other countries. Recently China has opened its eyes to the importance of strong IP rights and has shown that the country can and wants to develop a stronger IP regime. Differences in the protection of IP rights between China and other countries are rare in the lawful protection of designs, but are more prominent when looking at the way the rights are being handled and enforced.

By putting effort in creating a cultural industry the country not only shows that it sees the importance of culture and creativity, but is it also forced to offer more protection for the creative products produced. This should start in the education of universities concerned, such as design schools. It seems that at present the information given to the students is not satisfactory and this leads to a disinterest of the students to study IP rights. This also leads to a lack of interest in their eventual work field, where the young designers when confronted with IP rights rely on the knowledge of others to handle with such affairs. The main solution to support the young designers in terms of intellectual property rights is to increase their knowledge on the matter by teaching them on the subject in school.

11. Recommendations

Introduction

To support the findings of the research in this chapter several recommendations will be given to improve the situation concerning IP rights in China. These recommendations are founded on the conclusions as stated in the previous chapter.

Invest more in the rise of a creative industry

As China is finally seeing the importance of IP rights and the interest in having its own creative industry the two parts can only enhance each other. Also, it seems that China has a particularly interesting part to play in a global creative industry, since its history and culture are so special that creative goods from the country are respected internationally. With the building of the creative parks in the big cities China is on the right way of becoming not only a top manufacturing country, but also a creating country, if they continue this trend.

Educate inhabitants of China

The most important part of the development of China in terms of the understanding and rightfully usage of IP rights is to raise awareness under the people of China. To increase the understanding of the rights, which are in contrast to what history taught the Chinese, more information should be given on why IP rights are important for not just the country, but also for the people themselves. China is already setting up such information days and even supports the International Week of IP rights, but real understanding and awareness of the importance of IP rights will only be accomplished when inhabitants are shown what is important for them when they respect the IP rights. This is in addition to the next recommendation.

Adjust the administration facilities

Although this was not one of the main research topics, it is an important recommendation that the administration facilities for Intellectual Property rights are being adjusted so that there is a more equal view on the subject trough out the country. When there is one line drawn it is easier to set rules on this topic and to make people understand what the importance is of such rules.

Educate young designers

Next to the recommendations given to solve global problems concerning IP rights it is equally important to educate the young designers on this topic. Since it seems that they have a lack of interest and a lack of knowledge when it comes to this subject two things should happen. Their knowledge should be improved by offering them courses on IP rights during their studies in which they are told the basics and the importance of the laws. Next to this they should be offered more information on the

subject which they can look up themselves. This could be either through a website, such as the one CSM offers their students, or a special part in the library. Teaching the students the basics and the importance will possibly fuel their interest in the topic and so they can find more information on the topic outside of their given or chosen courses.

Offer more information in English

One of the most difficult parts of this thesis was to find sufficient information and literature in a language that I could read. More information on the topic of IP rights (in fashion) in China was offered in Chinese, and this made the research more difficult. Since China is more likely to get involved with international partners over the next few years it is important for them to start offering information not just in Chinese, but also in other languages such as English. Although it can be read in this thesis that little Chinese people themselves speak English it can be expected from governmental institutions that they also offer information in other languages than just Chinese.

12. Future research and improvements of the research

Introduction

The subject of IP rights in fashion is very broad. It proved to be difficult to narrow down the subject and focus on young designers and their entourage and the way they think and are influenced by the IP rights in fashion in their own country. Other interesting research topics kept occurring and influencing the view on the chosen topic. This did not turn out to be a disadvantage since fresh views on the main research question only deepened my interest in the topic. Also the broadness of the subject offers several interesting future research topics that are influenced by my thesis. Next to this future research this chapter will also review improvements for the research concerning this thesis.

Future research

The importance of the influence of education on design schools in China is one of the most important points of future research. It seems that there are little courses given on the subject of IP rights and this might be one of the reasons young designers lack knowledge and interest on the topic that is still very important on their industry. It would be important and interesting to see if the intensity of courses on the topic would increase knowledge as well as interest on the subject so that the fashion industry of China would be protected better.

Another topic that could be researched is the influence of the government on the inhabitants of China. Will this help bridge the problem that the history has created and will it help to educate the people so that they also see the importance of the enforcement of IP rights? How much effort does the government put in to this education and what are the best ways to teach?

The third suggestion for future research is the influence of the setting up of a cultural industry in China. What is China's future in this new development and what is possible in the intensification of this evolution? Because this is a fairly new development it is interesting to see what new steps will be taken so that China can set up this cultural industry. How far can China make it from "Made in China" to "Created in China"?

The last suggestion is the research on the other new types of infringement, as were targeted by Danny Friedmann. meaning that the trademark counterfeiters/copyright pirates are becoming only copyright pirates because they start to build their own brand name. This looks like the way the fashion industry, but downright copying under another name without changing any elements is very specific. Interesting would be to see why this works, who buys it and where.

Improvements

The first point to improve in this research is the amount of data through interviews. It is fairly difficult to find sufficient information by interviewing people, and it is much more convenient to speak to people face to face. Since this opportunity was not always available the answers sometimes lack the

depth that is needed to sufficiently answer some questions. Not only the quality of the interviews was a difficult point, also the quantity of the research could be improved. The amount of young designers especially could have been larger, because by doing so the information from that particular group could have been more build out.

The second point to improve is the closer defining of the subject. Because the topic of IP rights in China is so intertwined with several areas such as law, economy, creative industries and education it is difficult to deal with the several subjects or fully leave them out, which was sometimes the better choice to keep the focus on the subject. In the future it is important to take one approach on a subject and work from there, and not get distracted by other opportunities.

The third and last improvement point is that it is important to know and understand the language that is spoken when dealing with another country or culture. It was a very difficult task to deal with young designers and some experts because their knowledge of the English language was very limited and my knowledge of the Chinese languages was non-existent. This was difficult in the interviews, but almost impossible when interviewing trough e-mail. If an answer was received, which was a rather hard task, either the questions were misunderstood or the answers that were given were hard to understand. In future research the importance of this rule will always stick.

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Appendix

Appendix 1.

Well known brands
Lacoste Trademark Infringement



Source: own travel pictures Shanghai

Appendix 2.

Table 1. List of international treaties concerning IP rights as signed by the PRC

Treaties	PRC Status	Entry into Force
Berne Convention	In force	Oct. 1992
Madrid Agreement	In force	Oct. 1989
Madrid Protocol	In force	Dec. 1995
PCT	In force	Jan. 1994
Paris Convention	In force	Mar. 1985
Nice Agreement	In force	Aug. 1994
TRIPS Agreement	In force	Dec. 2001
UPOV	In force	Apr. 1999
WCT	Non-member	-
WPPT	Non-member	-
Rome Convention	Non-member	-

Source: http://www.sinoptic.ch/scccgeneva/telechargement/pdf/evenements/2007/20070426_Swiss-China.Focus_Thaler.Paul.pdf

Appendix 3.

Figure 1. China Unemployment Rate April '08 trough April '09

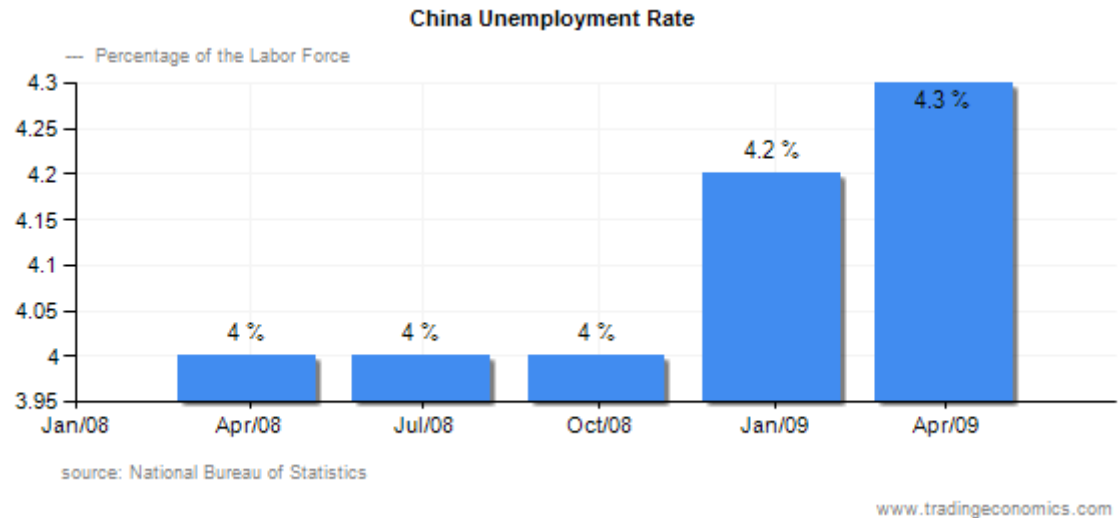


Table 2. China unemployment rate 2002 trough 2009

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2009			4.30									
2008			4.00			4.00			4.00			4.20
2007			4.10			4.10			4.00			4.00
2006			4.20			4.20			4.10			4.10
2005			4.20			4.20			4.20			4.20
2004			4.30			4.30			4.20			4.20
2003			4.10			4.10			4.20			4.30
2002									3.90			4.00

Source: National bureau of statistics via tradingeconomics.com

Appendix 4.

Interview Paul Schmidt

Lawyer Office Baker and McKenzie Hong Kong

What are the differences in laws between China and other countries that have signed agreements such as the TRIPS agreement?

For one, China has the rule that counterfeit and pirated goods can be produced up to US 7000 dollars (SOURCE!!). By having this knowledge, of course the pirates are smart enough to keep just below this level. And you can imagine that when everyone knows about this rule, counterfeiting gets really out of hand. Because those pirates aren't stupid.

Why can China get away with these kinds of actions?

One of the reasons for this is the low number of cases on IP rights infringement. My estimation is that there are about 100 cases a year. Either people don't want to pay for the costs or see it as an inevitable loss when their goods get counterfeited. It depends on the kind of goods that get counterfeited of course, and how important this is to the government or the brand itself. Health products like medicine and food, or technical products such as car parts are more important to the government and the brands than pirated fashion goods.

Also, a lot of things happen without the knowledge of the government, or the brand itself. A client of mine had a factory in America, where car parts were made. Some of the workers took the original car parts and replaced it with counterfeits. No one knew about this, but the client got sued for not delivering trust worthy, well working cars.

I think another big cause of the counterfeiting and the tolerance of the counterfeiting is the unemployment rate. My guess again is that its between 15 to 20 percent. If the government has to choose between taking away peoples incomes and creating a huge turmoil under the people, or letting them do their slightly illegal affairs, I know what I would choose. No one is getting killed here, no one is doing bad or evil. This also has to do with the social safety net that is provided for the Chinese. There is none. So if you had to choose between having no job, or a counterfeit job, that's an easy choice.

But do you think the government supports it then?

Not really supporting, but they are not against it either. As I said, there are two obvious sides to it, and it's not an easy decision, but there is a choice that has to be made. So the government chooses to have a lower unemployment rate and a higher 'criminal' rate. Although it is not really all criminal stuff.

Do you think China benefits from not obeying the rules? In what context?

As I said, China favors this solution. Not only in the sense of keeping the people happy and the employment rate somewhat higher, although in a criminal context, but also for the economic growth. Although IP rights are not being enforced that well, China is a country that mostly just produces. Less development, more producing. In a fast pace, on a low budget. And that the enforcement of IP rights does not play a big role in that is one of the things that are mainly taking for granted from the foreign businesses. For local entrepreneurs, it is different. Chinese businesses are even heavier damaged, because they don't have money for protection at all. When Chinese start up a business with a good plan, there just has to be one person who leaves that company, takes trade secrets with them and starts its own company with the same plan or product, for a cheaper price. Of course the first business has to lower its standards then and so on and so forth. This way, there is not a lot of money being made. Every once in a while the Chinese government will pick 'winners'. These winners get special attention and care, and thus money to protect their products and improve it. But this seems to be unfair competition.

So do you think that IP rights are more important for small companies?

I think that is it important to have stern rules on IP rights, for everyone. You cannot choose for who it is most important, but for young businesses it is often a struggle of course. What I always tell my clients, is that registering a trademark only costs US 1500 dollars. That is of course a lot of money, but it is nothing compared to the amount of money you can lose when you don't register the trademark.

What do you think will be the future of China's IP rights (concerning fashion)?

It depends greatly on their economy. There are so many things that need to be changed. Rules, regulations, the governmental way of looking at such problems, the views of the Chinese themselves on IP rights. It will take a long time, but I think China already has done a great job, mostly thanks to enforcement from the United States. China is just a different country than other countries, and they are finding a way to survive.

Appendix 5.

Interview Paul Ranjard

Co chair of the EU China Chamber of Commerce in Beijing and a representative of Unifab.

‘What should be changed in policies in China so that piracy is a issue of less concern?’.

Some key practical issues can be identified which cause significant difficulties for businesses operating in China :

- The current calculation method for the threshold with three different possible methods (value based on the labels on the goods, valued based on the infringers goods or value based on the value of the genuine goods depending on the circumstances of the cases) is complex. When the method based on the value of counterfeit goods is used, the threshold is not reached even if considerable quantities of counterfeit goods are found. The existence of three possible calculation methods created uncertainty and long discussions with local authorities, which delay or make very difficult the transfer of cases from the administrative authorities to the police.
- The transfer of cases between the administrative authorities and the PSB is often delayed because the administrative authorities often insist of first handing out an administrative sanction, and then only transferring the case to the police. When the case is transferred, the case is ‘cold’ and the counterfeiters have had time to disappear.
- The administrative authorities have only limited investigation powers and, for instance, do not have the right to arrest criminals. The participation of PSB is therefore essential to a successful raid on a large operation. However, despite their good cooperation, the PSB resources are limited and they have other priorities to follow. As a result, in many cases, even when the threshold is reached, the criminals are allowed to escape and prove impossible to catch later.
- There are wide disparities in the level of fines imposed by AICs between different cities and different regions and the right-owners do not have the right to receive a copy of the fine decision. In some cases, local protectionism (or even corruption) results in very low level of fines. As a result, it is very difficult for the right owner to rely on administrative sanctions as an effective deterrence tool.
- Counterfeiters very often not just infringe the trademark law, but many other laws: poor hygiene, absence of business license, non payment of taxes. The costs for the Chinese society are compounded by the number of violations of the law committed by counterfeiters. They are

however very rarely sanctioned for these other infringements due to the lack of coordination at local level between the different administrations.

- The method of calculation based on the value of the counterfeit goods should only be possible as a second alternative when full sales ledgers are available over a period of three years and the counterfeiter fully cooperates with the authorities.
- Instruct the local administrative authorities to transfer the cases when the threshold has been reached immediately and not later than within five working days to the PSB. Create an efficient and quick procedure to raise refusals to transfer to PSB to the higher administrative echelon or the central authorities.
- Increase the resources of the PSB allocated to anti-counterfeiting at the every level. Increase the level of priority given to anti-counterfeiting.
- Notify right owners of administrative fines, increase the maximum level of administrative fines in the new Trademark law, issue public guidelines after public consultation on the method for calculating fines, make more use of non financial sanctions such as temporary business closure or revocation of the business licence.
- Create anti-counterfeiting task forces at the local level to increase coordination between the different actors involved (AICs, PSBs, Procuratorates, CIQs, TSBs, tax bureau, etc.).

‘What is the loss of established fashion organizations because of poor intellectual property rights in China?’

No idea

Is IP rights protection more important for smaller companies or is it equally important for the large companies?

Impossible to say.

Appendix 6.

Interview Danny Friedmann

Owner of and writer on the blog ipdragon.com

What should be changed in policies in China so that piracy is a issue of less concern?

If you have to evaluate China's intellectual property protection it looks good in the books but on the ground it is not effective. Enforcement is not always taken seriously (massive anti-counterfeiting campaigns are not effective in the long run, and are often announced in advance so the infringers are warned), but the development of China is getting at a point where it is in the interest of China to enforce intellectual property rights. So, in case of fashion, when Chinese fashion creators, such as Shanghai Tang's copyright is infringed, it will start to enforce intellectual property rights in a more effective way, since Chinese companies demands this.

Is IP rights protection more important for smaller companies or is it equally important for the large companies?

Large companies in general have more famous brands. Therefore, probably in more cases, they will be targeted by trademark counterfeiters and copyright pirates. Then again, large companies can have more budget to protect (via design rights and copyrights) and enforce their intellectual property rights.

What do you think will be the future of fashion with little IP rights, in countries such as in China?

Fashion trends will change even faster. I can speculate that consumers will start to look more at quality.

Trends in fashion infringements: first brands and designs were copied. Now, although this still happens, a new category of infringements is becoming more prominent: only the design is infringed under a Chinese brand name. In other words, the trademark counterfeiters/copyright pirates are becoming only copyright pirates because they start to build their own brand name.

By the way: In the European Union each fashion designer who has created a design obtains (just like copyright) at the moment of creation a European Design Right for three years, which can be enforced in the EU. This is without registration! Just like copyrights.

What do you think are China's most influential factors for attracting piracy when it comes to the rampant copying of the fashion industry in this country?

China can manufacture clothes relatively much more cost-effective compared to companies in the West. And the distribution of wealth in China is uneven and much lower than in the West. Even in the West fashion is copied very frequently, or to put it differently: fashion designers are inspired by other fashion designers. And maybe fashion is not so suitable for copyright protection, because by definition

fashion designers build upon the designs or remix the designs of others. And fashion trends change so quickly anyway, first mover advantage is probably more important in fashion business than intellectual property protection. Please see chapter 8 of my thesis: Extra-judicial factors:

<http://ipdragon.blogspot.com/2007/09/thesis-paper-tiger-or-roaring-dragon.html>

Appendix 7.

Interview Young Designer Queenie Leung.

Graduate Fashion and Textile Design of Polytechnic University Hong Kong

Did you learn anything about IP rights in school?

I had one class on the subject, but they did not teach us much.

What did you learn?

We had a short introduction on the different types of protection, but the main outcome was that it was hard to protect your brand. You just have to be careful.

Do you feel you missed out on the subject?

I know this is a issue in fashion so I know there is more to know about this. I just don't know where to find the information. I am sometimes scared that when I design a garment for my own collection or my work that someone else will like it so much they will steal it. I put so much money and effort in to it, but yet I cannot do anything to protect my work.

Next to the things you learned in school, do you know anything else?

No.

What do you think about the IP protection in China?

I don't know very much about that.

Will this hold you back in terms of producing in China?

Because it is cheaper there I think I would consider it, but I will ask someone to help me when I want to produce in Mainland China.

Do you know who to go to?

I think I could look it up on the Internet, but now, I do not have an idea.

Do you think there should be more information about this for young designers?

If they want to start their own brand then it would be interesting to know more about it. If this is not the case then I trust the company I work for to take care of that.

Appendix 8.

Interview Young Designer Ivan Yip

Third year of Textile and Design of Raffles University Shanghai.

Did you learn anything about IP rights in school?

No.

Do you feel you miss out on this?

I had my own label with a friend of mine, but since I didn't have anything to do with the administrative side I don't feel that I needed the knowledge if I had it. Besides, I think not a lot of fashion designers are interested in aspects of law, although they might know it is helpful to them.

Next to the things you learned in school, do you know anything else?

No. I never had the urge to look it up.

What do you think about the IP protection in China?

I am aware of the huge amount of fakes that are being produced in China, but I don't know what I should think of this. I know that China is very poor and that it is a fast way to make money. I think China is the most important country in the world in terms of the copying of designs, but I do not think this is bad for the industry. People have to make a living, right?

Will this hold you back in terms of producing in China?

I would much rather go to Beijing because the culture is different and there are more subsidies. Although I didn't think about the poor IP rights, this would not hold me back. I think that Beijing is even more a creative city than Shanghai or Hong Kong for example, where everyone is doing the same thing.

Do you think there should be more information about this for young designers?

If they are seriously thinking of going to China and setting up a brand there, there is need for more information. I also think that it is possible to look it up on the Internet, but in school we learn that there is someone for everything, that designers should do their work and let other people do theirs. I agree with this and think people that know about law and such things should be the ones concerned with those matters.

Appendix 9.

Interview Young Designer Gerr Ng Yuen Yi

Third year of Accessory Design at Mod' Art International School Beijing

Did you learn about IP rights in school?

No, the only school that I know of that they teach IP rights in is Central St. Martins in London. The reason I think that they don't teach IP rights at the Mod' Art International School is that it is too expensive. If you want to look up information about topics that weren't discussed in class or that you want to know more about, you visit the Trade Development Library, where they have books on all different kind of topics concerning fashion and IP rights.

Did you learn anything else in practice?

In the fashion world in Hong Kong people do not make use of your head, but of your hands. Right now I am working for Dragonmodels, which is actually a toy company. There is no need to create in China, design is dead here. In my work, people tell me what to design and what it has to look like.

What is your knowledge of IP rights in China?

I don't know a lot about IP rights.

Will the poor IP rights hold you back when producing in China?

Since I don't know if things are so different here, I don't know how it would be different. I do feel that if there is a lot of copying in China, they only copy the famous and interesting pieces, so if they copy me there it would mean that I am famous and a trendsetter. By all the copying I also think that the production cycle is spurred, there is more 'fast fashion' if you look at H&M and such. I think the biggest difference between other countries and China is that China is so big, there is more space to think and developed, in for example Shanghai and Beijing. In China people treasure their spirit, Hong Kong treasures the foreigners.

Do you think there should be more information on IP rights for young designers?

I would like to have a class on this topic, because I think it is very influential in the design world. Also I don't know a lot about it and when you want to have your own label or business it is very important to know about this.

Appendix 10.

Interview Young Designer Yin Shu
Graduate Textile and Design of IFA.

Did you learn anything about IP rights in school?

We learned a bit during design classes. Mostly that it was not allowed to copy each others works. We did not learn anything specific.

Do you feel you miss out on this?

I think if I had my own label it would be a lot more difficult if there was no knowledge that I could use. I read a lot of fashion magazines and when I go shopping I always see copies of copies of copies that once I saw in a magazine. Although I like to buy the affordable designs that look a lot like the originals, I don't know if this is good for the industry.

Next to the things you learned in school, do you know anything else?

Since we did not learn a lot in school it is difficult for me to know what to look up if I wanted to. Also, it is not very useful to me now.

What do you think about the IP protection in China?

This country is a very big country where a lot of things happen. I think it is difficult for the government to check everything and that is why there are so many copies made of designs. I once heard that Nike took some pirates to court, but had a hard time winning the case because there was something wrong with the registration of Nike. I think that something like that can only happen in China, where the own culture is so strong that people maybe rather buy a knock off shoe that looks like Nike, but is a Chinese brand, than to support Americans or other countries. Although I think this is more important for old people, and not so much the younger generation, I think this influences the protection of such rights in China.

Will this hold you back in terms of producing in China?

I would like to set up my own label in China. As I said, China is a large country with a lot of people that maybe like my designs. The fact that they could like it so much they want to copy it does not really influence my dream.

Do you think there should be more information about this for young designers?

Only if they need it. And if they need it, it is always possible to look it up yourself, on the Internet or in a library. I don't know if it is important for young designers to be taught about it in school. The

subject might bore people, but a short introduction or some information could be helpful, just to start with.

Appendix 11.

Interview Young Designer Sheila Pitigala

Working on her own label in Shanghai

Why did you choose China to start your business?

A friend of mine was doing an internship at Louis Vuitton and after quitting he decided to start his own business, and to create a collection of accessories made with cotton, because he thought it was going to be easy in China. He needed a fashion designer, so he asked me to join him in Shanghai.

Do you have any knowledge on IP rights?

I did not learn a lot in school, especially concerning IP rights in China. I do know that Europe has an extensive protection for designs, and I also know that China is not the best country in the world for the protection of designs, but other than that I don't know anything about the topic.

Would you like to know more on the subject?

Yes. I think it is very helpful to designers to understand this subject. It can harm the label terribly when there is no protection for it. I think if there was a website with short statements that could help me I would very much like to read it. I tried to look it up here once, but either the information is in Chinese, or it is not specified on fashion. I think it is hard to find the right information.

Do you have any help from people concerning the protection of your designs?

We have an American friend who works for a sourcing company that accepted to work with us and helps on searching factories, and gave us a document to sign which is an agreement, or better say a deal with the factories that protects our designs legally.

Are you scared your designs will get copied or do you think this will help your designs?

We're really scared they can copy our designs, because we're producing for summer 2010 and that means they have a whole year to copy us...but we're quite sure it's very hard for them to understand the style beneath, as we can see dealing with factories.

Do you think the fashion industry in Italy differs a lot from the one in China for young designers? In which way?

Italy doesn't have a lot to offer at the moment, many friends of mine are still waiting to get a job after a year of research, and for me coming to China was an important opportunity to learn about the fashion industry directly more than what I could expect remaining in Italy, which right now is still, and not very open to young designers.

Appendix 12.

Interview Tim Hoar

Business Development Manager Student IP

Central Saint Martins College Of Art and Design

What courses does CSM offer on the topic of IP rights?

In regards to IP being taught formally at CSM, this varies from course to course, it is however part of PPD (Personal and Professional Practice). So some students will receive talks as part of this section of their course.

How do you teach your students on the topic next to the courses?

The way that we ensure that all students and graduates have access to current knowledge on Intellectual property is through an organization called www.own-it.org This is a service set up originally by University of Arts London (of which CSM is a part) but is available to all creative businesses in London. In addition it has a section called 'own it uni' specifically for free advice for current students.

Appendix 13.

Interview International Fashion Academy Shanghai

Dominique Simard

Marketing and Business Development Director

Do you educate the students concerning IP rights in Fashion? Why, or why not?

As much as I know this topic is not part of our curriculum. But may be approached by instructors from time to time.

What do you teach them, if the previous answer is yes?

We ensure that students do not copy others garment in their own collection.

Do you think their knowledge is sufficient?

When it comes to their own right, I would say that it is not on their mind yet.

Do you think knowledge on IP rights in fashion is more needed by young fashion designers in China than by designers elsewhere in the world?

I think that knowledge on IP rights in fashion is an important part of the industry. Especially in a country like China, where history dictates the future. The interest of young designers might not be in this particular field, yet they should gain more knowledge on this topic. If we cannot give it to them, they should be stimulated to look it up their selves.