

The Legal Landscape of Cultural Appropriation in Fashion: U.S. Approaches and Global Implications

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The fashion industry is known for its creativity, diversity, and global reach. However, its engagement with cultural elements has often led to controversies, especially concerning cultural appropriation. Cultural appropriation in fashion refers to the use of elements from a minority or marginalized culture by those in a dominant cultural position, often without permission, acknowledgment, or respect for their significance.

This practice raises critical ethical and legal questions that transcend borders, affecting not only the countries where these cultures originate but also the fashion powerhouses that appropriate them.

In recent years, discussions around cultural appropriation have intensified, with the public, activists, and scholars demanding accountability from fashion brands. While some perceive it as a form of cultural appreciation or global exchange, others argue that it commodifies and exploits marginalized communities. This article explores cultural appropriation in the fashion industry, focusing on U.S. legal approaches and the broader global implications.

Understanding Cultural Appropriation in Fashion

Cultural appropriation in fashion occurs when brands or designers use symbols, clothing, patterns, or even hairstyles from another culture without understanding their significance or respecting the source community. Iconic examples include brands adopting Native American headdresses, African tribal patterns, or South Asian garments for commercial purposes, often without context or attribution.

The crux of the debate lies in the unequal power dynamics between the appropriating entity (usually a well-established, Western brand) and the marginalized culture from which elements are borrowed. The commodification of these cultural symbols strips them of their

meaning and turns them into fashion trends, devoid of their original context and significance. As a result, it can perpetuate stereotypes, reduce cultural identity to mere aesthetics, and, in some cases, distort historical or spiritual meanings.

U.S. Legal Approaches to Cultural Appropriation

In the United States, there are no specific laws directly prohibiting cultural appropriation in the fashion industry. However, several legal frameworks can be relevant in addressing some aspects of cultural appropriation:

1. Intellectual Property Law

One of the most common legal frameworks used to address issues of cultural appropriation is intellectual property (IP) law, which includes copyrights, trademarks, patents, and trade secrets. However, IP law often falls short when it comes to protecting traditional cultural expressions.

Copyright Law: In the U.S., copyright law protects original works of authorship, including designs, music, and art. However, it only applies to works that are “fixed in a tangible medium,” meaning that intangible cultural expressions like rituals or folklore are often not covered. Moreover, copyright law is focused on individual or corporate ownership, which conflicts with the communal nature of many traditional cultural expressions.

Trademark Law: Trademarks protect brands and symbols used in commerce. Indigenous or marginalized communities could theoretically protect their cultural symbols through trademark law. For example, the Navajo Nation has taken legal action against brands that used the term “Navajo” to sell clothing and accessories without permission. In 2012, the Navajo Nation sued Urban Outfitters for using “Navajo” in its product names, leading to a settlement in 2016. While this case represents a success for protecting cultural heritage, it also highlights the limitations of trademark law, as it primarily addresses commercial use and branding, not the cultural significance of the symbols themselves.

Patent Law: Patents are used to protect inventions and processes. However, traditional knowledge and cultural expressions are typically passed down orally and are not considered patentable under U.S. law. This makes patent law largely irrelevant to cultural appropriation cases.

2. The Indian Arts and Crafts Act (1990)

The Indian Arts and Crafts Act is a unique piece of legislation aimed at preventing the misrepresentation of Native American goods in the U.S. It prohibits the marketing of products as “Indian-made” if they are not actually made by a member of a federally recognized tribe or certified Native American artisans. Violations can result in both civil and criminal penalties.

This act offers some protection against cultural appropriation for Native American communities, particularly in cases where non-Native individuals or companies seek to profit from the sale of products falsely claiming Native American origin. However, the law is limited to “Indian-made” products and does not extend to the broader issue of non-Native designers incorporating Native American designs or symbols into their collections.

3. Cultural Heritage Laws

Some U.S. laws, such as the Native American Graves Protection and Repatriation Act (NAGPRA), are designed to protect cultural heritage by ensuring that sacred objects and human remains are returned to Indigenous communities. However, these laws are primarily focused on the protection of artifacts and have little bearing on fashion or other forms of contemporary cultural expression.

4. The Role of Traditional Knowledge and Cultural Expressions

The growing recognition of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE) as forms of intellectual property has brought some hope to communities seeking protection from cultural appropriation. TK refers to the know-how, practices, and innovations passed down within a community, while TCEs encompass the artistic, musical, or literary works intrinsic to a culture. Some legal scholars have argued that these forms of IP should be given protection akin to copyright or trademark law.

The Global Impacts of Cultural Appropriation in Fashion

While cultural appropriation is a legal and ethical issue within the U.S., it has global ramifications due to the international nature of the fashion industry. Major fashion houses operate on a global scale, meaning that their actions can affect communities worldwide.

1. Impact on Marginalized Communities

For communities whose cultural symbols and designs are appropriated, the consequences are significant. Cultural appropriation often leads to the commodification and trivialization of sacred or meaningful traditions. For example, Indigenous communities may see their sacred symbols used on runways or sold as mass-market items, stripping them of their original significance. This not only disrespects the culture but can also perpetuate harmful stereotypes about these communities.

Furthermore, when global fashion brands profit from cultural appropriation, they often do so without providing any benefit to the source communities. These communities may be economically marginalized, yet their cultural expressions are used to generate significant profits for large corporations.

2. Global Intellectual Property Challenges

The issue of cultural appropriation also highlights the shortcomings of international intellectual property law. Traditional knowledge and cultural expressions are often excluded from international IP protections, as they do not fit neatly into existing legal frameworks. While some international agreements, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), call for the protection of Indigenous cultural heritage, these declarations are non-binding and lack enforcement mechanisms.

Organizations such as the World Intellectual Property Organization (WIPO) have recognized the need for better protection of traditional knowledge and cultural expressions on a global scale. However, efforts to create binding international agreements have been slow, leaving many communities vulnerable to cultural appropriation by multinational fashion brands.

3. Cultural Appreciation vs. Appropriation

One of the complexities of the cultural appropriation debate is the question of where to draw the line between cultural appreciation and appropriation. Fashion is inherently a global and multicultural industry, and cross-cultural exchanges have long been a part of its evolution. However, the key distinction lies in the power dynamics and intent behind the use of cultural elements.

When fashion designers collaborate with artisans or communities to incorporate traditional techniques or designs into their collections, this can be seen as a form of cultural appreciation. In such cases, the source community benefits economically and is credited for its contribution. By contrast, appropriation occurs when cultural elements are used without permission, respect, or compensation, perpetuating unequal power dynamics.

Moving Forward: Addressing Cultural Appropriation in Fashion

To address cultural appropriation, the fashion industry must adopt more ethical practices. This can be achieved through a combination of legal reforms, industry self-regulation, and greater consumer awareness.

Legal Reforms: While U.S. intellectual property law is limited in its ability to protect traditional cultural expressions, there is room for improvement. Expanding protections for collective cultural heritage, either through national legislation or international agreements, could help prevent the exploitation of marginalized communities' cultural symbols.

Collaborations and Partnerships: Fashion brands should prioritize ethical collaborations with artisans and source communities. By working together and providing proper compensation and credit, designers can create meaningful and respectful cultural exchanges.

Consumer Responsibility: Finally, consumers play a crucial role in combating cultural appropriation. By supporting brands that engage in ethical practices and avoiding those that exploit cultural symbols, consumers can help drive change in the fashion industry.

Conclusion

Cultural appropriation in the fashion industry is a complex and contentious issue that touches on legal, ethical, and cultural dimensions. While U.S. legal approaches provide some avenues for addressing cultural appropriation, particularly through intellectual property and trademark law, they fall short of offering comprehensive protections for traditional cultural expressions. The global nature of the fashion industry further complicates these issues, as cultural appropriation has far-reaching impacts on marginalized communities worldwide.

Addressing cultural appropriation requires a multifaceted approach that includes legal reforms, industry accountability, and consumer awareness. By fostering ethical collaborations and respecting the cultural significance of the symbols they use, fashion brands can move toward a more inclusive and responsible future. *(Tripti Bhushan is Assistant Professor at Jindal Global Law School, O.P Jindal Global University. Email- tbhushan@jgu.edu.in)*