

Forever Fashion; Questionably Legal

Fast fashion giant [Forever 21](#) has a very interesting business model. Despite growing faster than many of our favorite retail outlets, this Korean-American-owned empire views American law through its own eyes. As recently spotlighted in a [Business Week profile](#), Forever 21 is acknowledged with unprecedented success:

Forever 21 has been quick to take advantage of the misfortunes of other retailers, moving into buildings abandoned by Saks (SKS), Sears (SHLD), Mervyns, Dillard's (DDS), Circuit City, Virgin Megastore, and HMV. It's staked out some of the most prestigious real estate in the world—on this stretch of Fifth Avenue, on London's Oxford Street, in Tokyo's Shibuya district. Its new Times Square store is 96,000 square feet; its store on the Las Vegas Strip is 127,000. In seven years, Forever 21 has grown from 1 million square feet of space to 10 million, from one brand of its own to six, offering clothes for kids, men, and plus-size and pregnant women. This year it plans to open at least 75 more stores in five countries. Forever 21 had a profit of \$135 million in 2008, the last time it made figures public. And it did all this without selling any item for more than \$60.

Well dang.

It appears Forever 21 also takes legal matters into its own hands. In recent years, the fashion giant has been the recipient of many lawsuits, claiming infringement on the designs of top brands. Now, we all know there currently is [no copyright protection](#) for fashion designs. However, the suits claiming copying of original prints and graphics have resulted in hefty settlements from Forever 21. Apparently, the company has what some have called a "copyright infringement budget", suggesting copies are just part of their way. They avoid court at all costs.



Is this business model appropriate? No doubt the plan is profitable, as revenues are in the billions. But, can we say "fast fashion" is playing fair? Upscale brands say "copying"; Forever 21 says "inspiration". They trust their designers couldn't have known. Although the infringement section of the Korean Copyright Act does not specifically mention *designs* of any kind, it does provide: *Any*

act of exploiting a work in a manner prejudicial to the honor of its author shall be deemed infringement of his moral rights.

Sure everyone who buys their clothes cannot also buy the clothes they are accused of copying, so technically there's no loss of revenues --kind of. On the other hand, shouldn't designs be somewhat safe despite the quick turning, reworking nature of the industry?

What do you think about the "copying" of fashion designs, versus "inspiration"? Are they one in the same? What about the fact of trends coming, going, and coming back?

Designers, weigh in on this one. Fellow lawyers, tell us what you think!