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Forever 21 Under Fire Again... this Time by H&M!

BY [HEATHER BRODSKY](#) / ON NOVEMBER 24, 2015

Merely a few weeks ago we discussed a trademark infringement suit initiated by Adidas against Forever 21. Forever 21 had allegedly copied Adidas's famous three-stripe trademark. The infamous fast fashion company is now in trouble with a brand that many consider a close competitor: H&M.

H&M is suing Forever 21 for copying its "Beach Please" tote bag. The claims are for copyright infringement, trade dress infringement, false designation of origin, and unfair competition. H&M asks that the court order Forever 21 to stop manufacturing, marketing, and selling the tote, and to surrender its profits from the bag.

H&M claims that one of its in-house designers came up with the bag's design, which was debuted April of 2014. Subsequently, Forever 21 began selling a near exact replica. The Fashion Law reported that according to H&M, the bag was "well received by customers because of its distinctive design" and has acquired "secondary meaning in that H&M is recognized as the original source of the tote bags." H&M filed to register a copyright for the design prior to filing the lawsuit but after discovering that Forever 21 had copied the design.

H&M is a Swedish fast fashion brand known for its "affordable interpretations of high-end runway trends." Forever 21 is a fast fashion giant based in Los Angeles. The irony: both companies have had many run-ins with the law over knocking off others' designs. Although H&M's lawsuit alleges that Forever 21 "has also been accused of copyright designs in the past," H&M was recently sued by Converse for selling sneakers similar to the Chuck Taylor style. Famous fashion photographer Estevan Oriol also sued the Swedish brand for copyright infringement after H&M used his "L.A. Fingers" photograph on clothing. "If you put my photograph side-by-side with their re-creation of my image, anyone would tell you they are one in the same... they clearly copied my image," Oriol said.

H&M lucked out in its suit with the famous photographer. A California federal judge ruled that he hadn't identified any protectable, substantially similar elements between the photo and H&M's allegedly infringing shirt. "As Oriol cannot articulate a single protectable element of 'L.A. Fingers' that is substantially similar to the H&M photograph, the photographs fail the extrinsic test of substantial similarity, and the H&M photograph is not infringing as a matter of law."

More recently, artist Sam Larson discovered a Forever 21 shirt that contained a design that he had posted on Instagram two years ago. Larson posted a side-by-side comparison of his photo and Forever 21's shirt on Instagram. He captioned the photo "I normally keep this stuff private, but this is just too ridiculous. I hope you plan on paying me for stealing my art

@forever21." Fans of Larson rushed to social media and support the artist by using the hashtag #paysamlarson.

Larson told BuzzFeed, "I put so much time and effort into my work to try to make it as a freelance artist and then companies do this." Larson declined to answer whether he had filed suit.

H&M and Forever 21 have each had their fair share of litigation. The battle between them is not one to miss.

Heather Brodsky is a second-year student at Benjamin N. Cardozo School of Law and a Staff Editor of the Cardozo Arts & Entertainment Law Journal. She hopes to pursue a career in law within the fashion industry.

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