

# Where Sampling Crosses Infringement-

As much as we all believe we're unique and have unheard of creative ideas, we are just as guilty of taking something old and reworking it. This trend is alive and well in everyday life, at work and in general; it's in our entertainment world as well. Music, fashion, and media advertising all take cues from things once new and reinvent them --but when is it not ok?

*Infringement* is the unauthorized use or exploitation of another's work or rights. It is common in copyright, trademark, and patent law, and has increased year after year. In music, artists and producers often use "samples" of old, copyright-protected songs for remixes, or even brand new tracks. To some, this appears to be infringement, if the distinction in the tracks is not strong enough, and the new user is sampling without permission. To others, the new song is just so --a new song, reworked and remastered with its own identity. The music industry is not alone....



Fashion, as we've discussed on many occasions, is also seeing its share of issues with infringement. Although we do not currently have copyright protection for fashion designs, trademark infringement is increasingly prevalent in the fashion industry. Trademarks protect the logos and service symbols of brands, making them easily recognizable to the public. Those purses at the mall kiosk are *not* what's hot, and they are certainly teetering the line of fashion law. For example, handbags are typically in the market in tiers:

- 1: The real deal
- 2: A designer flaw (standards)
- 3: A pretty good fake
- 4: A sad attempt

Fashion designers have a bit more trouble than music producers, as their designs are not easily protected and can be difficult to prove as their own. We've all seen trends come, go, and come back, so claiming a style or design trend as your own gets unfortunately sticky in the fashion world. The [U.S. Senate has been working on this challenge](#).

Media advertising is also a culprit of infringement, using old images and likenesses to create new press pops. We all enjoyed the 2011 Super Bowl commercial with our [old TV faves](#) representing the NFL teams of their respective cities. The editing and entertainment were perfect. More

recently though, the cast of "Happy Days" has found their likenesses from the show in media use-- without permission. This spells trouble. Cast members have [filed suit against CBS](#); they're seeking \$40 million for not honoring contracts, and exploiting the use of their images in merchandising, even on slot machines.

As much as technology can aid in making something old resemble something new, one must always consider the test of "substantial similarity". In copyright and trademark, substantial similarity is the main test used to determine infringement. It can usually prove someone not as creative as they thought. Make no mistake, there is no harm in using established ideas and principles as a foundation for your own work....just make certain it has its own identity in the end.

Be careful in your reworking!