

CONSUMER ELECTRONICS

## Fashion sees ruling in Apple's favor as potential win for IP, patent protection

August 9, 2016



Apple iPhones

By JEN KING

Fashion designers are coming to the defense of Apple Inc. as the consumer electronics maker battles Samsung Electronics in the United States Supreme Court over alleged patent infringement.

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U.S.-based **Apple** has been calling out South Korea's **Samsung** on design imitation for a number of years and has now taken its case to the Supreme Court. As the case has gained momentum in the U.S.'s highest court, fashion designers have spoken out in support of Apple, as the final ruling on the patent infringement allegations may speak volumes for brands battling counterfeiting.

"The fashion industry notoriously struggles with IP protection of their designs," said Rich Goldstein, **patent attorney** and author of the recent book by the American Bar Association: *ABA Consumer Guide to Obtaining a Patent*.

"I mean, people don't ever talk about IP protection being taken too far in the fashion industry," he said. "But people often do talk about designs being knocked off."

"Anything the Supreme Court says that strengthens the value of design protection would only help designers to protect their property."

Rivalry night

**Apple** has accused its rival **Samsung** of copying the iPhone's patent design and technologies for its own smartphone offerings. Thus far, the U.S. consumer electronics maker has been awarded hundreds of millions of dollars by lower court rulings.

Now, Apple is taking the position that the court should force Samsung to forfeit all profits generated by the sale of products that infringed on Apple's design patents.

On Thursday, Aug. 4, more than 100 fashion designers and brands including Calvin Klein, Alexander Wang, Nicolas Ghesquire, Dries Van Noten and Alber Elbaz filed amicus documents on behalf of Apple. An amicus curiae, Latin for "friend of the court," refers to someone not personally involved in a case, but who can provide information that may bear on the court's ruling.



*Image courtesy of Boucheron*

The documents were submitted to the court as justices determine how much Samsung should be required to pay Apple. Samsung has challenged whether it is liable for the \$399 million of the \$548 million it has paid to Apple since 2011.

As of press time, Samsung has paid \$399 million to Apple based on the infringement of three patents: a black rectangular front face with rounded corners, a bezel and a 4 by 4 grid of colorful icons.

The amicus documents were followed by briefs submitted by brands such as Tiffany & Co., Adidas, among others on Friday, Aug. 5. It was these briefs that connect Apple's suit against Samsung to the fashion industry.

In the briefs, the brands voiced the opinion that forfeiting total profits is the only option for those caught copying the design patents of others. Speaking jointly, the brands said they, "have an interest in highlighting the unique function of design patents in the fashion industry, which differs in various ways from the technology industry."



*Image courtesy of Michael Kors*

Despite working within different sectors, the Supreme Court's ruling would affect how design patents are protected going forward.

Fashion, alongside cosmetics and jewelry, is constantly working to curb counterfeiters' practices and protect intellectual property. The brands' briefing continued to say that Apple's request that Samsung forfeits all profits gleaned from stolen patents "is critical to address the harm caused by design piracy. The total profits rule helps to ensure that designers have the appropriate incentives and rewards to make investments in innovative designs."

To underscore the importance and implications of the case for the fashion community, Mauro News Media and its founder Charles Mauro, the lead representative of Thursday's brief, has created a [Web site](#) to field additional signatures in support of Apple.

Although Samsung has won patent cases against Apple in its home country of South Korea, Japan and the United Kingdom, a large legal group has yet to file in its support. In the last five years, Apple and Samsung have been involved in nearly 50 lawsuits in 10 countries.

Damages due

Similarly, a number of fashion brands have taken legal action against manufacturers and Web sites for the creation and sale of counterfeit goods.

Last fall, British apparel and accessories brand Belstaff won a lawsuit that resulted in the closure of more than 650 counterfeit Web sites.

Heard by a United States civil court, the judges ordered offending counterfeiters to pay more than \$42 million in damages and turn over domain names to Belstaff. While this is only the most recent victory in the ongoing battle against counterfeiting, Belstaff's strategy to combat the issue through digital protection tactics will offer an effective solution for both luxury and mass brands facing a similar predicament ([see story](#)).

Likewise, French outerwear label Moncler was awarded approximately \$448,000 in damages in relation to an intellectual property trademark infringement case in November 2015.

Moncler's case went in front of the Intellectual Property Court in Beijing after the outerwear label accused Beijing Nuoyakate Gourmet Co., Ltd., commonly known as Nuoyakate, of producing counterfeits of its merchandise.

According to Moncler, its court victory may be the first judgement under China's new Trademark Law to grant "maximum statutory damages" in cases of counterfeiting ([see story](#)).

While wrongdoers who intentionally copy the intellectual property of others have been tried and fined accordingly, these cases do not always rule in the brand or conglomerate's favor.

For instance, racketeering claims in a lawsuit brought by Kering-owned brands including Gucci and Saint Laurent against Chinese marketplace Alibaba were dismissed just last week.

A U.S. judge found that allegations Alibaba conspired with counterfeiters to profit on the sale of fake handbags and other merchandise failed to prove that the merchants knew of each other or that Alibaba was able to work with them. While these claims have been dismissed, the judge's decision does not impact other pieces of the lawsuit brought last year, which seeks damages for issues including trademark infringement and unfair competition.

This suit is being closely watched, as the decisions in the case could have an impact on labels' abilities to go after counterfeiters who sell online, potentially making it easier for them to seek damages ([see story](#)).

Protecting patents is just one aspect of ensuring that brands' intellectual property is properly protected from peers and illegal counterfeiters.

"An Apple win would put more attention on the design aspects of a product," Mr. Goldstein said.

"While little will slow direct knockoffs from overseas that are sold through the black market, this ruling would have a bigger impact on bigger fashion houses and retailers," he said.

"Such a move by the Supreme Court might make competitors think twice about putting out similar' designs through mainstream channels."