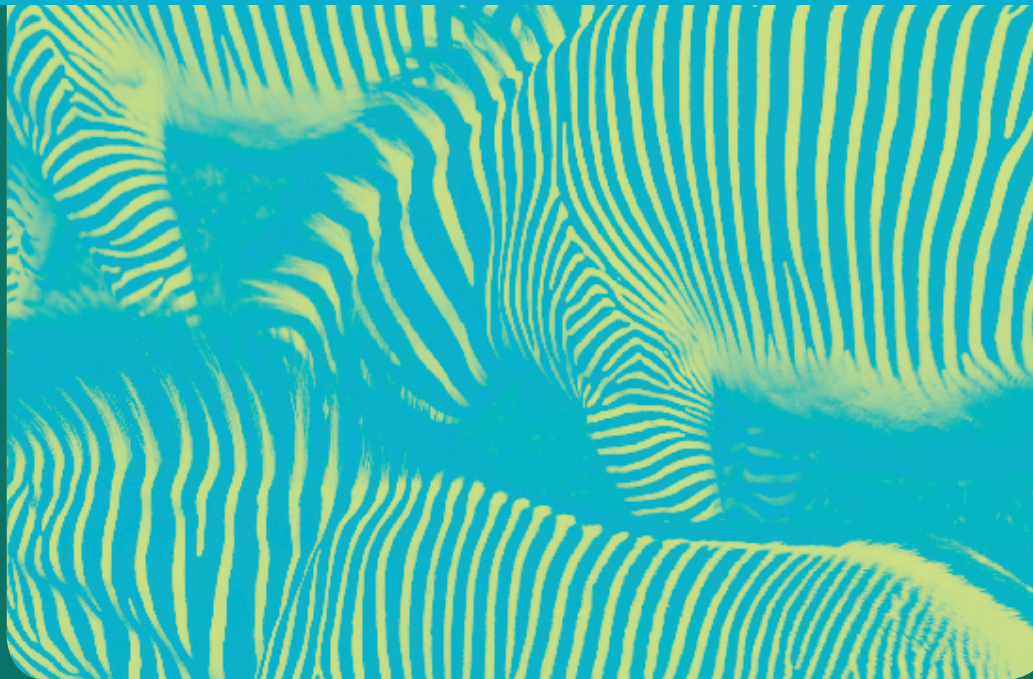


Olufunmilayo Arewa

Traditional Maasai patterns or African American styles are very common nowadays in the trendy outfits of the "It-Girls". Fashion is at the center of key areas of continuing tension today. Some problems of concern relate to knockoffs and fashion. Other controversies relate to social contexts of fashion itself and touch on questions related to diversity and inclusion.



Appropriation and Exclusion in Fashion

The Question of Intellectual Property Rights

Knockoffs are a subject of continued commentary in fashion today. Debates about copying and appropriation also touch on questions related to exclusion. Contestation about copying can be complex, in part because copying and knockoffs are essential parts of creativity itself. In varied contexts, disagreement may exist about the acceptability of copying both generally and in specific instances.

Who is the owner?

One strand of debates about copying in fashion surrounds questions of intellectual property. Although elements of fashion design may be protectable by intellectual property, including trademark, trade dress and design patents, fashion designs have not typically enjoyed broad copyright or other intellectual property protection in the United States. Unlike the United States, several countries in Europe

provide greater protection for apparel design. United States industry participants have lobbied in recent years for copyright protection for fashion in the U.S.. For example, the Innovative Design Protection Act of 2012, which was not enacted, would have granted exclusive rights in fashion design. Copycats have long been an integral part of fashion itself. Coco Chanel is said to have called copying the "ransom of success". The costs and ben-

efits of copycats remain a subject of contention. Questions about how much copying is acceptable stand at the center of debates about fashion copycats and intellectual property protection of fashion design. Allegations of appropriation in fashion often relate to protection within contexts of borrowing and reuse in commercial fashion design. The accusers and the accused in these contexts are often professional and repeat players.

Which cultural elements can be used?

Questions of appropriation in fashion are not limited to questions about how to allocate property rights in fashion designs. Some discussions of appropriation focus to a significant degree on cultural contexts of uses of cultural elements within fashion. Allegations of cultural appropriation are commonplace in fashion today. As it is the case with alleged intellectual property thefts, cultural appropriation discussions highlight zones of contestation about acceptable uses of cultural material. Some allegations of cultural appropriation fall onto ground made familiar by intellectual property debates about fashion. The Maasai of Kenya and Tanzania have a distinctive style that has been copied by several designers, including Louis Vuitton, Ralph Lauren, Calvin Klein, and Diane von Furstenberg. The Maasai Intellectual Property Initiative (MIPI) seeks to require licensing and compensation from fashion labels that copy Maasai styles.

Requiring licensing does not, however, fully address broader issues raised by cultural appropriation in other contexts. Although seemingly inevitable in today's world, knock offs of culture may also raise sensitivities because they may highlight persistent power inequities and patterns of exclusion. In 2017, Chanel was accused of cultural appropriation for producing a \$1,325 boomerang featuring the Chanel logo. Chanel follows in the footsteps of the Kardashian family, long accused of multiple appropriations from African American culture. In 2016 Marc Jacobs encountered controversy when his Spring 2017 show included models with dyed wool dreadlocks.

Good Exclusion?

The ability to exclude others from copying is a key aspect of copyright protection in varied contexts. Appropriation and exclusion are also relevant in considering broader cultural contexts of fashion. Inclusion in

fashion and other cultural spaces is a continuing struggle. Remarkably, 2017 was a strong year for diversity and inclusion in fashion runway shows, including in relation to race, body, age, and transgender visibility. Despite recent successes, significant racial and other forms of exclusion have long been present in the fashion industry more generally. As D'Ariel Myrick highlighted in a recent online article, cultural appropriation must be considered within the context of a fashion industry that has historically appropriated elements of cultures while denying representation within the industry from people of those cultures.

The greater diversity in 2017 runway shows was a product of concerted attempts to address diversity in fashion. In 2013, Bethann Hardison, a former fashion model, founded the Diversity Coalition and called out the fashion industry for white washing. Supermodels Naomi Campbell and Iman both joined the Diversity Coalition. A diverse and inclusive fashion industry reflects the diversity of its consumer base and makes fair use of cultural material copied from groups that might be traditionally underrepresented in fashion. Changing runway diversity patterns highlight both the possibility of change and the importance of calling out the need for such changes.

References: D'Ariel Myrick, A Black Woman's Thoughts on Cultural Appropriation in Fashion, Culture, May 1, 2017, <https://studybreaks.com/2017/05/01/cultural-appropriation/> // The Fashion Spot, Report: Fall 2017 Was a Banner Season for Runway Diversity, Especially in New York, www.thefashionspot.com/runway-news/740117-runway-diversity-report-fall-2017/#siWOYegQGk2KuP7Y.99 // Kal Raustiala and Christopher Sprigman (2012) The Knockoff Economy: How Imitation Sparks Innovation, Oxford: OUP.

On the author: Olufunmilayo Arewa is Professor of Law and Anthropology at the University of California, Irvine. She writes about culture, music, and technology. She is currently writing a book entitled "Creating Global Markets for Black Culture: Curation, Music, and Law".