

Kim K's "Kimono" – A Snapshot of Cultural Appropriation

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After receiving a wave of backlash against the decision to name her new shapewear line “Kimono” – as in the name for the traditional Japanese garment – Kim Kardashian has recently relented from adopting the term as a part of her brand. In 2018, she had tried to register the trademark KIMONO, but that application was rejected because of prior registrations containing the term. Though Kardashian

claims innocent intentions in coming up with the name – saying the term was a play on her name – her actions spawned more concern that this was another instance of cultural appropriation in fashion and entertainment.

Related Capabilities

- Trademark, Copyright + Advertising
- Intellectual Property Litigation

Cultural appropriation is, in short, the use of elements of cultural expression (e.g., traditional wear, artifacts and designs) of another's culture – usually minority groups - without consent or compensation. The World Intellectual Property Organization (WIPO) defines “traditional cultural expressions” as including “music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or many other artistic or cultural expressions.” In the trademark world, westernized and European-centric designers have historically been accused of stealing traditional designs, music, dances and hair styles for their own use and profit, while the minority groups from whom they took receive little more than an acknowledgement. Further, while the majority-centric designer or entertainer may proffer that it was “inspired by” the minority or indigenous culture, such inspiration is sometimes considered offensive to the group serving as the source of the inspiration. More importantly, these minority groups generally never see a dime of the millions that may be made from the popularization of their cultures. Notable exceptions include the Maasai people of Kenya and Tanzania, who were able to reclaim some origination rights and landed a licensing arrangement after Calvin Klein adopted a collection entitled “Maasai” without their consent and the Navajo Nation, which entered into an agreement with Urban Outfitters to

work collaboratively on marketing and selling authentic Navajo goods.

If such inspiration was really genuine, why wouldn't the inspired designer or entertainer be required to obtain consent, give credit or compensation to the source of that inspiration? If a person or company, for example, adopted some elements of Kim Kardashian's name, likeness, or some other indicia of her personal identity, under her state statutory or common law rights of publicity, Kim K would have a basis to prohibit commercial use of her likeness. However, similar protections do not exist for the adoption of cultural elements for commercial exploitation of a culture. Another harm occurs when the adopters of culturally-inspired trademarks aggressively enforce their trademark rights and effectively create exclusionary ownership of logos and phrases in legitimate markets of competition. U.S. trademark law does not appear particularly well-suited to addressing cultural appropriation. This is the challenge with cultural appropriation.

The lesson for brand owners and entertainers may be that selecting a name derived from another culture involves more than just ascertaining whether it is available and registrable in the USPTO. Consideration should be given to cultural sensitivities and the likely reaction in the marketplace to whether the name will be deemed offensive or inappropriate – and ultimately bad for business.