



The Quality of a Copy

Constantine V. Nakassis

Citational Economies, Part 1

In the area of North Chennai where I conducted fieldwork, clothing shops crowd together. Their export-surplus and defect brand-wares spill into the street, interspersed with uncanny brand forms – ‘brands’ like Poma; Diesel Industries; Chiesal; Columbian – and garments sporting brand names and designs that few have ever seen before, and probably won’t ever again: ‘brands’ like Dex; The QS; Emperor; Style Jeans; and the like. In search of cheap ready-made apparel, wholesalers and retailers from Chennai and neighboring cities, as well as local, (lower-) middle-class shoppers, examine the wares, some going inside to inquire about, and negotiate, prices, others simply passing along to the next shop. Interested in how certain brand fashions circulate and are taken up among lower-middle- and middle-class college youth in urban Tamil Nadu, my research also led me to this area, one of the sites from which the apparel that was so widely worn among the youth with whom I worked originated.

In addition to retailing and wholesaling, textile manufacture also takes place here. Although locally oriented, the designs and design elements of these manufacturers’ wares are global. They are poached, borrowed and inspired by the garments that leak out of export-oriented factories. Such factories, many of them located in Tamil Nadu, produce garments for foreign-brand companies like Diesel, Columbia, Nike, Puma and so on (Nakassis 2012a; Norris 2010:38–41). Anxious about being left behind what’s ‘moving’ in local markets, these low-level producers not only copy export-oriented garment manufacture, they also watch what their neighbors are making (which is to say, what they are copying from such factories), compulsively copying what they (re-)make/copy.¹ A design or, more precisely, some of its qualities are borrowed from other sites and other designers, from a global other and a local competitor. Such qualities are unstitched and restitched, worked over, deformed and reformed, altered and conserved. What is the quality of such a copy? And what quality does it copy?

During my fieldwork from 2007–2009, certain designs multiplied in urban Tamil markets. Proliferating, copied and recopied, their form was rendered increasingly different from what they copied. With each copy,

¹ In addition to export surplus, such manufacturers culled their designs from fashion catalogues, advertisements, the Internet, and local high-end malls and boutiques. For many, however, export surplus was the major source for their designs (Nakassis 2012a).

a newness was introduced, the identity that held together such forms stretched thin, the pull that kept the copy in the orbit of its 'original' weakened. At the same time, with each iteration the cachet of the copy/copied decreased, the newness and aura of the design giving way to the pedestrian, the bland, the old-fashioned. In this cycle, there was a close-distance that had to be maintained from the brand, or design, that was copied, as well as from the other copies that circulated in local markets: not too different, but not too similar either. Of course, with the vagaries of the global market for high-end, ready-made brand-wares, new garments were constantly being produced in nearby factories, their surplus serving as new inputs to this churning replication machine. When I left, it was no longer copies of Diesel and Ferrari that captured the imaginations of local producers and youth consumers, but other brands, for example, Puma.

Brands proliferate in such South Indian markets through a particular mode of what we might call *citational copying*, where a 'copy' – though this term has its own ideological and metaphysical implications that render it problematic, as we shall see – 'quotes' some other discourse, sign, or event, selectively replicating, or reanimating, particular qualities of it. The canonical citation, the direct quotation ('He said "This is a fake!)'), for example, reanimates the informational content and phrasing of what is cited (the speech event "'This is a fake!')', quoting it 'to the word'. Indirect reported speech, by contrast, simply reanimates informational content, shifting the wording, and perspective, of the cited act ('He claimed that her shirt was fake'). The citation is not necessarily a linguistic act, however. Any representable quality may be brought back to life in any number of media: a pleating technique, fabric choice and cut, for example, may be enough, as in the case of John Galliano of House Dior's homage to Mariano Fortuny's Delphos dress (itself, of course, a citational *renvoi* to the chiton style of antiquity).

Citation here refers to acts which re-presence another('s) semiotic act and mark that re-presencing, or iteration, as *not* what is re-presented, a disavowing and suspending metacommunication about the very act in question. Citations repeat, but with a difference. And insofar as they are citations, they reflexively mark that difference (Nakassis 2013b). In this sense, local surfeit designs in Chennai markets 'cite' various brands, reanimating their logos and names while marking them as *not* what they presence, that is, authorized instances of the brand. Indeed, such wares were not meant to be seen as 'the same' as the brand commodities they were inspired by. They were not made to deceive anyone as to their origins or affiliation, nor did they.

Through such citations, re-presented branded garments diverge from their 'originals', new qualities creeping into their form, qualities which key their non-authorized, and non-authenticated, self-difference: cheap fabrics, misspelled brand names (Lavi's, Diesal, Ferrarri, Lottoo, etc.), sometimes paired with other brands' logos and designs (as well as other design elements), novel color combinations, fonts and the like. The photographs below give some examples of some of the surfeit forms that were consumed by the lower-middle- and middle-class young men in urban Tamil Nadu with whom I worked.



Citational shadow economies such as these are common around the world, and anthropologists have become increasingly interested in them.² Often, such economies are criminalized, manufacturers labeled as 'counterfeiters', 'pirates' and the like (Thomas 2009, 2013). Such labeling has increased in the twenty-first century as Euro-American intellectual property (IP) regimes have been exported to third-world locations like India. In India, IP law has been modeled on, and pushed by, recent American and British IP law (Gangjee 2008). As is common in

² For a bibliography of this growing literature see http://nakassis.com/constantine/anth_of_brand_counterfeits/, last accessed 1st July, 2013; or Nakassis 2012a, 2012b, 2013a *passim*.

brand heartlands like the US and Europe (Coombe 1998; Klein 2000),³ as well as in peripheries like India, China, Indonesia, Guatemala and elsewhere (Pang 2008; Luvaas 2010, 2013; Thomas 2013), IP regimes have been introduced and strengthened to protect, among others, big brand names from 'piracy' and other forms of infringement ('dilution', 'tarnishment') that proliferate in the shadows of the authentic and authorized. The copy, the counterfeit, the pirated – we, like IP law, tend to talk about such forms as exterior to the brand, as derived from 'original' designs, as parasites of designers' ethical, honest practices (Nakassis 2013c). Through copying, the pirate steals what the brand creates, the author writes, the designer designs. To speak of the copy, then, is already, in some sense, to be within this ideological enclosure, located by its normative coordinates. How might we think, and think differently, this quality of the copy?

Citational Economies, Part 2

Do not the 'original' and its 'copy' share substance even as they maintain a fundamental alterity? Is there not a line drawn between them that conjoins and separates them, a line of authenticity, creativity and priority that makes them foreign to, and yet intimates of, each other? This is, as I suggested, how we tend to understand 'derivative' citational economies like the urban Tamil one discussed above, markets where inauthentic 'fakes', aping 'real' brand 'originals', are made, sold and worn. And yet, what of the brand heartlands with respect to which such peripheries are put in their place? What of those brands, designers, and design houses who are being copied the world over – Ralph Lauren, Tommy Hilfiger, Diesel, Armani and the like?

Fashion writers and scholars of intellectual property law tell us that in certain ways high-fashion designers are not so different from these Chennai 'pirates' (Agin 2000; Schmidt 1983; Hilton et al. 2004; Rautiala and Sprigman 2006). Both are enmeshed in citational economies. Indeed, the Euro-American fashion cycle can be described as the frenzy of copying the latest design (what's 'moving' in the market), modifying it with small citational marks until the design is played out, the quali-

³ The phrase *brand heartlands* refers not to geographic places as such, but ideological imaginaries and regimes of brand authenticity, of which certain places are recruited as metonymic emblems. In this sense, to speak of a brand heartland is, to use Bakhtin's (1982) term, to speak of a 'chronotope' of brand, one which may abut and even overlap spatially, temporally, and sociologically with other commodity chronotopes, such as the chronotope of surfeit described above. To give a concrete example, from New York to Chennai, it is not difficult to find 'pirate' road-side stalls nearby and even in front of authorized brand retailers, each in their own world and yet also contiguous and in dialogue.

ties that unite and fractionate what is cited abandoned under the swell of the next 'trend'. From this point of view, high fashion is itself split in two, a line of authenticity and originality dividing it internally, separating the copier and the copied, originator and imitator (see Kuldova's chapters in this volume on this dynamic in elite Indian fashion). The distinction that separates fashion from piracy, organizes fashion itself. That which defines the exteriority of fashion is inscribed within it. But is that line, by being drawn, not also etched away, anticipating its erasure and putting itself under erasure?

High fashion has long been ambivalent about the status of the copy, an ambivalence that defines the very sociological organization of the field. Seen as the sign of a designer's success or simply the cost of doing business (Kaufman 2005:532), copying others' designs is often condoned by the industry. It is reported that Elsa Schiaparelli, the great Italian designer, considered laws protecting design 'vain and useless. The moment that people stop copying you, it means that you are no longer any good' (cited in Stewart 2005:130). As one group of authors has put it: 'Copying is thus endemic and could be said to be a core activity of the industry' (Hilton et al. 2004:351; also see Schmidt 1983; Agins 2000:24-25; Nurbhai 2002; Barnett 2005; Kaufman 2005).

While tolerated, such copying has also been seen by certain, but not all, parties in the fashion world as a fundamental problem for the industry, as an impediment to growth, innovation and creativity, not to mention being seen as immoral, unjust and unfair (Hagin 1991:342; Scafidi 2006; Marshall 2007). Despite all this, the fashion industry in the United States and elsewhere has shown continuing economic growth and investment, and, by all accounts, rapid innovation and vibrant creativity.⁴ Jonathon Barnett (2005) and Kal Raustiala and Chris Sprigman (2006, 2009) have argued that some amount of copying, and counterfeiting even, benefits fashion designers, and, in one way or another, may be encouraged by them (through inaction and nonchalant attitudes, as we saw above). According to such arguments, copying enhances the prestige of the 'original', functions as a mode of publicity, solidifies trends by making them

⁴ For discussion of this so-called 'piracy paradox' see Barnett 2005; Raustiala and Sprigman 2006, 2009; Scafidi 2006; Marshall 2007; Cox and Jenkins 2008; Stevens 2012. Of course, while Raustiala and Sprigman (2006) suggest that copying is a projection, or an affordance we might say, of the law, the political economy and culture of copying is crucial as well. See, for example, Weikart 1944 on some of the economic and institutional features of the interwar textile industry (a period of much growth in the industry) that promoted rampant copying (among them, growth of mass markets and the decline of tailoring, reactions to WWI austerities and the depression, 'hand-to-mouth' retailing, and the 'jobber' organization of manufacture).

more visible and thus recruits new consumers.

The similarities, and ironies, that lie between the ‘pirate’ workshop in Chennai and the great fashion houses of New York, Paris and the rest do not simply stop there. Fashion history underscores that it was the US, the contemporary pusher of IP regimes the world over that was one of the principal pirates of high (French) fashion from its late-nineteenth- and early-twentieth-century inception. Haute couture fashions from France were frequently pilfered by American design houses – sometimes with ‘permission’ and sometimes not – so as to be reproduced for the American parvenus and masses (Stewart 2005; Scafidi 2006:118). Even contemporary American designers like Ralph Lauren and his own doppelganger Tommy Hilfiger have been described by certain writers within the fashion world as design hacks and fashion thieves, pilferers of others and of each other (Agins 2000).

This line that splits and divides fashion – original/copy; real/fake; true/false – is shifty. It alters its scale and meaning across contexts (Gal 2002), typifying and normatively ordering various objects and persons as belonging to one category or another. This lability makes it possible for a stitch, a color scheme, an individual designer and even a whole nation (Pang 2008; Graan 2013) to be typified as innovative or derivative; real or fake; authentic or inauthentic. It allows Ralph Lauren to be both an originator and a hack, a victim and perpetrator at the same time, depending on one’s point of view, the designs in question, or the person to whom he is compared. What is important for me here is that this shifting ideological discourse, this moving line of authenticity construes the citational relations that fashion comprises, ordering and organizing them, giving them cultural substance, normative force and economic value.

Fashion may be viewed, then, as a tiered citational economy or, rather, a set of entangled economies related to each other through this shifting line. Haute couture and big-name elite designers cite/copy each other, and this world inspires and is copied by mass-producing ‘ready-made’ brands. Such mass-market brands also compete with and cite each other and are in turn copied/cited by ‘pirates’ across the globe (who also, of course, may ‘pirate’ high-end designers as well). Since the late twentieth century, this also runs in reverse. Fashion designers today freely draw ‘inspiration’ from, and cite, the so-called ‘street’, just as post-colonial designers in places like India cite and appropriate ‘traditional’ (rural) designs (Tarlo 1996; Kuldova 2013; see Kuldova’s chapters in this volume; Wettenstein, this volume). Consider the launch party for Japanese

artist Takashi Murakami's 2008 '© MURAKAMI' retrospective at the Brooklyn Museum.⁵ As part of the spectacle, 'real' Louis Vuitton goods were sold in a citational simulation of 'pirate' platform shops, a cheeky inversion that aimed to capture, and disavow, some of the aura of the 'fake' so as to recoup it into, and thus augment the value of, the 'real'. The blog notcot.com described the event as such:

Louis Vuitton is really fighting back against counterfeiting these days. . . . How about their little Canal St-eqsue set up outside the Brooklyn Museum of Art for the Murakami exhibit launch party? It is a fake set up of a fake bag seller that sells real bags. . . . It is really quite a hilarious set up – notice the hand written labels below the paintings for \$6000?⁶

Citational copying stitches and unstitches fashion designs and qualities, transporting forms within and across these tiers, across time and space and social class. The citation is the semiotic form by which different social parties – elite designers, mass-market designers, local 'pirates', and all their various publics – are entangled with and oriented to each other. These citational entanglements are one way in, and by, which fashion is materialized.

Today, big name designers have internalized these entanglements between tiers. Since the 1980s, designers have increasingly created multiple commodity lines (and 'labels'), each catering to different market segments and 'lifestyles'. Designers, in effect, have fractionated and multiplied themselves into various brand surrogates. They are not simply designers of particular pieces of clothing, but are now brand names (Klein 2000), the very mass-market 'design pirates' who once copied and parasited the high-fashion designer (Agins 2000). Rather than having their couture copied and mass produced by others, today designers like Giorgio Armani feature different, yet hierarchically ordered, sub-brands: from Armani Privé (the haute couture line), Giorgio Armani (high-end ready-to-wear), Armani Collezioni (not as high-end ready-to-wear for professionals), Emporio Armani (similar to Armani Collezioni but for a more youthful demographic), to Armani Jeans (mass-market,

⁵ As the Brooklyn Museum's website describes the exhibit: The exhibition © MURAKAMI explores the self-reflexive nature of Murakami's oeuvre by focusing on earlier work produced between 1992 and 2000 in which the artist attempts to explore his own reality through an investigation of branding and identity, as well as through self-portraiture created since 2000 (<http://www.brooklynmuseum.org/exhibitions/murakami/>, last accessed 1st July, 2013).

⁶ <http://www.notcot.com/archives/2008/04/lvs-war-on-coun.php>, last accessed 1st July, 2013. Also see http://www.nytimes.com/slideshow/2008/04/04/fashion/0406-BROOKLYN_index.html, last accessed 1st July, 2013.



sold in department stores) and Armani Exchange (a 'street'-inspired collection). Designers like Armani, now corporatized brand entities, cannibalize, steal and redistribute their own aura *as* designers, an autocitatoriality that splits the designer into so many mediatized, and mass-marketed, fractions of the 'same' brand. The brand, now, encompasses design and designer.

If brand heartlands are not so different from their surfeit shadows, then what is the difference? What about their similarity? What, and from where, is the line that separates and unites them?

Taming Citation, Staying Quality

The operative thesis here is not the truism that 'fake' and 'real', 'original' and 'copy' are merely arbitrary cultural or historical categories. Rather, it is that these binaries are a shifting set of indexical, and fractal, relations that entangle different social parties and projects to each other, and by doing so materialize a range of social and aesthetic forms. Think again of Schiapparelli's image of fashion, a world where 'original' and 'copy' designate a set of mutually defining social positions – those who are 'good', who are 'original', who are trendsetters; and those who copy and validate them, and thus, presumably, are not (as) 'good'. Such relations of 'original' and 'copy' ground, and are grounded in, the creation, circulation and consumption of material objects, just as they map out a terrain of aesthetic and economic value. Or think again of the Chennai market, a space of presumed third-world mimics, designated 'pirates' (not 'good'!) and entangled with IP law, global capital and their target market (non-elite young men). Such entanglements materialize non-elite youth fashion in urban Tamil Nadu. They materialize a particular kind of surfeit aesthetic that differs from the logics and ontological commitments of the forms they copy (*viz.* the brand), as I discuss below (Nakassis 2012a, 2013d).

Important for me here is the way the limit and protective border that surrounds the 'original' and the 'authentic' depends on the continual, haunting presence of its transgression, of its surfeit. There is an excess that is projected out of, but also introjected into, the 'original'. The surfeit is always already interior to the 'original', the copy already anticipated in the very form of what is copied, the parasite already in the heart of the host, beating its heart and breathing its breaths (Nakassis 2013a, 2013c). 'Fake' and 'real' are not simply discursive designations *about* objects ('That is a fake!', 'This is real!'), but, at the same time, and by that very fact, *material* distinctions. The ideological opposition of 'real' and 'fake', of course, is just that, a rationalization, a cultural discourse,





a reflexive reanalysis; but it operates over a range of forms, shifting and moving, variously typifying objects and phenomena as one or the other. And by operating as a shifting discourse, this being the point, it performatively congeals in various ways. It is materialized in the (re)design of a logo, in the writing and enforcement of a law (and in the act of its transgression), in the weave of a garment and the like (Nakassis 2013e). While there are multiform ways in which this materialization happens, below I want to focus on the role of intellectual property law, and in particular, trademark law as one institution that materializes the citationality of surfeit and the surfeit of citationality.

The emergence of the modern brand turned on the mid-nineteenth-century need to reliably mark commodities of otherwise uncertain provenance and quality so that they might, virtually at least, point back to their putative origin, their authorizing producer (Coombe 1998; Bently 2008). This was necessary due to the emergence, and increased prevalence, of transnational mass markets. Such markets were implicated by new technologies and organizational forms (viz. the corporation) to mass produce and manage goods, goods that – as a result of such new modes of mass manufacture, distribution and retailing – were increasingly detached from older social networks that worked to guarantee consumer trust and commodity quality. This dispersed, transnational form of market organization was, by that very fact, plagued by fraud and piracy. The trademark, then, was not simply a ‘mark of liability’, but also the mark of state force backing the authority, and authenticity, of the good. Trademark law necessarily presupposed the surfeit good, the good that exceeded its authority (Nakassis 2013a). Such law implicitly invoked the surfeit and explicitly damned it at the same time.

The productivist, and referentialist, semiotic ideology of trademark law, then, aimed to make the commodity always point to its unique source. Such a referential relation made commodities compete not just on use value or exchange value, but on the name, on the commodity’s ‘brand identity’, we might say. But such competition wasn’t simply staked on the name. It was also staked on the spectral image of the producer that stood behind the commodity – her ‘reputation’ or ‘good will’, or ‘brand image’ as we say today.

Here we see a double parasitism and a double inversion. On the one hand, the trademark parasites the commodity (Nakassis 2013c). The trademark enters the law and the market as a supplemental sign that appends itself to the commodity, communicating the good’s quality and value through the detour of the producer’s good will. Through this



parasitism, however, the trademark also comes to be the origin of the commodity, such that now the commodity – on one understanding of it, at least – exists simply to carry the sign of its producer. On the other hand, the brand parasites the trademark. The brand image is the outgrowth of the trademark, the aura and imaginary projected by, and anchored to, it. Through this parasitism, the brand comes to reverse that ordering, becoming the originating source of value and meaning of the trademark. Indeed, today it is increasingly brand image that determines social value and meaning over and above the trademarked commodity form, imbuing commodities and their marks with their exchange values and social meanings (Lury 2004; Arvidsson 2005; see Schechter 1927 for an early realization of this). Such commodities are merely the brand's earthly extension, the trademark its transparent medium. The brand, by contrast, is a more ethereal, essential(ist) entity, more similar to a Platonic Form (Manning 2010). Consider, for example, then-CEO of Nike, Phil Knight's comment on the relation between the product and brand marketing:

For years we thought of ourselves [Nike] as a production-oriented company, meaning we put all our emphasis on designing and manufacturing the product. But now we understand that the most important thing we do is market the product. We've come around to saying that Nike is a marketing-oriented company, and the product is our most important marketing tool.
(cited in Klein 2000:22).

The brand, as a function of trademark law, then, has become the commodity's *élan vital*. The brand stands in where the body of the artisan would, even as the hand that produces the commodity is no longer a 'producer' in any clear sense, but a dispersed set of bodies linked by the corporate form (Klein 2000). It is, of course, doubly ironic, then, that the language of brand marketing has resignified the very body of the designer, evaporating and mediatizing the originator and author of fashion into a brand, inscribing that parasite relationship within the designing subject so that she might, in turn, parasite herself, parlaying her cachet as a designer into a chimerical brand portfolio.

Here my interest is how trademark law defines a material field, and a subjectivity that navigates it, how it outlines the limits of the 'copy' by defining it, determining when a citation becomes a 'fake' and when a 'copy' is acceptable, and even defensible. When, indeed, does homage become theft, inspiration piracy? And when is it legally prosecutable? When does a name or design become someone's property? In drawing that line, trademark law creates and stabilizes semiotic monopolies, arbitrating who is allowed to exclusively use a name or logo and who

is not.

It is through such little dominions that brands enter the market. This market, however, is always already composed of spaces of non-monopoly, of – as far as intellectual property law is concerned at least – commodity classes that cannot be owned. While you can trademark ‘Xerox’, you can’t trademark signs that designate the class ‘copy (xerox) machines’. That is, the brand and commodity must stand apart from each other, even as they are intimately entangled. Brands compete *within*, but never *as*, those ‘generic’ commodity classes that they must be distinct from, creating the possibilities of brand imaginaries where love (Foster 2007), loyalty (Fournier 1998) and community (Muniz and O’Guinn 2001), among other marketers’ fantasies, may play out through, while never being reducible to, material commodities. Not just a technology to police the surfeit, trademark law is a technology to tether the commodity to a brand imaginary and identity and thus to make both possible. Trademark law never lets the commodity get too far away from the brand, never lets it be seen to exclusively stand under another identity, even as it, at the same time, never lets the commodity get too close to the brand, never letting it merge totally with that identity (see below).⁷

If the trademark makes the brand possible, and thus also makes its surfeit necessary, and if it does so by internalizing that exteriority within itself, what is exterior to it? What kinds of copies fall beyond intellectual property, and how might we understand such ‘copies’? Further, what does such copying materialize beyond the ‘original’?

‘Low-IP’ Environments and the Materialization of the Copy

High fashion design in the United States and local garment ‘counterfeiters’ in Chennai are part of what Kal Raustiala and Chris Sprigman (2006) have dubbed ‘low-IP’ environments, which is to say, citational economies where intellectual property laws only obliquely regiment fashion practices, where there is a ‘low’ amount of IP protection.

As Raustiala and Sprigman, among others, have noted, fashion design in the United States falls between the ‘seams’ of IP law (Cox and Jenkins 2008). Simply put, a ‘look’ or design of a garment or set of garments – the cut of a sleeve, the draping of a dress, the width of a collar, the

⁷ The merger of brand identity (as invoked by the trademark) and the commodity class of the goods that are instances of that identity is sometimes called ‘genericide’ (Moore 2003), the lapse of the trademark’s unique source-indexicality into mere common nominal reference. This is, for example, what threatened to happen to Xerox, and what did happen to Bayer’s once-trademarked Aspirin.

arrangement of a garment's components, or the color palette of a collection – cannot be easily copyrighted, trademarked, or patented. While design is perhaps *the* central aesthetic and commoditized element of fashion, US IP law does not protect it in any straightforward way.⁸ Nor has fashion design traditionally received much support from American law-makers or courts of law.⁹

Clothing designs, historically, have been definitionally excluded from copyright.¹⁰ Only in the early twentieth century did clothing, along with music, theater, sculpture, photography, film and other creative practices, come to be considered a type of artistic creation, that is, 'applied art' that could be covered by copyright (Nurbhai 2002:498–500; Tu 2010:424–425). Even with this reclassification, however, the use of copyright for fashion design has been difficult. The primary reason for this is that clothing has been considered primarily a functional commodity.¹¹ It is a 'useful article', which is to say that clothing has 'an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information' (17 USC §101). Coded as nonrepresentational commodities, the utility of garments and the inseparability of their design aesthetics from that utility (Mazer v. Stein 1954) mean that clothing often cannot be copyrighted.

⁸ Fashion isn't the only such field, of course. Indeed, much of economic activity is characterized as low-IP environments. None of the following are easily protectable by IP law: culinary works, fireworks, magic tricks, typefaces, stand-up comedy, music by 'jam bands' or any musical form where 'standards' are standard, perfumes, sports plays, semiconductor chip design (until 1984), building design (until 1990), and boat hull design (until 1998).

⁹ As Schmidt (1983), Hagin (1991), Scafidi (2006) have noted, the fashion industry has been consistently neglected by US Congress and legal interpreters of the law who have resisted extending protections to design. Indeed, of the over 70 proposals to add *ad hoc* protections to fashion design, all have, to date, been rejected. While below I note some of the legal reasons why fashion design has not been protected, Susan Scafidi has also suggested cultural reasons linked to the gendering of fashion and its perceived frivolousness (http://www.counterfeitchic.com/2006/02/law_econ_discovers_fashion.php, last accessed 1st July, 2013).

¹⁰ The original 1790 US copyright statute only protected maps, charts, and books. The general history of copyright since has been the gradual extension in scope and temporal length of copyrights (Nurbhai 2002).

¹¹ From this functionality doctrine it follows that while designs as texts are protectable, their embodiment in actual material objects (i.e., pieces of clothing) generally are not (Raustiala and Sprigman 2006:1699; Tu 2010:428). Insofar as copyright protects a particular expression of an idea, but not the idea itself (a vague, but powerful distinction of species-genus that applies at every level of IP law), actual garments as tokens of a type are unlikely to be protected, even if their sketches or instructions are. While a sketch represents the design idea and puts it into a protectable aesthetic form (which has no 'utility' except to represent), the embodied garment is an object of utility and thus is not protectable (see below).

The issue for courts here is that extending intellectual property to apparel designs would inhibit competition by de facto leading to unfair forms of monopoly (Schmidt 1983:861ff.). If copying some quality or form is the only way to compete within a commodity market (that is, if that quality is integral to the 'generic' product type and its 'function'), then such qualia are unprotectable by copyright. As the courts have argued, when it comes to clothing there are often a limited number of ways to vary its aesthetico-utilitarian qualities, such that to have exclusive rights over such qualia (or any subset of them) would severely curtail the ability of competitors to operate in the market. If someone owned the length or width of a lapel, how could different producers fairly, and freely, compete to sell shirts?

Trademark, like copyright, is also constrained by the notion of functionality. With respect to trademark, courts generally understand functionality to refer both to the essential 'use or purpose of the article' as well as to the question of whether the feature in question 'affects the cost or quality of the article' (*Louboutin v. Yves Saint Laurent* 2012). By conflating these rather different notions of function, trademark law asks whether the quality or form under question is central to 'non-reputation-related' (i.e., non-brand-related) competition (*Qualitex v. Jacobson* 1995), and thus whether protection would cause disadvantage to other producers by laying claim to the larger, unprotected commodity class within which brands are supposed to vie.¹² As fashion designers compete on 'looks' that are not simply indexical of their brand identity (that unique and singular indexicality being what justifies the trademark's protection), aesthetic functionality as a legal doctrine precludes trademark protection being conferred on those ('non-functional') qualities upon which competition in fashion markets is staked, that is, design itself (*Qualitex v. Jacobson* 1995; *Knitwaves v. Lollytags* 1995; *Adidas-Salomon AG v. Target* 2002). In effect, trademark law requires that the mark simply be a diacritic, a pure indexical of its producer, that it not designate a 'generic' commodity class (say, 'blouse', 'skirt', 'collar', 'sneakers', etc.) or its aesthetics. The brand and its trademarks should not come too close to its commodities.

The limits of trademark open up a space of quality beyond identity, beyond the brand, but still tethered to the design(er). If designs can't be

¹² See *Sicilia Di R. Biebow & Co. v. Cox* (1984): 'a design is legally functional, and thus unprotectable if it is one of a limited number [of] equally efficient options available to competitors and free competition would be unduly hindered by [giving] the design trademark protection' (cited in Bharathi 1996:1693; also see *Abercrombie & Fitch v. American Eagle* 2002:643).

copyrighted, trademarked, or patented¹³, they can be liberally copied without legal recrimination. This limit allows for forms of fashion citation – ‘referencing’, ‘inspiration’, ‘homage’, ‘dedication’, ‘borrowing’, ‘re-interpretation’, ‘updating’ and the like being the terms of fashion-speak’s citational register. It allows fractions of the commodity to disperse and disseminate in a myriad of ways. It creates a space of surfeit beyond the ‘counterfeit’. This is the space of fashion itself, and is, as Schiapparelli noted, the very fabric of fashion’s sociology, of its hierarchies of status and aesthetics, and of its vitality in innovation and its normativity in copying.

In the penumbra of the ‘original’, then, the surfeit materializes as a particular kind of temporality and spatiality: that of the fashion cycle and its ‘trends’, the multiplication of a quality – the cut of a hemline, a particular kind of fabric, a particular color or color palette – across a number of material instantiations. Such multiplication takes place within a particular temporal envelope, an unfolding synchrony subject to fadish ephemerality, as well as to fashion’s characteristically rapid (re) cycling and involuted citational *renvoi* (so-called ‘retro’) (see Mukherjee, this volume).

Compare this with that fashion design element that is protectable by intellectual property – the trademark. The identifying function of the trademark requires some degree of constancy of form and referent across time and space. The citation of trademarks is so tightly regulated that trademarks are, relative to other design elements, static in form. The trademark is seemingly not subject to the same kinds of circulation and dissemination as other design elements, not subject to fashion’s temporality in the same way. In fact, by definition, all authorized iterations of a brand’s trademarks are, in some sense, (functionally) ‘identical’, even if distinct. Consider, for example, Louis Vuitton’s classic and unchanged ‘Toile Monogram’ trademark, created in 1896 and registered in France

¹³ While patents, and design patents in particular, would seem to be applicable to fashion design, they rarely fit the criteria of non-trivial novelty and non-obviousness (Schmidt 1983:867–868; Hagin 1991:354–356; Tsai 2005:455–458; Scafidi 2006:122–123; Jenkins and Cox 2008). Fashion innovations are oftentimes small alterations to an existing design, and hence don’t fulfill the necessary criterion for novelty to receive a patent. Moreover, given the rapidity of the fashion cycle (3–6 months) relative to the time to receive a patent (a minimum of 6 months given the requirement to search for novelty) patents are not feasible for much fashion design. Further, given their relative expense (and the high number of designs produced for each fashion season), they are often not economically viable options to protect design. Design patents (unlike utility patents) also have a non-functionality requirement (i.e., that the good’s function be purely ornamental) which makes their use in fashion design difficult.

in 1905. In 2002, as part of the revitalization of the brand, Louis Vuitton unveiled its first co-branding venture with Takashi Murakami (see above), the result of which was the 'Louis Vuitton Toile Monogram Murakami Trademarks'. While identical in form and arrangement, the two marks do differ in certain qualia. In the Murakami version, as decorating Louis Vuitton's popular Multicolore handbags, the mark is rendered in multiple colors (33 to be exact) rather than the Toile's classic gold. It is precisely in this difference of quality that the possibility of an exteriority, and citational menace, to the trademark was opened. Shortly after the launch of this trademark the lower-market designer brand, Dooney & Bourke proceeded to create their own multicolored monogram handbag, not with Louis Vuitton's trademark but with its 'look'. Dooney & Bourke's 'It Bag' had DB's trademarked monogram splayed across the bag in multiple colors in a way that was reminiscent of, and in fact shown to be directly inspired by, Vuitton's Multicolore monogrammed bags. Louis Vuitton sued for infringement (*Louis Vuitton v. Dooney & Bourke* 2008). They ultimately lost, however, which is to say that the courts reiterated that the look is not the trademark. Every trademark has its own aesthetic that exceeds the trademark's status as a trademark. There is a surfeit to the trademark. It itself has its own 'look', one that partially falls outside of its identity, and thus cannot be legally protected. While Louis Vuitton uses the aesthetics of its trademarks to leverage itself in consumer markets – the look of its goods is its trademarks multiplied all over the commodity – this has its own limit. The look of a trademark can, after all, be cited. Its qualia can be copied. Here, then, we see the gap between trademark and fashion, between ownership and copying, identity and aesthetics.

Compare this materialization to the surfeits in Chennai that I discussed above. Here as well we have come to a limit of the trademark, but of a rather different sort. Such economies, as I noted, are seemingly defined by their relationship to the brand heartlands to which they are peripheral. In places like India, surfeit garments exist because of demand for the 'real' thing elsewhere. They are locally desired, presumably, because of that very existence and demand. From the perspective of the brand, such surfeits are 'copies' of an 'original', attempts to capture the aura and steal the profits from that elsewhere. Of course, the irony is that conceptions of intellectual property and aesthetics, and even the very ontology of what a brand 'is', are – for certain people at least – radically different in South India (Nakassis 2012a, 2012b, 2013d), as elsewhere around the globe (Vann 2006; Luvaas 2013; Thomas 2013).

Indeed, the local producers and consumers with whom I worked were rather indifferent to the brand: 'no one cares about brands' was a common refrain. Rather, such garments have a 'look' – they're 'stylish', 'different' and visually interesting. Most producers and their youth consumers didn't know much about, or (communicate their) care to know much about, the brands they so eagerly re-produced and consumed. Rather, they were interested in clothing that looked like it was branded – that is, that had that 'look', as they put it – even as they were indifferent to actual brands and questions of brand authenticity more generally. In any case, for these non-elites, everyone knew that such goods weren't the 'real' thing. In fact, in the peer groups of the lower-middle- and middle-class young men with whom I worked, authentic, authorized brands – with their hefty price tags and presumptions to social status – were likely to provoke undesirable envy and censure from peers. They often elicited claims of arrogance and offensive ostentation, teasing and gossip that one was presuming to be better than others when one was not. Such youth, instead, safely enjoyed surfeits of the brand. Such brand-esque forms, as surfeits, kept at an arm's length the problems raised by the authentic brand even as they alluded to its social value and prestige. As a result, these young men were less attentive to the authorized identity and provenance of the commodity than to the commodity's aesthetics as such, with its ability to align its user with a cosmopolitan imaginary of fashion (which they called 'style') while not presuming to be a credentialized member of it (Nakassis 2013d).

From the perspective of the design and manufacture of such surfeits, one principle that disconnects the trademark in these contexts from its legal regimentation is, ironically enough, the law itself, or rather, local producers' understanding of it (Nakassis 2012a). There was an anxiety among local producers about being prosecuted for trademark infringement. When I was doing my fieldwork, some producers, I was told, had been made examples of by big brand companies, brought up on charges and levied heavy fines for 'piracy'. As a result, the producers that I spoke with made sure to alter the trademarks that they reanimated. They didn't, they insisted, make exact replicas of brand garments or of their trademarks. To their mind, any quantum of difference in how they rendered a trademark or design was enough to make their works legal, from a slightly altered curvature to a different spelling or a changed font. They were operating with the understanding that a trademark was not just a diacritic of origin, but part of the garment's 'look'. It was part of fashion. In their hands, then, the trademarks of a brand were design elements, aesthetic forms that could be played with and redeployed. As with their youth consumers, for these producers it wasn't

brand identity, image, provenance or authenticity that was important for their practice (Vann 2006), but an *aesthetics of brandedness* (Nakassis 2012a). And indeed, these local producers didn't only copy trademarks, but also whole modalities of presenting brand commodities: they used branded and brand-esque labels, price tags and even packaging to give the commodity a so-called 'royal' look, to look like an authentic, authorized good even if it was, obviously, not.

These surfeit producers and designers, and their consumers, exist in the orbit of the trademark but also beyond it, in the possibility of its qualia. They cite the brand, or rather the idea of it. And in doing so, they generate a whole range of garments and aesthetic forms. Interestingly, such forms were connected to trends in brand heartlands. Indeed, what they copied, as I noted above, came from export surplus, the detritus of goods produced in India for consumption abroad. One Chennai producer that I spoke with, for example, got his hands on a large surplus of Columbia brand price tags that were produced in the state for export abroad. With his new tags, he began producing Colombian shorts, embroidering his 'new' brand name – only differing from Columbia's by the 'n' appended at its end – along with Columbia's logo onto fabrics culled from other surplus garments and defect goods (Nakassis 2012a).

Note, then, how the 'demand' for a brand in 'foreign' brand heartlands guides what was copied locally even if there was no 'demand' for such brands among local, non-elite consumers.¹⁴ How could there be 'demand' for such brands if these local producers and consumers didn't reckon the signs of the brand as of the brand at all, but as simply 'stylish' aesthetic elements? The surfeit at one end of the world materializes, through citational relay, a surfeit on the other. From high fashion to mass-market brands to 'piracy' in South India, certain qualities of brand forms are transported, repeated, altered, cited.



This aesthetics of brandedness materializes in a locally particular way. Copying, here, is untethered from the brand and its trademarks. Indeed, if no one cares to care about brands, and if the brand is displayed and worn not as a brand but as something else (i.e., as 'style'), then there is no anchor to tether the brand in this citational economy. A brand can be cited into non-existence, into unrecognizability, deformed until its identity is lost along the way, its origin erased. Hence the wide range of

¹⁴ It is important to keep in mind the class specificity here. Upper-middle-class and elite consumers, in distinction to non-elite youth, were often fastidious about brands and their authenticity.

brand-esque and fictive brand forms that one finds across South India and similar places. Something remains, of course, just not the identity of the brand. Only the mere idea of it lingers, its aesthetics, its qualities. A brand is decomposed into a set of reanimatable fractions, design elements to be used later and elsewhere to make a different-enough look.

To highlight how this citational economy differently materializes its surfeit, compare this aesthetics of brandedness with 'knock-offs' found in situations where the authenticity and authority of the brand *qua* brand 'original' is highly consequential and performative of status, aesthetics and value: high-end handbags in brand heartlands. Such handbags, especially those from brands like Louis Vuitton and Hermès are widely counterfeited and copied, as we saw above. The surfeits of such bags are also heavily policed and prosecuted through the law. In distinction to Dooney and Bourke's fashion citations, however, knock-offs of high-end handbags are valued for their ability to 'pass' as, or at least figure as passing as, their brand originals. Such surfeits are simulacra, aiming to *be* that which they are not. Rather than marking themselves *as* surfeits, which is to say, as citations, their reflexive signs of difference are downplayed and hidden. Such difference should not be recoverable at all, in fact. The knock-off should be identical in every way (with the exception, of course, of price). Indeed, the very citationality of such surfeits can often only be recovered through specialty knowledge ('taste' or 'connoisseurship' as it is often operationalized) and sleuthing which, luckily for the fashion tyro, the Internet provides in spades. A Google search for 'how to tell if a Louis Vuitton is real' generates pages upon pages of sites pedagogically dedicated to telling the difference between 'real' and 'fake' Vuitton products.

It is in such contexts – where the authenticity and provenance of the brand is paramount for reckoning the commodity's value, aesthetics, meaning and identity – that the distinction between 'copy' and 'original' becomes most ideologically salient, when it can be said to exist. And yet curiously, it is in such contexts that the very material forms typified as 'originals' and 'copies' also become near indistinguishable. While we all know that we *should* know the difference between the 'real' and the 'fake' Hermès bag, telling them apart can be near impossible. As authenticity becomes more and more important, the material differences between 'original' and surfeit become less and less perceptible, more and more minute. They also become further and further removed from the space of the trademark itself. It is the *qualia* that accompany the trademark (the stitching, the shape, font, etc.), the whole commodity aesthetic and the engineering of the commodity that become the site for



the authentication and authority of brand identity. Hence, consider the bagbible.com blog's section for 'how to spot a fake' (last accessed 1st July 2013): here one gets tips on how to compare the contour, the shape, the lock design, the stitching patterns and the 'stamp' of logos on 'real' and 'fake' bags. Comparatively speaking, the material gap between surfeit and 'original' decreases in inverse proportion to the policing of that gap.

By contrast, the materiality of surfeit in the South Indian case becomes more and more detached from what it cites with every copy, the 'original' more and more suspended and deformed. The surfeit floats off, the forms become more and more patently 'fake'. And yet, curiously, this materialized difference, this ever-widening and visible gap, is also seemingly erased and unseen, invisible to these goods' brand-indifferent producers and consumers. Indifference to authenticity opens up a space beyond the brand, and hence allows for the play of material alteration across iterations. Here the materialization of difference proceeds in direct proportion to producers' and consumers' indifference. This epistemology of surfeit, we might say, materializes a different ontology. Brands are not the issue, for they don't quite exist anymore. Suspended by indifference and inscribed in material difference, they are cited out of being.

Quality Beyond the Copy

At the edge of authorization, identity is perilous. Intellectual property law enables forms of copying that conserve the identity of that which is cited, and yet such copies always threaten to lose their origin, to cease being copies altogether. Trademark, from this point of view, is a regime of authorization, a semiotic and economic anchor to never let the commodity get too far from the brand (but also not too close). Trademark law polices a fine line between surfeits and 'originals'. It aims to protect the identity of the 'original', to stabilize it by projecting, and introjecting, its surfeit. But what of the forms of unanchoring and decentering that occur when the trademark's authority is ignored, when its importance is met with indifference, when the very distinction between 'original' and 'copy' is itself put into question? Perhaps it is this possibility that most troubles the brand (to say nothing of other regimes of originality). The brand, as the center of this regime of authenticity and authorization, attempts to catch both itself and its surfeits in its web, to make itself always and everywhere the coordinates of commodity intelligibility, a Jupiter around which all its surfeit satellites rotate. This is a tenuous achievement indeed, one that attempts to stay the never-ending quivering of quality, the unbridling of possibility latent in every act of citation.

This is why it is not enough to show how ‘real’ and ‘fake’ are cultural categories, mere epistemologies over a messy ‘reality’ that abides, unto itself, no such distinctions. These issues of citation and quality, the quality of a copy, and the status of a copy as copy, are ontological questions. They are questions of materiality and materialization. What does it mean for something to be ‘a copy’? What is the materiality of a surfeit when it stands under or outside of a regime of authenticity, when it is typified as a ‘copy’ or not? How does it open up a social field of relations and performative force? How does it temporalize itself, how does it spatialize itself, how does it map out a social terrain? Only by asking these questions can we come to understand what makes high fashion in New York and surfeit fashion in South India so different and so similar, what makes a ‘low-IP’ environment, and what it makes.

Citations act on, and activate, the quality of things. They materialize and create possibilities out of them. And in doing so, they open up other imaginaries and forms of social relation. It is these spaces, their materiality, their sociality and their performativity that must be the grounds upon which any analysis of ‘real’ and ‘fake’ must operate, which any analysis of ‘original’ and ‘copy’ must occupy, for it is this space which is constantly on the move, shifting beneath this metaphysics and its institutional manifestations. The exteriority opened by the citation is not simply on the margins, but at the very center of the (brand) universe. Or to put it another way, the quality of the copy is that it is also always *not* a copy, but something else still. And it is *that* quality which allows it to be a copy, to whatever extent it is. In repetition, something is elicited and created, something that cannot be reduced back to the identity of the thing copied. Beyond ‘real’ and ‘fake’ and beyond repetition we might ask what are the horizons that are opened, what qualities and possibilities exist? Is not fashion itself one of them?

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