

KEY TRENDS IN IP LITIGATION RELATING TO FASHION, FURNITURE, AND PRODUCT DESIGN

RECENT INTELLECTUAL PROPERTY TRENDS RELATING TO FASHION AND FURNITURE DESIGNS



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WHAT DO FASHION AND FURNITURE HAVE IN COMMON?

- Product Design
- Innovation and Creativity
- Luxury, mid-tier, and mass production
- Branding, marketing, and social media messaging
- International inspiration and growth

“It is the province of *patent law, not trademark law*, to encourage invention by granting inventors a monopoly over new product designs or functions for a limited time.” *Qualitex Co. v. Jacobson Products Co.*, 514 U.S. 159, 164 (1995) (Emphasis added)

“The availability of these other protections [design patent or copyright] greatly reduces any harm to the producer that might ensue from our conclusion that a product design cannot be protected under § 43(a) without a showing of secondary meaning.” *Walmart v. Samara*, 529 U.S. 205, 214 (2000)

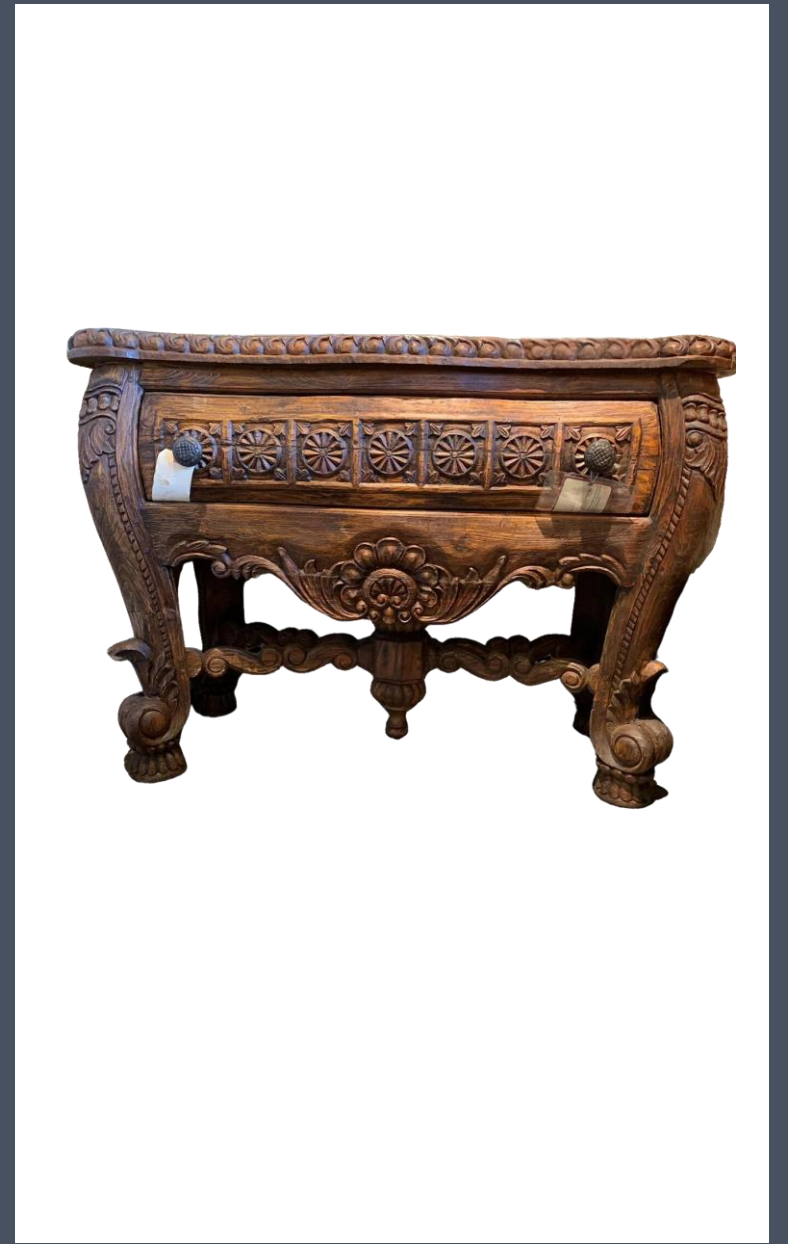
“Trade dress protection must subsist with the recognition that in many instances there is no prohibition against copying goods and products . . . , [and] unless an intellectual property right such as a patent or copyright protects an item, it will be subject to copying.” *TraFFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23, 29 (2001)

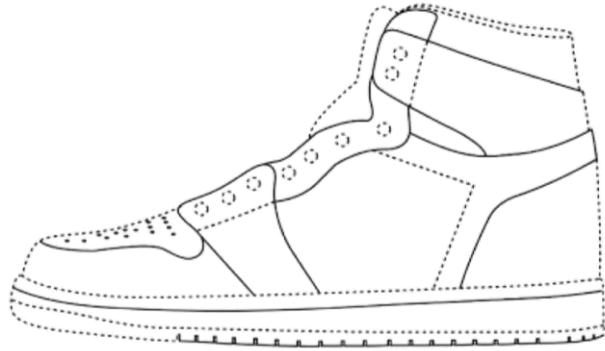
“Consumers should not be deprived of the benefits of competition with regard to the [] esthetic purposes that product design ordinarily serves by a rule of law that facilitates plausible threats of suit against new entrants based upon alleged inherent distinctiveness”. *Walmart*, 529 U.S. at 214.



[T]o qualify as a pictorial, graphic, or sculptural work on its own, the feature cannot itself be a useful article or [a]n article that is normally a part of a useful article (which is itself considered a useful article). 17 U.S.C. § 101; *Varsity Brands v. Star Athletica*, 137 S. Ct. 1002, 1010 (2017). If the article is a “useful article,” then a feature is only protectable if it is conceptually separable from the physical article.

Conceptual separability has two elements: (1) the work of authorship “can be identified separately from,” and (2) is “capable of existing independently of, the utilitarian aspects of the article.” The first element is easy to satisfy and only requires the decision maker to “spot some two- or three-dimensional element that appears to have pictorial, graphic, or sculptural qualities.” The second element is more difficult to meet, but is satisfied if the feature “identified and imagined apart from the useful article ... would qualify as a pictorial, graphic, or sculptural work either on its own or when fixed in some other tangible medium.”





Knitwaves v. Lollytogs (2d Cir. 1995)
Infringement Found

Plaintiff's Work



Defendant's Work









