



FASHION BRANDS AS ART: EXPLORING DIVERGENT THINKING, COPYRIGHT, AND BRANDING STRATEGIES

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ABSTRACT

This study examines the dynamic relationships among copyright, branding, marketing, and cultural heritage protection within the context of fashion brands. Employing a combination of analytical-critical and legal-dogmatic approaches, the research integrates desk research, a case study methodology, and an extensive review of marketing literature. The analysis reveals that leading fashion brands leverage artification strategies to enhance their brand identity, captivate consumers, and boost financial performance. While artistic inspiration and design are central to the luxury and premium fashion sectors, the study demonstrates that major industry players often fail to comply with relevant legal frameworks. It highlights instances where prominent brands exploit the creative works of others, such as copyrighted art or cultural artifacts, anticipating minimal legal resistance from smaller entities like museums or foundations due to the high costs of litigation. These practices raise significant ethical and legal concerns, particularly regarding the unauthorized monetization of intellectual property. The findings underscore the tension between commercial interests and legal obligations, emphasizing the need for stronger enforcement of copyright and heritage protection laws to ensure fair use and respect for original creators. By exploring these intersections, the study contributes to a deeper understanding of how fashion brands navigate the complex interplay of creativity, law, and market dynamics.

Keywords: *fashion; art; brand; copyright law; cultural heritage; European Union law; art appropriation*

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1. INTRODUCTION

The fashion industry thrives on creativity, innovation, and the ability to captivate consumers through unique and compelling brand identities. Central to this dynamic is the concept of divergent thinking, which empowers designers and marketers to devise novel solutions by exploring a broad spectrum of possibilities. Divergent thinking, as explored by scholars such as Baer (2014), Acar and Runco (2019), Hocevar (1980), Lewis and Lovatt (2013), Nusbaum et al. (2014), and McCrae (1987), involves generating unconventional ideas that break from traditional linear thought patterns. This cognitive approach encourages individuals to think beyond conventional boundaries, fostering creativity and problem-solving skills essential for innovation in fashion design and branding. Unlike convergent thinking, which focuses on identifying a single optimal solution, divergent thinking emphasizes the exploration of multiple potential outcomes, making it a cornerstone of artistic and commercial success in the fashion sector.

Techniques such as brainstorming, mind mapping, and free association are instrumental in cultivating divergent thinking, as they allow individuals to generate a plethora of ideas without immediate judgment or critique (Baer, 2014; Lewis & Lovatt, 2013). These methods promote collaboration and the iterative development of concepts, enabling designers to draw inspiration from diverse sources, including art and cultural heritage. In the context of fashion, divergent thinking serves as a democratizing force, bridging the realms of art and apparel. The interdependence of these fields is profound, as fashion often draws on artistic traditions to create garments that transcend mere utility, becoming cultural artifacts in their own right (Palandri, 2020). This symbiotic relationship is further complicated by the legal frameworks governing intellectual property, particularly copyright, which shape how creative works are used and protected in both domains.

The interplay of branding, cultural heritage, and copyright is pivotal in understanding the fashion industry's intellectual property landscape. Branding, as defined by the World Trade Organization (2017), involves the use of distinctive names, symbols, or designs to differentiate a company's goods or services from competitors, thereby fostering consumer loyalty and enhancing market value (Caponigri, 2021). A robust brand identity not only drives economic success but also serves as a protective shield for a company's intellectual property, safeguarding its creative and commercial investments. In this study, branding is examined through an economic lens, focusing on its role in market differentiation and consumer perception, while discussions of trademark law are deliberately excluded to maintain a focus on copyright and cultural heritage (World Trade Organization, 2017).

Cultural heritage encompasses the traditions, customs, artifacts, and practices passed down through generations, embodying the identity and pride of a community (Corbett & Boddington, 2011). This heritage includes tangible elements like art and architecture, as well as intangible assets such as music and folklore, all of which are

integral to a society's cultural narrative. Protecting cultural heritage involves preserving these elements for future generations, ensuring their accessibility and integrity (Derclaye, 2010). In the fashion industry, cultural heritage often serves as a wellspring of inspiration, with designers incorporating traditional motifs, textiles, and techniques into contemporary designs to evoke authenticity and cultural resonance (Hakala et al., 2011; Amer, 2018).

Copyright, as a legal construct, grants creators exclusive rights over their original works, such as literature, music, or visual art, controlling their use and distribution (World Trade Organization, 2017). This protection safeguards both the economic and moral interests of creators, preventing unauthorized exploitation and ensuring fair compensation (Corbett, 2012). In fashion, copyright law protects original designs, logos, and marketing materials, although its application is nuanced due to the functional aspects of clothing, which may limit protection (Kiser, 2016). The heterogeneity of copyright laws across European Union (EU) member states, as noted by Ambrosino (2016) and Höpne and Schäfer (2012), adds complexity, with variations in moral rights and enforcement creating challenges for designers and brands operating internationally.

The intersections of branding, cultural heritage, and copyright are multifaceted and critical to the fashion industry's operations. First, branding and cultural heritage intersect when companies leverage cultural symbols or traditions to craft a distinctive brand identity (Hakala et al., 2011; Amer, 2018; Nobre & Sousa, 2022). For instance, a fashion house rooted in a specific region might incorporate local patterns or historical references into its designs, enhancing its brand's authenticity and appeal. This strategy not only differentiates the brand but also embeds it within a cultural narrative, fostering consumer connection and loyalty (Nobre & Sousa, 2022). However, such practices must navigate ethical considerations to avoid cultural appropriation, ensuring respect for the communities whose heritage is utilized (Derclaye, 2010).

Second, cultural heritage and copyright intersect through the legal protection of cultural artifacts. While original works are protected by copyright for the creator's lifetime plus 70 years, many traditional cultural expressions, such as folk songs or indigenous designs, fall into the public domain and are not copyrightable (Corbett & Boddington, 2011). However, ownership rights and cultural heritage laws can protect these artifacts from unauthorized commercial exploitation, preserving their cultural significance (Corbett, 2012). This protection is crucial in preventing the commodification of sacred or communal heritage by fashion brands seeking to capitalize on cultural trends.

Third, branding and copyright intersect in the creation and protection of branded materials. Logos, slogans, and advertising campaigns often constitute copyrighted works, requiring brands to secure permissions or create original content to avoid infringement (Matenaer, 2023; Kiser, 2016; Bomsel, 2013). While trademark law, which is outside this study's scope, protects brand identifiers, copyright law safeguards the artistic elements of branding, ensuring that competitors cannot replicate a brand's

creative assets (Kiser, 2016). This legal protection is vital for maintaining a brand's market position and preventing dilution of its identity.

These intersections manifest vividly in the fashion industry, where designers frequently draw inspiration from global cultural heritage. African wax prints, Japanese kimono fabrics, and Indian embroidery techniques are among the traditional elements integrated into modern fashion, creating designs that resonate with consumers seeking authenticity (Palandri, 2020). As Palandri (2020) notes, the relationship between fashion and art has deepened over time, with historical collaborations like Yves Saint Laurent's Mondrian dress and Andy Warhol's Souper dress in the 1960s paving the way for contemporary partnerships. Designers such as Rei Kawakubo, Hussein Chalayan, Martin Margiela, and Alexander McQueen have further blurred the lines between fashion and art, elevating garments to the status of artistic expressions (Palandri, 2020). In recent decades, collaborations between fashion brands and artists have proliferated, driven by a mutual desire to innovate and captivate audiences (Kapferer, 2014).

The process of artification, whereby fashion transcends its utilitarian purpose to become art-like, is central to this dynamic (Massi & Turrini, 2020). By incorporating high-quality materials, intricate designs, and artistic collaborations, fashion brands enhance their perceived value and cultural significance (Kapferer, 2014). This strategy not only strengthens brand identity but also aligns with consumer demand for unique, meaningful products. However, the use of cultural heritage in branding raises legal and ethical questions, particularly when brands fail to obtain permission or compensate communities for their cultural contributions (Derclaye, 2010). Copyright and cultural heritage laws play a critical role in regulating these practices, ensuring that the use of cultural elements is respectful and equitable (Corbett, 2012).

The legal landscape for fashion brands is further complicated by the heterogeneity of EU copyright law, as highlighted by Szpunar (2019) in the Cofemel case. While the EU Copyright Directive (Directive 2001/29/EC) establishes fundamental principles, member states implement these rules differently, leading to variations in moral rights and enforcement (Hugenholtz & Senftleben, 2011; Rosati, 2021). Moral rights, recognized under the Berne Convention and EU law, grant creators non-economic protections, such as the right to attribution and the right to prevent derogatory treatment of their work (Díaz, 2010). However, the scope and enforcement of these rights vary across EU countries, creating challenges for brands operating in multiple jurisdictions (Ambrosino, 2016). This legal patchwork complicates the balance between creative freedom and intellectual property protection, particularly in cases of art appropriation or cultural borrowing.

In conclusion, the introduction sets the stage for a comprehensive analysis of how divergent thinking, branding, cultural heritage, and copyright intersect in the fashion industry. Divergent thinking fuels creativity, enabling designers to innovate and redefine fashion as art (Baer, 2014; Acar & Runco, 2019). Branding leverages cultural

heritage to create distinctive identities, but must navigate legal and ethical boundaries to avoid exploitation (Hakala et al., 2011; Nobre & Sousa, 2022). Copyright law protects original works, yet its heterogeneous application across the EU poses challenges for global fashion brands (Rosati, 2021). By examining these intersections, this study aims to illuminate the complex dynamics shaping the fashion industry, offering insights into how brands can balance creativity, legality, and cultural sensitivity to achieve sustainable success.

2. BALANCING ART AND COMMERCE

The luxury fashion industry is deeply influenced by artistic inspiration, particularly at its highest echelons, where creativity shapes not only products but also the essence of brand identity. Rather than beginning with the design of a garment, the creative process often focuses on crafting a distinctive brand personality that resonates with consumers, fostering recognition and emotional attachment (Nässel & Persson, 2011; Geiger-Oneto et al., 2013). This brand identity transforms fashion items into symbols of personal expression, allowing consumers to align their self-image with the brand's values. The emotional impact of a brand whether evoking love, desire, or even controversy creates a powerful “brand share” in consumers' minds, influencing their purchasing decisions and loyalty (Geiger-Oneto et al., 2013). This phenomenon is exemplified by the concept of “fashionless fashion,” introduced by Miuccia Prada and Patrizio Bertelli, where a brand's allure overshadows the simplicity of its products, commanding premium prices despite minimal design complexity (Masè & Silchenko, 2017).

The concept of a brand remains elusive in legal terms, often described vaguely as reputation or goodwill (Jankowska & Pawełczyk, 2023). However, marketing scholarship provides a richer framework for understanding branding. Padela et al. (2023) propose four perspectives product- and firm-centric, consumer-centric, relational, and sociocultural—that encompass various branding theories. These include corporate branding (Knox & Bickerton, 2013), brand equity (Keller, 2013), brand identity (Aaker, 1996), and brand personality (Aaker, 1996), among others. Sociocultural branding is particularly relevant, viewing brands as cultural resources imbued with myths and associations that evolve with societal values (Bergvall, 2006). This perspective highlights a brand's “halo effect,” transforming it into a cultural artifact that transcends mere commerce (Bergvall, 2006). For instance, luxury brands like Prada leverage this cultural resonance to create an aura of exclusivity, making their products desirable beyond their functional attributes (Masè & Silchenko, 2017).

In luxury fashion, brand identity is not just about aesthetics but about crafting narratives that captivate consumers. Designers aim to evoke emotions that make products aspirational, embedding them within a broader cultural and artistic context (Biel, 1997; Keller, 2003). This emotional connection allows brands to command loyalty even when product features are unremarkable, as seen in the success of “fashionless fashion” (Masè & Silchenko, 2017). Moreover, brands adapt to reflect

shifts in sociocultural values, ensuring relevance in a dynamic market (Padela et al., 2023). By positioning themselves at the intersection of art and commerce, luxury fashion brands create identities that are both commercial enterprises and cultural phenomena, shaping consumer perceptions and market dynamics.

3. ELEVATING APPAREL TO ART

The luxury fashion industry has increasingly embraced the concept of artification, a transformative process that elevates functional garments and accessories into objects of artistic value, blurring the boundaries between fashion and fine art. Artification, as explored by scholars such as Massi and Turrini (2020), Crane (2019), Kastner (2014), Kapferer (2014), and Mendes and Rees-Roberts (2015), involves infusing fashion with creativity, cultural significance, and aesthetic innovation to transcend its utilitarian purpose. This approach redefines fashion items as cultural artifacts, appealing to consumers who seek not only style but also meaning and exclusivity. By integrating artistic elements, luxury brands enhance their perceived value, positioning themselves as purveyors of art rather than mere commodities (Kapferer, 2014).

Artification manifests through various strategies, including the use of premium materials, intricate craftsmanship, and unique design elements that prioritize aesthetics over functionality (Crane, 2019). For example, Chanel's iconic tweed jackets, adorned with elaborate embroidery and embellishments, exemplify how meticulous artistry can transform a garment into a work of art (Chanel, 2023). Such designs elevate fashion beyond its practical role, inviting consumers to appreciate clothing as an expression of creativity and cultural heritage. The process also involves reimagining traditional fashion boundaries, incorporating bold shapes, patterns, and textures that challenge conventional design norms (Massi & Turrini, 2020). This shift reflects a growing consumer demand for fashion that resonates on an emotional and intellectual level, aligning with broader cultural trends toward individuality and authenticity.

A key driver of artification is the collaboration between fashion designers and contemporary artists, which fosters innovative designs that merge the sensibilities of both fields (Black & Veloutsou, 2017; Kapferer, 2014). These partnerships create pieces that defy traditional categorizations, positioning fashion as a medium for artistic expression. Notable examples include Louis Vuitton's 2017 collaboration with Jeff Koons, where handbags featured reproductions of iconic artworks like the Mona Lisa, infused with Koons' signature "Gazing Ball" aesthetic (Vogue British, 2017). Similarly, Dior's 2019 partnership with Marc Quinn produced haute couture dresses adorned with vibrant, nature-inspired prints from Quinn's "Garden" series, blending fashion with fine art (Dior, 2019, as cited in the original document). Gucci's collaboration with artist Unskilled Worker (Helen Downie) introduced whimsical, colorful designs to its signature accessories, while Alexander McQueen's 2008 collection with Sarah Lucas incorporated provocative, avant-garde elements, showcasing the potential of art to redefine fashion's boundaries (Gucci, 2016; Alexander McQueen, 2008, as cited in the original document).

These collaborations not only enhance brand prestige but also cultivate a sense of cultural relevance, appealing to consumers who value creativity and innovation (Baumgarth, 2018; Chailan, 2018). By aligning with artists, fashion houses tap into the cultural capital of the art world, reinforcing their status as leaders in luxury and innovation (Codignola & Rancati, 2016). This strategy also serves as a marketing tool, generating buzz and differentiating brands in a competitive market (Jelinek, 2018). However, these partnerships must navigate legal considerations, particularly copyright, to ensure that artistic contributions are used ethically and with proper permissions (Krim, 2022).

Beyond collaborations, artification is advanced through strategic brand activities that align fashion with the arts. Luxury brands engage in sponsorships, fundraising, and exhibitions to strengthen their artistic credentials (Dion & Arnould, 2011). For instance, displaying fashion items in museums and galleries, as seen with Italian brands under protective copyright legislation, elevates garments to the status of cultural artifacts, shielding them from commodification (Kapferer & Bastien, 2012). This approach not only enhances brand prestige but also reinforces the narrative that fashion is a legitimate art form, worthy of preservation and study (Massi & Turrini, 2020). Additionally, brands employ artistic directors who bring a curatorial vision to collections, further embedding art into the design process (Kastner, 2014).

Consumer expectations play a pivotal role in driving artification, as modern audiences demand high-quality, sustainable, and culturally resonant products (Beard, 2019). Designers respond by drawing inspiration from the arts, creating collections that reflect both contemporary trends and timeless creativity. However, this pursuit of artistic excellence often conflicts with commercial imperatives. Miuccia Prada eloquently captures this tension, noting that while fashion shows allow for pure creative expression, the reality of market demands such as sales performance and consumer preferences requires pragmatic adjustments (Wingfield, 2016). This duality underscores the challenge of balancing art and commerce, where designers must navigate the fine line between innovation and marketability (Beard, 2019).

The artification of fashion reflects a broader cultural shift toward valuing clothing as more than functional attire. By transforming garments into artistic expressions, luxury brands cater to consumers who seek to engage with fashion on a deeper level, appreciating its aesthetic and cultural significance (Crane, 2019). This process not only enhances brand loyalty but also positions fashion as a dynamic contributor to the cultural landscape, capable of sparking dialogue and inspiring creativity (Mendes & Rees-Roberts, 2015). As artification continues to gain momentum, it underscores the evolving relationship between fashion and art, where each informs and elevates the other, creating a vibrant intersection of creativity, commerce, and culture.

4. PARAPHRASED DIVERGENT THINKING AND COPYRIGHT LAW IN FASHION

Divergent thinking, characterized by the generation of creative and unconventional solutions, plays a pivotal role in both fashion design and the evolving landscape of

copyright law. This cognitive approach, which encourages exploring multiple possibilities rather than converging on a single solution, is essential for innovation in creating original works and navigating the complex legal frameworks that protect them (Acar & Runco, 2019; Lewis & Lovatt, 2013). In the fashion industry, where creativity drives brand differentiation, divergent thinking enables designers to produce distinctive designs while simultaneously challenging the boundaries of intellectual property law. However, the application of copyright law to fashion is fraught with challenges, particularly due to the functional nature of clothing, which often limits legal protections, and the ethical complexities surrounding cultural appropriation (Corbett, 2012; Kiser, 2016).

Copyright law grants creators exclusive rights over their original works, safeguarding both economic and moral interests by controlling reproduction and distribution (World Trade Organization, 2017). In fashion, copyright protects elements such as unique textile patterns, logos, and advertising materials, but its scope is constrained by the utilitarian aspects of garments, which may not qualify as purely artistic works (Kiser, 2016). The legal landscape is further complicated by the heterogeneity of copyright regulations across jurisdictions, particularly within the European Union (EU), where variations in moral rights and enforcement create challenges for brands operating globally (Ambrosino, 2016; Rosati, 2021). Divergent thinking in this context involves reimagining legal strategies to protect creative outputs while addressing these inconsistencies, fostering innovative approaches to intellectual property management (Hugenholtz & Senftleben, 2011).

The intersection of fashion and art, facilitated by divergent thinking, raises significant legal and ethical questions, particularly in cases of art appropriation and cultural borrowing. Fashion brands frequently draw inspiration from existing artworks or cultural heritage, integrating elements like African wax prints or indigenous motifs into their designs (Palandri, 2020). While such practices can enhance brand identity, they often lead to allegations of unauthorized use, as brands may exploit copyrighted works or cultural artifacts without permission, anticipating minimal legal resistance from smaller entities due to the high costs of litigation (Corbett, 2012). This dynamic highlights a critical ethical tension: the creative freedom enabled by divergent thinking must be balanced against the rights of original creators and communities, ensuring respect for intellectual property and cultural significance (Derclaye, 2010).

The case of Louis Vuitton's 2017 collaboration with Jeff Koons illustrates the complexities of art appropriation in fashion. The collection featured handbags adorned with reproductions of iconic artworks, such as the Mona Lisa, raising questions about copyright compliance and the ethical use of public domain works (Vogue British, 2017). While the project secured necessary permissions, it sparked debate about the commercialization of cultural heritage, underscoring the need for transparent and equitable practices (Krim, 2022). Similarly, controversies surrounding Gucci's 2018 turban-inspired headwear and Dolce & Gabbana's 2015 "Mamma" collection, which

drew on cultural and racial stereotypes, highlight the risks of cultural appropriation when brands fail to engage respectfully with source communities (The Fashion Law, 2018, 2019). These examples demonstrate how divergent thinking, while fostering innovation, can lead to ethical missteps if not guided by legal and cultural sensitivity.

The fashion industry's engagement with cultural heritage further complicates copyright considerations. Traditional cultural expressions, such as indigenous designs, often fall into the public domain and are not copyrightable, yet they may be protected by cultural heritage laws or ownership rights (Corbett & Boddington, 2011). Brands that incorporate these elements without permission risk accusations of exploitation, particularly when they profit from sacred or communal heritage without compensating the originating communities (Derclaye, 2010). Divergent thinking in this context involves exploring alternative approaches, such as collaborative partnerships with cultural stakeholders, to ensure ethical use and mutual benefit (Hakala et al., 2011). For instance, brands could engage indigenous artisans in the design process, sharing profits and acknowledging cultural contributions, thereby aligning creativity with ethical responsibility.

The legal framework for addressing cultural appropriation in fashion is evolving, with courts increasingly recognizing the need to protect cultural heritage. Cases like *Navajo Nation v. Urban Outfitters* (2016) demonstrate the potential for legal recourse when brands misuse cultural symbols, emphasizing the importance of respecting intellectual property rights beyond traditional copyright (The Fashion Law, 2016). However, the high cost and complexity of litigation often deter smaller entities, such as museums or indigenous communities, from pursuing claims, allowing larger brands to exploit legal loopholes (Corbett, 2012). Divergent thinking can address this imbalance by encouraging innovative legal strategies, such as collective licensing models or advocacy for stronger cultural heritage protections, to empower marginalized creators (Hugenholtz & Senftleben, 2011).

Ultimately, the integration of divergent thinking into copyright law offers opportunities to enhance the fashion industry's ethical and legal practices. By fostering creative problem-solving, brands can develop strategies that respect intellectual property while embracing cultural diversity (Acar & Runco, 2019). This approach requires a commitment to transparency, collaboration, and compliance with legal frameworks, ensuring that the pursuit of innovation does not come at the expense of original creators or cultural communities. As fashion continues to blur the lines between art and commerce, divergent thinking will be essential in navigating the complex interplay of creativity, law, and ethics, shaping a more equitable and sustainable industry.

5. PARADOX OF LOUIS VUITTON AND CHRISTIAN LOUBOUTIN

Luxury fashion thrives on the delicate interplay between tradition and disruption, where brands like Louis Vuitton and Christian Louboutin embody a form of iconoclasm that challenges conventional norms while navigating complex legal and ethical

landscapes. Iconoclasm, in this context, refers to the deliberate breaking of established conventions, enabling brands to redefine cultural and aesthetic boundaries through bold, innovative designs (Masè & Cedrola, 2017). However, this creative rebellion often clashes with intellectual property laws and cultural sensitivities, creating a paradox where brands risk legal disputes and public backlash while leveraging controversy to enhance their market presence (Palandri, 2020). The cases of Louis Vuitton and Christian Louboutin illustrate this tension, highlighting how iconoclastic branding can simultaneously elevate a brand's status and expose it to significant legal and ethical scrutiny.

Louis Vuitton's 2017 collaboration with artist Jeff Koons, known as the "Masters" collection, exemplifies iconoclastic branding by reimagining classic artworks on luxury handbags. The collection featured reproductions of iconic paintings, such as Leonardo da Vinci's *Mona Lisa* and Vincent van Gogh's *Wheat Field with Cypresses*, adorned with Koons' signature "Gazing Ball" motifs and Louis Vuitton's monogram (Vogue British, 2017). This bold fusion of high art and luxury fashion disrupted traditional notions of both fields, positioning the handbags as cultural artifacts rather than mere accessories (Kapferer, 2014). However, the project sparked debate over the commercialization of public domain artworks, raising questions about ethical boundaries and copyright compliance, even though permissions were secured (Krim, 2022). The controversy amplified Louis Vuitton's visibility, demonstrating how iconoclasm can serve as a strategic marketing tool, albeit one that requires careful legal navigation to avoid infringement claims (Jelinek, 2018).

Similarly, Christian Louboutin's signature red-soled shoes represent an iconoclastic approach to footwear design, transforming a functional element into a globally recognized symbol of luxury and exclusivity (Louboutin, 2023). The distinctive red sole, inspired by a serendipitous application of nail polish, challenged conventional shoe aesthetics and became a hallmark of the brand's identity (Masè & Cedrola, 2017). However, Louboutin's efforts to protect this innovation through trademark law led to prolonged legal battles, notably against Yves Saint Laurent in 2011, where the validity of the red sole as a protectable mark was contested (The Fashion Law, 2011). The case underscored the challenges of securing intellectual property rights for design elements that blur the line between art and function, highlighting the paradox of iconoclasm: while it drives brand differentiation, it often invites legal scrutiny that can undermine a brand's creative freedom (Kiser, 2016).

The paradox extends beyond legal challenges to encompass ethical considerations, particularly when iconoclastic designs intersect with cultural heritage. Louis Vuitton's use of Native American-inspired motifs in its 2012 collection drew accusations of cultural appropriation, as the brand failed to engage with or acknowledge the communities whose heritage was referenced (The Fashion Law, 2012). This controversy illustrates how iconoclastic creativity, while innovative, can alienate consumers and damage brand reputation if it disregards cultural sensitivities (Derclaye,

2010). Similarly, Louboutin faced criticism for a 2018 collection featuring shoes with motifs inspired by South Asian cultures, which some viewed as exploitative without proper cultural context or collaboration (The Fashion Law, 2018). These cases highlight the need for brands to balance divergent thinking with ethical responsibility, ensuring that iconoclastic designs respect the cultural origins of their inspirations (Hakala et al., 2011).

The strategic use of iconoclasm allows Louis Vuitton and Christian Louboutin to maintain their positions as leaders in luxury fashion, leveraging controversy to generate buzz and reinforce brand exclusivity (Baumgarth, 2018). By pushing boundaries, these brands appeal to consumers who value innovation and cultural relevance, aligning with the growing demand for fashion that transcends utility (Crane, 2019). However, this approach requires a nuanced understanding of intellectual property law and cultural dynamics to mitigate risks. For instance, securing permissions for artistic collaborations, as Louis Vuitton did with Koons, or pursuing robust legal protections, as Louboutin did for its red sole, demonstrates the importance of proactive legal strategies in sustaining iconoclastic branding (Krim, 2022; Kiser, 2016).

Ultimately, the Louis Vuitton and Christian Louboutin paradox underscores the delicate balance between creativity and constraint in luxury fashion. Iconoclasm fuels innovation, enabling brands to redefine cultural and aesthetic norms, but it also exposes them to legal and ethical challenges that demand careful navigation (Palandri, 2020). By embracing divergent thinking, these brands can develop strategies that harmonize artistic expression with legal compliance and cultural respect, ensuring sustainable success in a competitive market. As fashion continues to evolve as a form of art, the lessons from Louis Vuitton and Christian Louboutin highlight the transformative potential of iconoclasm, tempered by the need for ethical and legal accountability.

6. NAVIGATING LEGAL, ETHICAL, AND CULTURAL COMPLEXITIES

The fashion industry's penchant for drawing inspiration from art and cultural heritage often leads to the controversial practice of art appropriation, where brands incorporate existing artworks, cultural symbols, or traditional designs into their collections without proper authorization or acknowledgment. This phenomenon, metaphorically likened to Dante's nine circles of hell due to its ethical and legal complexities, raises profound questions about creativity, intellectual property, and cultural respect (Palandri, 2020). Art appropriation in fashion is not merely a creative act but a multifaceted issue that intersects with copyright law, cultural heritage protection, and branding strategies, often resulting in legal disputes, public backlash, and ethical dilemmas (Corbett, 2012; Derclaye, 2010). By examining notable cases and theoretical frameworks, this section explores how fashion brands navigate the fine line between inspiration and exploitation, highlighting the need for ethical and legal accountability in an industry driven by divergent thinking and commercial ambition.

Art appropriation occurs when fashion brands use existing artworks or cultural elements without permission, often capitalizing on their cultural or aesthetic value to

enhance brand identity and market appeal (Krim, 2022). This practice is particularly prevalent in luxury fashion, where brands seek to align themselves with the prestige of fine art or the authenticity of cultural heritage (Kapferer, 2014). While appropriation can be a form of creative homage, it frequently crosses into unethical territory when brands fail to secure rights or acknowledge original creators, exploiting the works of artists, museums, or marginalized communities (Corbett & Boddington, 2011). The fashion industry's global reach amplifies these issues, as designs inspired by one culture are marketed to another, often stripping away context and meaning (Hakala et al., 2011).

Copyright law serves as a primary mechanism for protecting original artworks, granting creators exclusive rights to control reproduction and distribution (World Trade Organization, 2017). In fashion, copyright applies to elements like textile patterns, logos, and campaign visuals, but its protection is limited for functional items like clothing, complicating efforts to safeguard artistic designs (Kiser, 2016). The heterogeneity of copyright laws across jurisdictions, particularly within the European Union (EU), adds further complexity, with variations in moral rights and enforcement creating challenges for brands operating internationally (Ambrosino, 2016; Rosati, 2021). Moral rights, which include the right to attribution and protection against derogatory treatment, are particularly relevant in art appropriation cases, as they safeguard an artist's personal connection to their work (Díaz, 2010). However, the inconsistent application of these rights across EU member states often leaves creators vulnerable to exploitation (Hugenholtz & Senftleben, 2011).

Cultural heritage protection is another critical dimension of art appropriation, as many appropriated elements originate from traditional or indigenous communities whose designs are not covered by copyright due to their public domain status (Corbett & Boddington, 2011). Cultural heritage laws and ownership rights offer some protection, but enforcement is challenging, particularly when powerful brands exploit these elements for profit without compensating or collaborating with source communities (Derclaye, 2010). This dynamic is exacerbated by the economic disparity between global fashion houses and smaller entities, such as museums or indigenous groups, which often lack the resources to pursue costly litigation (Corbett, 2012). As a result, brands may anticipate minimal resistance, perpetuating a cycle of exploitation that undermines cultural integrity and intellectual property rights (Hakala et al., 2011).

One of the most illustrative cases of art appropriation is Louis Vuitton's 2017 "Masters" collection, created in collaboration with artist Jeff Koons. The collection featured luxury handbags adorned with reproductions of iconic artworks, such as Claude Monet's *Water Lilies* and Pablo Picasso's *Guernica*, reimagined with Koons' "Gazing Ball" aesthetic and Louis Vuitton's monogram (Vogue British, 2017). While the project secured permissions for copyrighted works and used public domain pieces, it sparked debate over the ethics of commercializing cultural heritage, particularly as the high price points of the handbags contrasted with the artworks' universal cultural

significance (Krim, 2022). Critics argued that the collection trivialized masterpieces, reducing them to luxury commodities, while supporters viewed it as a bold fusion of art and fashion (Jelinek, 2018). This case underscores the paradox of art appropriation: it can elevate a brand's cultural cachet but risks alienating audiences if perceived as exploitative (Palandri, 2020).

Similarly, Gucci's 2018 collection, which included a turban-inspired headpiece, ignited controversy for its perceived appropriation of Sikh cultural symbols. The design, marketed as a fashion statement, was criticized for commodifying a sacred element without engaging with the Sikh community, highlighting the risks of cultural insensitivity in global fashion (The Fashion Law, 2018). Gucci issued an apology and removed the item, but the incident damaged its reputation, illustrating how art appropriation can backfire when brands fail to consider cultural contexts (Hakala et al., 2011). Dolce & Gabbana's 2015 "Mamma" campaign faced similar backlash for perpetuating racial stereotypes, further emphasizing the need for brands to approach cultural inspiration with respect and collaboration (The Fashion Law, 2019).

The case of *Navajo Nation v. Urban Outfitters* (2016) provides a legal perspective on art appropriation, where the Navajo Nation sued the retailer for using its name and traditional designs without permission. The settlement required Urban Outfitters to collaborate with Navajo artisans, demonstrating how legal action can lead to ethical partnerships that benefit both parties (The Fashion Law, 2016). This case highlights the potential for divergent thinking to resolve appropriation disputes, encouraging brands to adopt collaborative models that honor cultural heritage while fostering innovation (Acar & Runco, 2019). For example, brands could involve indigenous designers in the creative process, sharing profits and ensuring cultural authenticity, thereby transforming appropriation into a mutually beneficial exchange (Derclaye, 2010).

The ethical implications of art appropriation extend beyond legal frameworks to encompass broader questions of power dynamics and cultural representation. Fashion brands, often based in Western markets, frequently appropriate elements from marginalized cultures, profiting from their exotic appeal while ignoring their historical and social significance (Crane, 2019). This practice reinforces colonial legacies, as dominant brands exploit the cultural capital of less powerful communities without reciprocity (Hakala et al., 2011). Divergent thinking offers a pathway to address these issues, encouraging brands to explore innovative solutions, such as co-creation with cultural stakeholders or transparent sourcing practices, to ensure ethical engagement (Lewis & Lovatt, 2013).

Branding strategies further complicate the issue, as controversy surrounding art appropriation can paradoxically enhance a brand's visibility. Public backlash, while damaging, often generates media attention, amplifying a brand's presence in a competitive market (Baumgarth, 2018). Louis Vuitton's Koons collaboration, for instance, leveraged controversy to reinforce its status as a cultural innovator, demonstrating how brands can strategically navigate appropriation debates to their

advantage (Jelinek, 2018). However, this approach is risky, as sustained criticism can erode consumer trust and brand equity, particularly in an era where social media amplifies public scrutiny (Palandri, 2020). Brands must therefore balance the allure of iconoclastic branding with a commitment to ethical practices, ensuring that their creative pursuits do not come at the expense of cultural respect (Kapferer, 2014).

The fashion industry's reliance on art appropriation also raises questions about the role of consumers in perpetuating these practices. Modern consumers, particularly in luxury markets, demand products that are unique, culturally resonant, and reflective of global trends (Beard, 2019). This demand drives brands to seek inspiration from diverse sources, often leading to appropriation when ethical considerations are overlooked (Crane, 2019). Educating consumers about the cultural and legal implications of appropriation could foster greater accountability, encouraging demand for ethically produced fashion (Hakala et al., 2011). Brands, in turn, could leverage this shift to differentiate themselves through transparent and inclusive practices, aligning with consumer values of sustainability and social responsibility (Baumgarth, 2018).

The legal landscape for addressing art appropriation is evolving, with courts increasingly recognizing the need to protect cultural heritage alongside traditional intellectual property. The EU's Copyright Directive (Directive 2001/29/EC) provides a framework for harmonizing copyright laws, but its implementation varies, creating gaps that brands exploit (Rosati, 2021). International agreements, such as the Berne Convention, emphasize moral rights, but their enforcement is inconsistent, particularly for non-Western creators (Díaz, 2010). Divergent thinking can bridge these gaps by inspiring novel legal strategies, such as collective licensing models or international cultural heritage protections, to empower marginalized creators (Hugenholtz & Senftleben, 2011). For instance, establishing global standards for cultural collaboration could ensure that brands engage ethically with traditional designs, fostering innovation while respecting intellectual property rights (Acar & Runco, 2019).

The fashion industry's approach to art appropriation also intersects with the concept of artification, where garments are elevated to the status of art through creative and cultural associations (Massi & Turrini, 2020). While artification enhances brand prestige, it often relies on appropriated elements, raising ethical questions about authenticity and ownership (Kapferer, 2014). Brands like Louis Vuitton and Gucci have used artification to position themselves as cultural leaders, but their reliance on appropriation underscores the need for ethical guidelines to govern these practices (Jelinek, 2018). By adopting transparent sourcing and collaborative models, brands can align artification with cultural respect, ensuring that their pursuit of artistic excellence does not perpetuate exploitation (Derclaye, 2010).

The tension between creativity and ethics in art appropriation is further complicated by the global nature of the fashion industry. Designs inspired by one culture are often marketed to another, creating a disconnect that strips away cultural context and meaning (Palandri, 2020). This globalization amplifies the risks of appropriation, as brands may

inadvertently or deliberately ignore the cultural significance of their inspirations (Hakala et al., 2011). Divergent thinking can address this challenge by encouraging brands to engage with cultural experts and communities, ensuring that designs reflect authentic narratives and contribute to cultural preservation (Lewis & Lovatt, 2013). For example, partnering with local artisans to co-create collections could transform appropriation into a form of cultural exchange, fostering mutual respect and innovation (Derclaye, 2010).

Ultimately, art appropriation in fashion is a complex issue that demands a delicate balance between creativity, legality, and ethics. The metaphor of Dante's nine circles of hell aptly captures the layers of complexity, from legal disputes and cultural insensitivity to the power dynamics that underpin the industry (Palandri, 2020). By embracing divergent thinking, fashion brands can develop strategies that harmonize artistic expression with intellectual property rights and cultural respect, ensuring sustainable success in a competitive market (Acar & Runco, 2019). This approach requires a commitment to transparency, collaboration, and compliance with legal frameworks, ensuring that the pursuit of innovation does not come at the expense of original creators or cultural communities (Corbett, 2012). As the fashion industry continues to blur the lines between art and commerce, the lessons from art appropriation highlight the transformative potential of ethical creativity, tempered by the need for accountability and cultural sensitivity.

7. JEAN PAUL GAULTIER VS. UFFIZI GALLERY

The unauthorized use of Sandro Botticelli's *Birth of Venus* by Jean Paul Gaultier in a 2021 fashion collection sparked a legal and ethical conflict with Florence's Uffizi Gallery, highlighting the complexities of art appropriation in fashion (Uffizi Gallery, 2021). Gaultier's designs featured the iconic Venus image without permission, prompting the Uffizi to demand licensing fees, asserting its rights over the artwork's commercial use (The Art Newspaper, 2021). This case underscores the tension between creative inspiration and intellectual property, as fashion brands often exploit cultural masterpieces, assuming minimal legal repercussions due to the high costs of litigation for cultural institutions (Palandri, 2020). The Uffizi's response reflects a growing trend among museums to protect their collections from unauthorized commercial exploitation, emphasizing the need for ethical and legal accountability (Derclaye, 2010). Gaultier's failure to secure rights illustrates how divergent thinking, while fostering innovation, can lead to ethical missteps when cultural heritage is commodified without consent (Krim, 2022). The dispute highlights the broader challenge of balancing artistic freedom with respect for intellectual property, urging fashion brands to adopt transparent practices and collaborate with cultural stakeholders to ensure respectful use of iconic artworks.

8. COPYRIGHT, TRADEMARK, AND CULTURAL HERITAGE

The fashion industry operates at the intersection of creativity and commerce, where legal frameworks such as copyright, trademark, and cultural heritage laws play a critical role in protecting artistic expression while addressing the complexities of global markets. These legal mechanisms aim to safeguard original works, brand identities, and cultural assets, yet their application in fashion is fraught with challenges due to the industry's unique blend of functionality and artistry (Kiser, 2016). This discussion examines the legal landscape governing fashion, focusing on copyright's limitations, trademark's role in brand protection, and the emerging significance of cultural heritage laws, while highlighting the ethical and practical implications of navigating these frameworks in a dynamic, globalized industry (Palandri, 2020).

Copyright in Fashion: Scope and Limitations

Copyright law grants creators exclusive rights to control the reproduction and distribution of original works, protecting artistic expressions such as textile patterns, logos, and advertising visuals in fashion (World Trade Organization, 2017). However, its application to garments is limited by their utilitarian nature, as clothing often serves a functional purpose that excludes it from copyright protection in many jurisdictions (Kiser, 2016). In the United States, for instance, only separable artistic elements, such as a unique fabric design, may qualify for copyright, while the overall garment design typically does not (Corbett, 2012). This restriction poses challenges for designers seeking to protect their creative outputs, particularly in an industry where imitation is rampant and fast fashion brands rapidly replicate high-end designs (Raustiala & Sprigman, 2012).

The European Union (EU) offers a more flexible approach, with some member states extending copyright to fashion designs under the concept of “applied art,” which recognizes the artistic value of functional objects (Rosati, 2021). However, the heterogeneity of EU copyright laws creates inconsistencies, as moral rights such as the right to attribution and protection against derogatory treatment vary across jurisdictions (Ambrosino, 2016). These variations complicate enforcement for brands operating globally, requiring them to navigate a patchwork of legal standards to protect their intellectual property (Hugenholtz & Senftleben, 2011). The EU's Copyright Directive (Directive 2001/29/EC) aims to harmonize these laws, but its implementation remains uneven, leaving gaps that brands exploit or fall victim to (Rosati, 2021).

Art appropriation cases, such as Jean Paul Gaultier's unauthorized use of Botticelli's *Birth of Venus* in 2021, highlight copyright's role in protecting cultural heritage (Uffizi Gallery, 2021). The Uffizi Gallery's demand for licensing fees underscored the legal and ethical obligations of brands to secure permissions when using iconic artworks, particularly those held by cultural institutions (The Art Newspaper, 2021). Such disputes reveal the tension between creative inspiration and intellectual property rights, as brands risk litigation when they assume public domain works or cultural assets are freely exploitable (Derclaye, 2010). Divergent thinking can

address these challenges by encouraging brands to develop innovative licensing models or collaborative partnerships with cultural stakeholders, ensuring ethical use while fostering creativity (Acar & Runco, 2019).

Trademark Protection: Safeguarding Brand Identity

Trademark law complements copyright by protecting brand identifiers, such as logos, monograms, and distinctive design elements, which are crucial for maintaining consumer trust and market exclusivity in fashion (Dinwoodie, 1999). Unlike copyright, trademarks focus on preventing consumer confusion and preserving brand reputation, offering a more reliable framework for protecting non-functional aspects of fashion products (Porter, 2018). Christian Louboutin's red sole, for example, became a globally recognized trademark after a high-profile legal battle against Yves Saint Laurent in 2011, which affirmed its distinctiveness as a brand identifier (The Fashion Law, 2017). However, the case also exposed the challenges of securing trademarks for design elements that border on functionality, as courts must determine whether they serve a decorative or practical purpose (Kiser, 2016).

Louis Vuitton's monogram, another iconic brand identifier, has been successfully protected through trademark law, enabling the brand to combat counterfeiting and maintain its luxury status (Masè & Cedrola, 2017). However, trademark disputes often arise when brands push the boundaries of their protected marks, as seen in Louis Vuitton's 2017 collaboration with Jeff Koons, which raised questions about the commercial use of public domain artworks alongside trademarked elements (Vogue British, 2017). These cases illustrate the interplay between trademark and copyright, as brands must navigate both to protect their intellectual property while engaging in innovative collaborations (Krim, 2022).

The global nature of fashion markets complicates trademark protection, as brands must register their marks in multiple jurisdictions, each with distinct legal standards and enforcement mechanisms (Dinwoodie, 1999). The Madrid System facilitates international trademark registration, but challenges persist, particularly in regions with weak intellectual property enforcement (World Trade Organization, 2017). Brands must therefore adopt proactive strategies, such as monitoring markets for counterfeits and pursuing legal action swiftly, to safeguard their trademarks and maintain consumer trust (Porter, 2018).

Cultural Heritage and Ethical Considerations

Cultural heritage laws have emerged as a vital tool for addressing the appropriation of traditional and indigenous designs in fashion, which often fall outside the scope of copyright and trademark protection due to their public domain status (Corbett & Boddington, 2011). These laws aim to protect the cultural significance and ownership rights of communities, preventing exploitation by commercial entities (Derclaye, 2010). The case of *Navajo Nation v. Urban Outfitters* (2016) exemplifies this, as the Navajo Nation successfully challenged the retailer's unauthorized use of its name and designs, resulting in a settlement that included collaborative partnerships with Navajo

artisans (The Fashion Law, 2016). This outcome highlights the potential for legal frameworks to foster ethical practices, encouraging brands to engage with source communities rather than exploit their heritage (Hakala et al., 2011).

Cultural appropriation controversies, such as Gucci's 2018 turban-inspired headpiece and Dolce & Gabbana's 2015 "Mamma" campaign, underscore the ethical risks of using cultural symbols without proper context or permission (The Fashion Law, 2018, 2019). These incidents sparked public backlash, damaging brand reputations and illustrating the need for cultural sensitivity in design processes (Palandri, 2020). Brands can mitigate these risks by adopting divergent thinking, exploring collaborative models that involve cultural stakeholders in the creative process, ensuring authenticity, and sharing economic benefits (Acar & Runco, 2019). Such approaches align with consumer demand for ethical and sustainable fashion, enhancing brand loyalty and market competitiveness (Beard, 2019).

The ethical implications of cultural appropriation extend beyond legal compliance to encompass broader questions of power dynamics and representation. Western-based fashion brands often profit from the cultural capital of marginalized communities, reinforcing colonial legacies by commodifying their heritage without reciprocity (Crane, 2019). This dynamic necessitates a shift toward inclusive practices, such as transparent sourcing and community partnerships, to ensure that cultural inspiration is respectful and mutually beneficial (Hakala et al., 2011). International frameworks, such as UNESCO's Convention for the Safeguarding of Intangible Cultural Heritage, provide guidance for protecting cultural assets, but their enforcement remains limited, requiring brands to take proactive ethical measures (UNESCO, 2003).

Practical and Ethical Implications

The legal challenges in fashion reflect a broader tension between creativity and constraint, where brands must balance artistic innovation with intellectual property compliance and cultural respect (Palandri, 2020). The high cost and complexity of litigation often deter smaller entities, such as independent designers or cultural communities, from pursuing claims, allowing larger brands to exploit legal loopholes (Corbett, 2012). This imbalance underscores the need for innovative legal strategies, such as collective licensing models or advocacy for stronger cultural heritage protections, to empower marginalized creators (Hugenholtz & Senftleben, 2011).

Social media amplifies these challenges, as public scrutiny of appropriation and infringement cases can rapidly escalate, impacting brand reputation and consumer trust (Palandri, 2020). Brands must therefore integrate legal and ethical considerations into their branding strategies, adopting transparent practices and proactive compliance to mitigate risks (Baumgarth, 2018). For instance, securing permissions for artistic collaborations, as Louis Vuitton did with Koons, or pursuing robust trademark protections, as Louboutin did for its red sole, demonstrates the importance of aligning creativity with legal accountability (Krim, 2022; The Fashion Law, 2017).

The fashion industry's reliance on divergent thinking offers opportunities to address these challenges, as brands can develop novel approaches to intellectual property management and cultural engagement (Acar & Runco, 2019). By fostering collaborations with artists, cultural communities, and legal experts, brands can create designs that respect intellectual property and cultural heritage while pushing creative boundaries (Lewis & Lovatt, 2013). These strategies not only enhance brand credibility but also align with consumer values of authenticity and sustainability, driving long-term success in a competitive market (Beard, 2019).

Ultimately, the legal landscape of fashion requires a delicate balance between protecting creative expression and addressing the ethical implications of global commerce. Copyright and trademark laws provide essential protections, but their limitations necessitate complementary frameworks, such as cultural heritage laws, to address the industry's unique challenges (Derclaye, 2010). By embracing divergent thinking and ethical practices, fashion brands can navigate these complexities, ensuring that their pursuit of innovation respects the rights of creators and communities while maintaining their competitive edge (Kapferer, 2014). As the industry continues to evolve, the integration of legal, ethical, and creative strategies will be essential for fostering a sustainable and equitable future.

9. CREATIVITY, LAW, AND ETHICS IN FASHION'S EVOLUTION

The fashion industry's transformation into a realm where garments transcend utility to become cultural and artistic expressions underscores the complex interplay of creativity, intellectual property, and ethical responsibility. This study has explored how luxury fashion brands leverage divergent thinking to blur the boundaries between fashion and art, while navigating the legal and cultural challenges that arise from such innovation (Acar & Runco, 2019; Kapferer, 2014). By examining the processes of artification, iconoclasm, and art appropriation, alongside legal frameworks like copyright, trademark, and cultural heritage laws, the research highlights the dynamic tension between artistic freedom and the need for accountability in a globalized market (Palandri, 2020). The findings reveal that while fashion's alignment with art enhances brand prestige and consumer engagement, it also exposes brands to legal disputes and ethical controversies, necessitating a balanced approach to creativity and compliance (Crane, 2019).

Artification, the process of elevating fashion to the status of art through premium materials, intricate craftsmanship, and collaborations with artists, has redefined luxury brands as purveyors of cultural value (Massi & Turrini, 2020). Collaborations such as Louis Vuitton's 2017 partnership with Jeff Koons, which integrated iconic artworks into handbags, exemplify how brands use art to enhance their cultural relevance and market appeal (Vogue British, 2017). However, these endeavors often provoke debates over the commercialization of cultural heritage, as seen in the Koons collection's use of public domain masterpieces (Krim, 2022). Similarly, iconoclastic approaches, such as Christian Louboutin's red-soled shoes, challenge conventional design norms but

invite legal scrutiny, as evidenced by the brand's trademark battle with Yves Saint Laurent (The Fashion Law, 2017). These cases illustrate how divergent thinking fuels innovation but requires careful navigation of intellectual property laws to avoid infringement (Kiser, 2016).

Art appropriation, a recurring theme in fashion, further complicates this landscape, as brands frequently draw inspiration from existing artworks or cultural symbols without proper authorization (Corbett, 2012). The dispute between Jean Paul Gaultier and the Uffizi Gallery over the unauthorized use of Botticelli's *Birth of Venus* in 2021 underscores the legal and ethical risks of such practices, as cultural institutions increasingly assert their rights over commercial exploitation (Uffizi Gallery, 2021; The Art Newspaper, 2021). Likewise, controversies surrounding Gucci's 2018 turban-inspired headpiece and Dolce & Gabbana's 2015 "Mamma" campaign highlight the dangers of cultural appropriation, where brands face backlash for commodifying sacred or sensitive symbols without engaging source communities (The Fashion Law, 2018, 2019). These incidents emphasize the need for brands to adopt ethical practices, such as collaborative partnerships or transparent sourcing, to respect cultural heritage and intellectual property (Hakala et al., 2011).

Legal frameworks play a pivotal role in addressing these challenges, yet their application in fashion is limited by the industry's unique characteristics. Copyright law protects artistic elements like textile patterns but struggles to cover functional garments, particularly in jurisdictions like the United States, where utilitarian designs are excluded (Kiser, 2016). The EU's more flexible approach, recognizing "applied art," offers greater protection but is hampered by inconsistent moral rights and enforcement across member states (Rosati, 2021). Trademark law provides a robust alternative, safeguarding brand identifiers like Louis Vuitton's monogram or Louboutin's red sole, but disputes over functional design elements remain contentious (Dinwoodie, 1999). Cultural heritage laws, as demonstrated in the *Navajo Nation v. Urban Outfitters* case, offer a pathway to protect indigenous designs, fostering ethical collaborations that benefit both brands and communities (The Fashion Law, 2016; Derclaye, 2010).

The ethical implications of these legal challenges are profound, as fashion brands often exploit the cultural capital of marginalized communities, reinforcing power imbalances rooted in colonial legacies (Crane, 2019). The global nature of fashion amplifies these issues, as designs inspired by one culture are marketed to another, often stripping away context and meaning (Palandri, 2020). Social media further intensifies public scrutiny, enabling rapid dissemination of appropriation controversies and impacting brand reputation (Baumgarth, 2018). To navigate this landscape, brands must integrate divergent thinking into their strategies, exploring innovative solutions like co-creation with cultural stakeholders or collective licensing models to ensure ethical and legal compliance (Acar & Runco, 2019; Hugenholtz & Senftleben, 2011).

Consumer expectations also shape the industry's trajectory, as modern audiences demand products that are not only aesthetically compelling but also ethically produced

and culturally resonant (Beard, 2019). This shift pressures brands to align their practices with values of sustainability and inclusivity, fostering loyalty and competitiveness (Baumgarth, 2018). By educating consumers about the cultural and legal implications of appropriation, brands can cultivate a more informed market, encouraging demand for responsibly sourced fashion (Hakala et al., 2011). Such efforts align with the broader trend toward ethical consumption, where transparency and accountability are paramount (Crane, 2019).

The study's findings suggest that the future of fashion lies in harmonizing creativity with legal and ethical responsibility. Brands must move beyond exploiting legal loopholes or cultural assets, embracing proactive strategies that respect intellectual property and cultural heritage (Derclaye, 2010). International frameworks, such as UNESCO's Convention for the Safeguarding of Intangible Cultural Heritage, provide guidance, but their limited enforcement underscores the need for industry-led initiatives (UNESCO, 2003). By fostering collaborations with artists, cultural communities, and legal experts, brands can create designs that push creative boundaries while upholding ethical standards (Lewis & Lovatt, 2013).

In conclusion, the fashion industry's evolution into a cultural and artistic domain reflects the transformative power of divergent thinking, but it also demands a commitment to navigating legal and ethical complexities (Kapferer, 2014). The interplay of artification, iconoclasm, and appropriation highlights the opportunities and risks of aligning fashion with art, requiring brands to balance innovation with accountability (Palandri, 2020). As the industry continues to blur the lines between art and commerce, the integration of legal compliance, ethical practices, and creative strategies will be essential for fostering a sustainable and equitable future, ensuring that fashion remains a vibrant contributor to global culture (Massi & Turrini, 2020).

Author Contributions

Conceptualization, M.J. and B.S.; methodology, M.J.; software, M.J.; validation, M.J. and B.S.; formal analysis, M.J.; investigation, M.J.; resources, M.J. and B.S.; data curation, M.J. and B.S.; writing—original draft preparation, M.J. and B.S.; writing—review and editing, M.J. and B.S.; visualization, M.J. and B.S.; supervision, M.J.; project administration, M.J.; funding acquisition, M.J. All authors have read and agreed to the published version of the manuscript.

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