

The African Fashion Design Industry: Capturing Value Through Intellectual Property

Executive Summary



This report is based on findings obtained from field visits conducted by a team of three consultants in the African fashion industry in 2011. Desk-based research was also conducted to supplement the findings of the field visits in order to address the overall objectives of the report. Consultations took place in seven African countries: Cameroon, Ethiopia, Ghana, Nigeria, Senegal, South Africa and Zimbabwe, and in the European fashion capitals of London, Paris and Milan. The rationale for the report is to demonstrate the role of intellectual property (IP) in enhancing the protection and commercialisation of African fashion design assets, thus capturing additional value for the African fashion design industry and contributing to the development of the sector. While the report provides a useful basis for examining the role that IP can play in African fashion, further rigorous research that builds on this report may provide a more holistic analysis.

Introduction

The fashion industry involves significant creativity and innovation, satisfying the criteria of both aesthetic design and utility to consumers. Fashion designs may also be manifestations of art, culture and symbolism. Globally, fashion is a multi-billion dollar industry and creates jobs for designers, models, beauticians and make-up artists, producers, textile designers, manufacturers, event organisers and more. It is also intrinsically linked to other creative industries, including the arts, film and music. This report was commissioned by WIPO to examine how better use might be made of the intellectual property (IP) system in the African fashion design industry.

Based on first-hand information and opinions collated during the field visits on the state of play in the African fashion design industry in seven African countries, the report asserts that the fashion industry can indeed make a positive contribution to Africa's development. However, there is a need for the establishment of quality design and modelling schools, for the launch and promotion of authentic African prêt-à-porter brands, for increased competitiveness in the local textile industry and for the adaptation of the textile industry to the international market. These are all essential advances requiring the involvement of governments. WIPO has previously conducted some work in the area of IP in the African textile industry, examining how IP could contribute to value creation for textile producers, along with an in-

vestigation of IP awareness in the sector.¹ The report largely confirms the findings of this previous WIPO work, notably how fierce international competition arising from the end of quotas and smuggling of counterfeit textile goods has impeded the development of local industries, and has thrived in an environment characterised by a severe lack of awareness of IP rights and their associated benefits.

It is vital for fashion enterprises to obtain sound legal advice at an early stage in order to appropriately protect their creativity through IP rights, and be able to realise their commercial potential. Fashion SMEs need to develop an IP strategy and incorporate it into their overall business strategy. Governments can create an enabling policy environment that is conducive to the operation of an effective IP system and the commercial success of SMEs, both of which are very much underpinned by the state of infrastructure and institutions within a particular jurisdiction. An effective system of IP protection and enforcement, together with institutions mandated to enhance commercial potential and allow the transfer of knowledge to take place, can create an enabling environment for innovation and creativity to flourish in the African fashion design industry and beyond.

1 Mould-Iddrisu, B. 'WIPO African Textile Report', August 2002 (internal report).

During the consultations in the selected countries, a number of fashion designers and fashion-related SMEs demonstrating significant commercial viability were observed. These included fashion houses, textiles and other related industries like leather processors. It was noted that the IP system could play an important role in commercial activity including branding, merchandising, licensing and franchising. However, with the exception of South Africa, the countries observed for the report were found to have an under-developed supply chain system as a result of their under-developed infrastructure, despite a growing fashion-sensitive middle class. Adequate IP laws were found to be in place in all the countries surveyed, and although issues relating to a lack of institutional capacity such as under-resourced IP offices and enforcement agencies remained problematic, infrastructural considerations appeared to be paramount.

Objectives of the Report

The report examines the state of business in the African fashion design industry at the time of the field visits, with special emphasis on the challenges, opportunities and constraints confronting the sector. It aims to appraise the understanding of the IP system and its use in association with relevant marketing and merchandising techniques to leverage the protection of local and indigenous creativity and to enhance the competitiveness and commercialisation of Africa's fashion design goods (e.g. clothing, apparel, textiles, furnishings and interior designs) in domestic and global export markets.

Recognising that fashion design is an emerging industry in Africa in which women are increasingly active, the report also gives special consideration to the specific plight of women designers and other professionals in the industry (such as dress-makers, tailors and weavers), including from the informal sector. It recommends measures aimed at leveraging their potential for innovation and creativity and contributing to their empowerment and fulfilment.

Methodology

The scope of the field visits to the African fashion industry encompassed a wide range of fashion-related enterprises and professions, including designers and manufacturers of clothing, textiles, footwear, jewelry, accessories and, to a lesser extent, furniture and interior design. While a variety of individuals in the industry were consulted for the study, particular emphasis was placed on fashion designs in apparel and textiles. Some fashion designers consulted during the field visits extend their brands to interior design and home furnishing products, although the use of IP for these items tends to be rather different in international markets.

Having conducted the desk research on the themes and issues to be tackled in relation to the present state of business in the African fashion industry, the team of consultants carried out the following tasks:

- i. consultations with heads of relevant departments at WIPO;
- ii. identification of the existing IP laws and regulations in the countries to be surveyed and their membership of relevant international treaties;
- iii. evaluation of the various IP tools that may be used to protect fashion and related industries (e.g. trademarks, industrial designs and geographical indications);
- iv. research on the various stakeholders to contact, particularly African fashion designers and producers of related industry goods;

- v. preliminary discussions with a few representatives from the Permanent Missions of the African countries to be visited and with delegates attending WIPO meetings to exchange ideas for the field visits; and
- vi. survey and summary of publication material on the subject matter to provide a substantive foundation for the study.

The methodology suggests the European Union as the benchmark in terms of IP regulation in force and fashion education provided. International instruments that affect the African fashion industry are also outlined. The European fashion centres of London, Paris and Milan were visited to appraise the curriculum of fashion education provided at some well-known training institutions at which aspiring African fashion designers could study. To summarise, while other regions such as Asia may be better comparators for the African continent in terms of the level of development, the European Union was selected as a jurisdiction that provides useful insight for the following reasons:

1. the EU is a key export region;
2. it has advanced IP rights jurisdictions;
3. it is home to some of the main fashion design centres; and
4. it is the location of world-renowned fashion education hubs.

The report relies largely on qualitative research conducted through semi-structured interviews/questionnaires during consultations. Four main methods of data collection were used to present the find-

ings of the report: (1) publication review; (2) discussions with WIPO senior staff; (3) consultations with a sample of designers, SMEs and industry associations in the seven African countries; and (4) consultations with government ministries and IP offices. Questionnaires were used to assist in the process of data collection from stakeholders during the field visits.

The issues that the report addresses can be summed up in these two research questions:

How can IP be used to capture value in the African fashion design industry?

What challenges and opportunities exist in enhancing innovation and creativity through IP in the fashion design industry in Africa?

Limitations of the report

The field visits covered a sample of only seven Sub-Saharan African countries, covering the eastern, western, central and southern regions of the continent. Some data may have changed since the field visits in 2011.² Therefore, some of the information gathered at the time may now be outdated.

Statistics in the sector were difficult to acquire in almost all the countries visited. Respondents of interviews/questionnaires were sometimes reluctant to disclose some figures, such as earnings. Other figures were also likely to be over-stated or understated, depending on the circumstances. A more comprehensive study involving greater data collection of statistical material was beyond the scope of this project. Additional research could be conducted in future to complement the findings.

2 For example, a leather tannery business in Ethiopia, Debre Berhan Tannery PLC, has since been reported to be in liquidation. A telephone conversation with a representative from the Addis Ababa Chamber of Commerce on 5 June 2015 supported this view.

Overview of Report

Taking into consideration some of the publications in the field, and using the findings obtained from the consultations during the field visits in the respective countries, this report serves as a useful basis for assessing the role of IP in capturing value in the African fashion design industry. By providing a summary of the state of affairs in the fashion design industry in the seven countries visited, it attempts to identify ways in which IP can be incorporated to add value for the commercialisation of fashion design assets, including those that may be considered as traditional cultural expressions. The findings present some of the necessary IP elements which African fashion designers and related SMEs may consider to capture value for their businesses, for which governments, international organisations, NGOs and related institutions should consider in formulating a comprehensive development programme which incorporates IP into various areas in public policy as a means of advancing the fashion industry.

The report consists of the following chapters:

1. IP Subject Matter and Scope of Protection Under International Instruments and European Union Regulations

Africa's fashion designs have great potential to compete in the global fashion industry. In this light, it is important to appreciate how the IP system operates beyond the continent's borders, particularly within key export markets. Fashion is a global business and IP rights extend into the international trading system through various international treaties. This chapter outlines some of the IP rights that are relevant to the fashion design industry and their scope of protection under international instruments. As the European Union is the largest export market, this chapter also highlights how the IP system can operate in this region for the fashion design industry and includes a brief description of some of the filing and registration procedures for relevant IP rights.

2. IP Rights in Africa: The Scope of Protection for the Fashion Industry

A general lack of reliance on and awareness of IP within the African fashion industry was prevalent in all the countries visited, with South Africa and Nigeria faring better than the rest. This chapter highlights the national, regional and international legal mechanisms available to the fashion design industry in the seven African

countries observed with respect to IP protection. It provides a summary of feedback received from the field visits on how designers use the IP system and outlines some of the factors prohibiting the utilisation of IP in the fashion design industry.

3. IP Strategies for the African Fashion Industry

Developments in trade on the African continent have created growing possibilities for the African fashion industry to strategically exploit IP assets through licensing, franchising and merchandising, which may effectively capture value, increase income and expand business operations. This chapter outlines some of the useful ways to incorporate IP for commercialisation and offers best-case examples of how African fashion businesses have successfully achieved this. IP strategy must be fully integrated with the overall business strategy of enterprises, ensuring that even partners such as suppliers have an understanding of the brand and how the business model operates, in order for the enterprises to benefit from commercial engagements.

4. IP and Traditional Designs

Manifestations of tradition and culture are a source of inspiration and creativity for the fashion industry. This chapter focuses on the possible opportunities that IP protection presents for fashion designs that may be considered as traditional cultural expressions (TCEs). In doing so, it provides a description of the key terms and

also highlights some IP tools that may be useful for the protection of TCEs in some national and regional contexts in Africa. In this respect, the Ghanaian kente and adinkra cloths were considered to be significant examples of traditional designs by stakeholders during the consultations that took place in the field visits. Moreover, Ghanaian law also includes provisions for the protection of kente as a TCE under conventional copyright law. The chapter concludes with a summary of the possible advantages and disadvantages of utilising existing IP laws for the protection and commercialisation of TCE designs in the context of the African fashion design industry.

5. Education, Innovation & Technology in Fashion

Education on IP with a focus on fashion innovation will inspire further original design and entrepreneurship. This chapter highlights the challenges and opportunities facing the African fashion design industry in drawing synergies between education, innovation and IP utilisation. It also highlights the fashion education curriculums in international fashion centres of excellence for comparison with some fashion schools in Africa. Some of the recent industry developments in technology and innovation in the fashion design industry, such as 3D printing, are outlined, to demonstrate the value added benefits these can bring to the African fashion design industry and to address some of the IP-related opportunities and challenges confronting the sector.

6. The Role of IP in Promoting Ethical Issues and Sustainability in Fashion

IP tools have the potential to help leverage sustainable economic gains and social development in the African fashion design industry. This chapter discusses the role of IP in promoting sustainability in the fashion industry, which may also be applicable to the African context. Several fashion designers and fashion-related enterprises in Africa and elsewhere often incorporate a social dimension into their business models, such as providing youth employment, empowering women and eradicating poverty. An overview of the principles of sustainable and ethical fashion is presented and demonstrates how various social initiatives aim to tap into this concept through the use of IP tools.

Conclusions & Policy Recommendations

The African fashion design industry may be able to effectively use the IP system to capture value, enhance the protection and commercialisation of its designs, and stimulate long-term competitiveness with the adoption of a clear strategy and a set of holistic policy considerations. The report finds that while talent and creativity in African fashion designs in the seven countries surveyed have enormous potential to advance further, there are significant challenges that need to be tackled in order to ensure the sustainable development of the industry. The African fashion industry requires the conditions and support that are necessary to take advantage of the many opportunities, including the advantages that the IP system presents.

In this regard, it is important to conduct a more detailed analysis of the challenges and opportunities faced by the fashion industries of African countries and outline a range of initiatives for the short and long term. The objective of the short-term initiatives is principally to address the general lack of awareness of IP rights in the African fashion design industry and to provide a practical demonstration of the value-capturing possibilities that the IP system presents for the industry. The long-term initiatives should consist of a strategy to create the conditions that would be conducive to the African fashion

industry to seize the current and future opportunities for sustainable growth.

The report also makes the following specific policy recommendations:

- National IP Offices should be continually strengthened in order to establish effective synergies with various ministries and government agencies, such as the Ministries of Trade and Industry and Culture and Tourism, in formulating national IP policies incorporating the fashion design industry.
- There should be capacity-building of IT services for national IP Offices – specifically in the areas of developing online presence through websites and provision of IP filing and registration services for customers.
- The lack of cross border cooperation between industry associations in the African countries should be addressed by establishing cross-border IP licensing platforms. Governments can be instrumental in facilitating and supporting these types of industry initiatives.
- Training seminars on the value-added benefits of IP in the fashion industry and on the filing and registration procedures of IP rights that are of great relevance to fashion designs should be organized.
- Partnerships should be forged with international fashion schools to establish exchange student programmes for cross-learning between African and non-African fashion students, as this can inspire creativity and innovation.
- IP elements should feature in the curricula of fashion schools. Likewise, as many training programs in export market access often include market standards and regulations, these could also incorporate training in IP regimes within export markets.
- Government incentives such as preferential credit schemes to women fashion designers can enable gender empowerment in the fashion trade by incentivizing the use of IP as a form of collateral.
- Establishing collective marks or certification marks for associations or cooperatives of women fashion designers could encourage gender empowerment.
- Undertaking a mapping exercise in the seven African countries observed is worthwhile to identify those assets that may be regarded as traditional knowledge or traditional cultural expressions in the fashion design industry.
- Establishing fabrication laboratories – or “fab labs” – for the use of 3D printing facilities has the potential to reduce costs and increase innovation in the African fashion design industry. Government support may enable the acquisition of such revolutionary technologies through subsidies and/or sponsorship, and promoting the protection of IP that may result from such innovations should be encouraged.
- Relevant pilot projects should be implemented to demonstrate the strategic importance of IP for SMEs in the fashion design industry in Africa, for example on how trademarks and design protection can enable branding for value capture in the traditional textile sector.

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