



Product IPR Analysis of LV Archlight Trainer by Louis Vuitton

Erika Heikkinen

Department of Commercial Law

Hanken School of Economics

Helsinki

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INTRODUCTION

Louis Vuitton is one of the well-known and valued fashion houses and luxury brands in the world which manufactures and sells exclusively high-quality luxury goods such as leather goods, ready-to-wear, accessories, shoes, watches and jewelry. In 2018, the luxury brand introduced a new futuristic trainer, LV Archlight Trainer designed by the women's creative director Nicolas Ghesquière, in its Spring/Summer collection. Many media sources declared the shoes to be “this season's must-have designer kicks”¹ and “the most talked-about shoe of 2018”². As LV Archlight Trainer can be considered as one of the more recent signature looks of Louis Vuitton, it surely makes an interesting luxury good to analyze from an intellectual property rights perspective. Thus, this paper analyzes all the intellectual property assets and components of LV Archlight Trainer. An extensive analysis of Louis Vuitton's industry, business strategy, industry value chain and intellectual property strategy is also provided. Interestingly, Louis Vuitton has made a name for itself by actively and aggressively pursuing to defend its intellectual property assets and, therefore, the brand's efforts to fight against counterfeiting and brand dilution are also explored.

¹ Jake Woolf, ‘Louis Vuitton's Archlight Sneakers Are This Season's Must-Have Designer Kicks’ (GQ Style Article) <<https://www.gq.com/story/louis-vuitton-archlight-sneaker-of-the-week>> accessed on 21 March 2020.

² Engracia Ang, ‘Louis Vuitton Archlight Sneakers: The Most Talked-About Shoe of 2018?’ (Be Asia Fashion Article) <<http://asia.be.com/fashion/style-advice/how-to-wear/louis-vuitton-archlight-sneakers-170541.html>> accessed 21 March 2020.

1. GENERAL DESCRIPTION OF THE PRODUCT AND BUSINESS

1.1. Product Description of LV Archlight Trainer

LV Archlight Trainer, designed by the women's creative director Nicolas Ghesquière, was the statement look of Louis Vuitton's Spring/Summer 2018 fashion show. As Louis Vuitton describes in their webstore, the key features of the oversized and futuristic women's trainer are "a springy wave shaped outsole and an oversized tongue with a low cut around the ankle"³ which makes the shoe recognizable and stand out from competitive products. LV Archlight Trainer comes in many different combinations of color, print, leather and technical fabric, or even metallic details, and it carries a rather hefty price tag. For the purposes of this intellectual property analysis, LV Archlight Trainer in white with the classic Monogram canvas will be analyzed because it displays many different intellectual properties owned by Louis Vuitton.



Figure 1: LV Archlight Trainer in white with Monogram canvas.⁴

The evolution from a stiff and conservative society to an increasingly casual and relaxed lifestyles has paved the way for sneakers to develop into one of the main elements in the world of fashion. According to Forbes Magazine, the market of global athletic shoes was worth USD 58 billion in 2018 and is predicted to rise to USD 88 billion by 2024.⁵

³ -- 'LV Archlight Trainer' (Louis Vuitton Webstore) <<https://en.louisvuitton.com/eng-nl/products/lv-archlight-trainer-nvprod810023v#1A43KT>> accessed 21 March 2020.

⁴ *Ibid.*

⁵ Cally Russell, 'Adidas or Nike? Which Retail Giant Is Winning the Sneakers War?' (Forbes Magazine Article) <<https://www.forbes.com/sites/callyrussell/2019/08/22/adidas-or-nike-which-retail-giant-is-winning-the-sneakers-war/#77dab16912b7>> accessed 21 March 2020.

Therefore, it is not surprising that even the world's most expensive luxury brands are entering the sneaker market when the demand for fashionable trainers is at its highest. Nowadays, wearing 'must-have sneakers' by brands such as Louis Vuitton or Gucci can indicate the same social status that previously has been tied to e.g. designer bags or high heels. As a result, people are increasingly willing to pay enormous amounts for a pair of fashionable trainers such as LV Archlight Trainer.

1.2. Industry Description of Louis Vuitton

Louis Vuitton Malletier, a French luxury fashion brand, is one of the houses under the Moët Hennesy Louis Vuitton (LVMH) group which is specialized in the production and marketing of high-quality luxury goods. Louis Vuitton was founded in Paris in 1854 by Maison Louis Vuitton, a valued craftsman in the artisanal industry of custom design boxes and trunks, and the family company has developed and expanded from a small atelier into one of the most best-known luxury fashion houses in the world. Today, Louis Vuitton's leather goods, ready-to-wear, accessories, shoes, watches and jewelry are sold exclusively in its boutiques around the world and are worn by very few due to the high prices. Forbes Magazine has estimated the brand value of Louis Vuitton to be USD 39 billion and ranked it as no. 12 of the world's most valuable brands in 2019.⁶

The industry of luxury goods is growing fast although a very small group of customers is actually able to consume such goods. In their book '*Luxury Brand Management – a World of Privilege*⁷', scholars Michel Chevalier and Gerald Mazzalovo distinguish three major differences between the luxury industry and the non-luxury segment: company size, financial characteristics, and the time factor. Firstly, luxury companies are generally small, with the exceptions of LVMH and some other conglomerates, but their reputations are impressive. The explanation is in brand awareness: "consumers have a genuine interest in luxury and fashion brands". Secondly, the business of luxury goods can be described as a "win all" or "lose all" type of business because it is very profitable for

⁶ -- '#12 Louis Vuitton' (Forbes Magazine company ranking) <<https://www.forbes.com/companies/louis-vuitton/#5b7d93356dbe>> accessed 27 March 2020.

⁷ Michel Chevalier and Gerald Mazzalovo, *Luxury Brand Management – A World of Privilege* (John Wiley & Sons, Singapore 2008).

those who are successful but there is a high risk of a profitable situation turning into major losses just because something is no longer fashionable. The industry of luxury goods requires expensive investments but the expenses can be balanced with high contribution margin and sufficient volumes. This indicates, however, a high break-even point. Lastly, launches of luxury goods often take a long time-frame which forces the brands to plan ahead and, therefore, “there is no short-term impact of major strategic decisions”.⁸

Furthermore, there is “intense competition among the handful competitors” in the luxury industry and markets of luxury goods, and a company’s success is dependent on the disposal income of its customers.⁹ Hence, academic Lucie Scholz identifies in her book ‘*Brand Management and Marketing of Luxury Goods*’ two different luxury consumers in correlation to their buying power: a very small group of customers who are able to buy luxury goods spontaneously and a much larger group of customers who plan the purchase in advance and save money to afford a luxury product.¹⁰ The buying power and purchasing decisions, on the other hand, are determined rather by symbolic qualities than functional qualities; thus, “[o]ne brand will satisfy a customer’s symbolic and experiential needs more than the other”.¹¹ In other words, whether a customer ends up buying Louis Vuitton, Gucci or Fendi bag depends on the customer’s conception and perception of the brand. Therefore, the ultimate objective for a luxury brand is customer desire.¹² Louis Vuitton is a great example of being consistently successful in the luxury industry.

1.3. Business Strategy of Louis Vuitton

Today, the luxury industry is dominated by conglomerates – large multi-industry enterprises that consist of several companies operating in different industries. LVMH is the world’s largest luxury conglomerate; it owns 75 distinguished luxury brands in six different sectors of business groups such as wines and spirits, fashion and leather goods,

⁸ *Ibid*, 2-12.

⁹ Ashok Som and Christian Blanckaert, *The Road to Luxury – The Evolution, Markets, and Strategies of Luxury Brand Management* (John Wiley & Sons, Singapore 2015) 12.

¹⁰ Lucie M. Scholz, *Brand Management and Marketing of Luxury Goods* (Anchor Academic Publishing, Hamburg 2013) 21.

¹¹ Gilles Auguste and Michel Gutsatz, *Luxury Talent Management – Leading and Managing a Luxury Brand* (Palgrave Macmillan, Hampshire 2013) 30.

¹² *Ibid*, 32.

perfumes and cosmetics, and watches and jewelry. Louis Vuitton is the leading brand of LVMH but it is also known for other brands like Moët, Christian Dior, Fendi, Tag Heuer and Bvlgari, just to name a few. As being the world leader in luxury, the success of LVMH is the result of its large market share but also its business strategy based on growth. Bernard Arnault, the Chairman and CEO of LVMH, has described the business model as follows: “Our business model is anchored in a long term vision that builds on the heritage of our Houses and stimulates creativity and excellence. This model drives the success of our Group and ensures its promising future.”¹³

Moreover, the business and operating model of LVMH is anchored by six pillars.¹⁴ The first pillar of decentralized organization provides that the enterprise is structured and operated in a way that ensures the autonomy and responsiveness of each brand. The second pillar of organic growth denotes the priority that the group places on growth but also the resources it commits to give its brands for development. The third pillar is vertical integration which allows control over every step in the value chain, from sourcing and production to retailing. The fourth pillar of creating synergies means sharing of resources on a group scale but in a manner that respects the individual identity of each brand. The fifth pillar of sustaining *savoir-faire* conveys the forward-thinking initiatives of LVMH to transmit *savoir-faire* and ensure craftsmanship in the future. Lastly, the sixth pillar is the balance across business segments and geographies; regular growth of LVMH requires that it is “well-positioned to withstand the impact of shifting economic factors”.¹⁵

Being part of LVMH group surely provides Louis Vuitton with a competitive edge in the luxury industry but it is very likely that the brand would perform well as an independent company as well. Luxury goods is a business that has been shaped over time by dominating brands, such as Louis Vuitton, and these companies have created a common but unique business strategy of luxury, “a pillar of their resilience and profitability”, which is contrary to most other business strategies.¹⁶ In their book ‘*The Luxury Strategy*:

¹³ -- ‘The LVMH Model’ (LVMH Website) < <https://www.lvmh.com/group/about-lvmh/the-lvmh-model/> > accessed 4 April 2020.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Jean-Noël Kapferer, ‘Abundant Rarity: The Key to Luxury Growth’ (2012) 55 *Business Horizons* 453, 456.

Break the Rules of Marketing to Build Luxury Brands’, academics Jean-Noël Kapferer and Vincent Bastien illustrate that, instead of classical marketing rules, the luxury business strategy adheres to “anti-laws of marketing”.¹⁷ Such anti-laws are, for example, forgetting about positioning, not responding to rising demand, dominating the customer, making it difficult for customers to purchase, increasing prices to grow demand, and raising the average price of the product range.¹⁸ Thus, these principles allow luxury brands to maintain their uniqueness and exclusivity.

Kapferer and Bastien also point out that the core trade of Louis Vuitton leather goods and especially luggage and trunks is sufficient by itself to ensure the brand’s long-term survival; “the Louis Vuitton bags and luggage will remain luxury products just as long as elites the world over continue to buy Vuitton trunks and ‘special orders’ with the LV name, even if the middle classes the world over queue up in Vuitton stores to buy bags made of the same materials”.¹⁹ Hence, essential characteristics of the business model of Louis Vuitton is that a profitable core trade, luggage and trunks, exists and other products outside the core range are “complementarity”.²⁰ This type of business model is the opposite of the pyramid model where a brand initially producing rare and unique pieces or haute couture is forced to widen its collection to include cheaper segments in order to reach more customers.²¹ This is the case, for example, with Armani which has multiple lines with different price levels, such as Giorgio Armani, Armani Collezioni, Emporio Armani and Armani Exchange.

1.4. Industry Value Chain of Louis Vuitton

In a world where fast fashion dominates the fashion industry by consistently offering and producing new styles and designs every month, it is easy to forget what goes into the production of a luxury good. Luxury brands are characterized by their quality and “[s]uperior quality is guaranteed through the mode of production: [l]uxury goods are

¹⁷ Jean-Noël Kapferer and Vincent Bastien, *The Luxury Strategy: Break the Rules of Marketing to Build Luxury Brands* (Kogan Page Limited, London 2009) 61.

¹⁸ *Ibid*, 61-75.

¹⁹ *Ibid*, 242-243.

²⁰ *Ibid*.

²¹ *Ibid*, 250.

produced in small quantities and always – at least to a certain degree – manufactured by hand”.²² Thus, luxury goods are customarily produced in workshops and ateliers – for example, Louis Vuitton has 12 leather goods workshops in France²³. Furthermore, it is stated in the brand’s website that the manufacturing of their footwear takes place in France and Italy.²⁴ Louis Vuitton’s Manufacture De Souliers, that is, the shoemaking manufactory, is located in Fiesso d’Artico, Italy, and the workshop called Speedy, named after the iconic handbag, is dedicated for the production of sneakers – the workshop where the LV Archlight is manufactured.²⁵

Manufacturing small quantities by hand in workshops and ateliers – the *savoir-faire* – naturally adds value to the luxury goods as well as the luxury brand itself. However, the value chain of luxury goods begins already from an earlier stage of production: The very first step of production is the ‘conception and design’ where the style and design as well as the image and identity of the brand is created.²⁶ In order to keep up with the latest trends and to even create some new ones, the design phase requires research and development of the fashion industry and if it is done properly, the research and development adds value to the luxury brand and its products.²⁷ Hence, luxury fashion houses often hire fashion designers, preferably the key designers at the time, to design new product lines and to extend the luxury brand. For example, both designers Nicolas Ghesquière and Virgil Abloh currently employed as artistic directors by Louis Vuitton have received praises from the fashion community.²⁸

²² Scholz (n 10) 15.

²³ -- ‘Houses – Louis Vuitton’ (LVMH Website) <<https://www.lvmh.com/houses/fashion-leather-goods/louis-vuitton/>> accessed 10 April 2020.

²⁴ -- ‘Where Are Louis Vuitton Products Manufactured?’ (Louis Vuitton Website) <<https://uk.louisvuitton.com/eng-gb/recommendations/where-are-louis-vuitton-products-manufactured>> accessed 10 April 2020.

²⁵ Selina Denman, ‘A visit to Louis Vuitton’s shoe factory in Venice’ (The National Article) <<https://www.thenational.ae/lifestyle/luxury/a-visit-to-louis-vuitton-s-shoe-factory-in-venice-1.789118#4>> accessed 10 April 2020.

²⁶ Elen Riot, Cecile Chamaret and Emmanuelle Rigaud, ‘Murakami on the bag: Louis Vuitton’s decommunitization strategy’ (2013) 41 IJRDM 919, 925.

²⁷ Tricia Wang, ‘The Value of Luxury Brand Names in the Fashion Industry’ (Senior Thesis, Claremont McKenna College 2015) 22.

²⁸ See: Dominique Muret, ‘Has Louis Vuitton made a winning bet with Virgil Abloh and Nicolas Ghesquière?’ (Fashion Network Article) <<https://uk.fashionnetwork.com/news/Has-louis-vuitton-made-a-winning-bet-with-virgil-abloh-and-nicolas-ghesquiere-,994381.html>> accessed 2 May 2020.

The second stage of the value chain as well as the first step of the supply chain of the luxury industry is the ‘sourcing’ where the materials such as leather and cloth are procured from the producers of such materials.²⁹ As the success of a luxury brand is much dependent on the superior quality of its goods, such brands usually use high quality raw materials to maintain the quality standards attached to their name. In fact, “[t]he raw materials cost can be a good indicator of the quality” and, as a consequence, “[s]uperior goods will add value to the firm because the image of high class [or] high quality products will be given to the company”.³⁰ Despite the fact that it is rather obvious that the customer of luxury goods expects such products to be made from high quality raw materials, the practice of luxury brands not disclosing any information on the source of the materials is still the norm rather than exception. In the case of LV Archlight Trainer, the author of this paper was not able to find any information on where Louis Vuitton procures all the different materials used in the sneakers, such as leather and technical fabric.

The next step of both value and supply chain is the ‘production’ stage where a product is manufactured from the procured materials. As mentioned before, the *savoir-faire* and the rare skills of the craftsman adds value to the luxury brand, and hence Louis Vuitton declares to manufacture its footwear in Italy. In fact, the author of this paper visited Louis Vuitton’s store in Helsinki quite recently for the purpose to see and feel the LV Archlight Trainer in person; both the bottom and the insole of the sneaker say “made in Italy” and the very kind and helpful shop assistant confirmed that the sneaker is made from scratch at Louis Vuitton’s Manufacture De Souliers in Italy by the best craftsmen in the industry³¹. However, in 2017, Louis Vuitton’s reputation took a hit when the Guardian reported that a factory located in Romania was manufacturing partly Louis Vuitton shoes before being sent to Italy for finishing; allowing the brand maintain the “made in Italy” label.³² Needless to say, it is impossible to know which party is telling the truth as there are no laws or legal mandates that obligate fashion companies to disclose information on the sourcing, production or even possible outsourcing of their products. The lack of

²⁹ *Riot* (n 26) 925-932.

³⁰ *Wang* (n 27) 22.

³¹ An informal interview with a shop assistant at Louis Vuitton store in Helsinki.

³² Alexandra Lembke in Cisnadie, ‘Revealed: the Romanian site where Louis Vuitton makes its Italian shoes’ (The Guardian Article) <<https://www.theguardian.com/business/2017/jun/17/revealed-the-romanian-site-where-louis-vuitton-makes-its-italian-shoes>> accessed 10 April 2020.

transparency could also imply Louis Vuitton's reluctance to reveal such information to the public for commercial purposes and, as a consequence, such information could be protected as trade secrets. This is, however, only speculation and the author of this paper does not have the facts on the matter.

The following stage of the value chain and the supply chain is 'distribution and retail' where the final products are delivered to stores and boutiques worldwide to sale.³³ LVMH and Louis Vuitton highlight their environmentally responsible supply chain – "Green Supply Chain" – because all the brand's logistic platforms have obtained ISO 14001 certification and two of its warehouses have received LEED certification.³⁴ Furthermore, Louis Vuitton has made efforts to reduce greenhouse gas emissions from transportation by selecting transportation partners on the basis of their environmental performance.³⁵ As environmental awareness is growing in society, consumers are more careful with their purchase decisions and, thus, environmental responsibility of companies adds value to their products and brand. Another value adding factor is the retail experience and customer services in relation to products in Louis Vuitton's boutiques or webstore where the goods are sold exclusively; "[r]etail is most important to create a durable impression on customers especially since the goal is to entice them to buy products more frequently".³⁶ Hence, luxury brands invest in the appearance of their stores, customer service and product packaging to provide their customers a high-end retail experience.

The last stage of the value chain is 'communication' of the products and brand identity to customers which includes, for example, product photos and videos for campaigns, fashion and art shows, media appearances and advertising.³⁷ Thus, all the different ways to display products to the public for commercialization purposes are an important factor that contributes to the success of the products and consequently to the value of a brand. In addition, celebrity and influencer marketing should not be underestimated as an

³³ *Riot* (n 26) 925-932.

³⁴ -- 'How do you balance logistics performance and environmental responsibility?' (LVMH Website) <<https://www.lvmh.com/talents/immersion/case-studies/how-do-you-balance-logistics-performance-and-environmental-responsibility/>> accessed 11 April 2020.

³⁵ *Ibid.*

³⁶ *Riot* (n 26) 925.

³⁷ *Ibid.*, 925-932.

alternative for luxury fashion houses to add value to their products and brand. For example, Jaden Smith is known for being a fan of LV Archlight Trainer³⁸ and Louis Vuitton dressed Smith in the women's sneakers to the Met Gala 2018³⁹. The futuristic sneakers have been seen also in the feet of other famous people but also social media influencers such as Diala Makki.⁴⁰ Due to the growth of social media, influencer marketing is an effective way for a luxury brand to create brand awareness and add brand value.

To conclude, the production and sale of a high-quality luxury good consists of many different stages, from design, sourcing and production to distribution, retail and communication, and the aim of a luxury brand is to acquire value in each stage of the chain to have a competitive advantage in the luxury industry and markets.

³⁸ Bobby Phelan, 'SPOTTED: Jaden Smith in Louis Vuitton Archlight Trainers' (Pause Magazine Article) <<https://pausemag.co.uk/2018/05/spotted-jaden-smith-in-louis-vuitton-archlight-trainers/>> accessed 11 April 2020.

³⁹ Liana Satenstein, 'Jaden Smith Brings an Actual Gold Record as His Date to the Met Gala' (Vogue Article) <<https://www.vogue.com/article/jaden-smith-met-gala-look>> accessed 11 April 2020.

⁴⁰ Milli Midwood, 'Meet The Shoe Every Fashion Girl Will Be Wearing This Season' (Arabian Harper's Bazaar Article) <<https://www.harpersbazaararabia.com/fashion/the-style/meet-the-it-shoes-of-the-season>> accessed 11 April 2020.

2. INTELLECTUAL PROPERTY ASSETS OF THE PRODUCT AND BUSINESS

2.1. Intellectual Property Components of LV Archlight Trainer

Fashion designs, styles, models, shapes, patterns, materials, logos, symbols, names, etc. – it is undeniable that intellectual creativity prevails the fashion industry. As intellectual property rights protect creations of the mind, these legal rights play an important role in the fashion industry. Innovation and creativity as well as protecting such intellectual assets provide fashion companies a competitive advantage in the markets, especially in the luxury industry. Therefore, luxury brands are willing to invest considerable resources in protecting their intellectual capital and brand. In order to have extensive and comprehensive legal protection, luxury goods usually consist of many different components of intellectual property. As mentioned in the previous chapter, LV Archlight Trainer in white with the classic Monogram canvas will be analyzed because it displays many different intellectual properties owned by Louis Vuitton. The analysis is based mostly on intellectual property rights granted in the EU and Louis Vuitton's homeland France but protection in the US is also addressed shortly.

Also, it should be noted here that, although trade secrets do not have their own subchapter in this paper, trade secrets and non-disclosure agreements no doubt play an important role when it comes to the business side of Louis Vuitton: undisclosed information of new designs and collections, raw materials, production and the *savoir-faire*, distribution and retail, license agreements and collaborations, and other business-related information. Surely the existence of such trade secrets is only speculation by the author of this paper but the lack of transparency in certain matters does suggest to that direction.

2.1.1. Design Right

In the EU, the most effective option for protection of fashion designs is probably the Community design. To put it simply, there are two parallel systems at the EU level: the

2.1.2. Copyright

The other intellectual property tool available for the protection of fashion designs is copyright, although it can be problematic depending on the country. In the EU, only parts of copyright law have been harmonized which allows differences between national copyright laws of the Member States. Generally speaking, copyright protects, without any formal requirements, literary and artistic works that possess originality, but the criteria of a work entitled to copyright protection can still differ from country to country. Therefore, fashion designs receive diverse copyright protection dependent on the national copyright law of each country. In this case, the homeland of Louis Vuitton grants copyright protection particularly to “articles of fashion” and “footwear” under the French Intellectual Property Code.⁴⁹ Therefore, LV Archlight Trainer has been considered as a copyrighted work in France from the moment it was produced. Furthermore, the protection in France is cumulative, “which means that fashion designs protected by copyright may be protected by [...] design rights too”.⁵⁰

The recent judgement *Brompton Bicycle* by the Court of Justice of the European Union⁵¹ should also be addressed. The case concerned the issue of whether works whose shape is necessary to achieve a technical result, in this case a folding bike, can be protected by copyright. The Court decided that “copyright protection [...] applies to a product whose shape is, at least in part, necessary to obtain a technical result, where that product is an original work resulting from intellectual creation, in that, through that shape, its author expresses his creative ability in an original manner by making free and creative choices in such a way that that shape reflects his personality”.⁵² To put it simply, the ruling enables works with a functional shape to be protected by copyright if such works fulfill the threshold of originality; a task left to national courts to assess and verify. Hence, the design of LV Archlight Trainer or at least some functional parts of it, such as the double lace, could be protected by copyright in the EU.

⁴⁹ Intellectual Property Code of France, Article L112-2.

⁵⁰ The European IPR Helpdesk (n 43).

⁵¹ *SI, Brompton Bicycle Ltd v Chedech/Get2Get* Case C-833/18 [2020].

⁵² *Ibid*, para. 38.

However, this is not necessarily the case outside the EU. In the US, copyright protection of fashion is much more limited because the case law establishes a separability test for utilitarian goods; copyright protection is not granted to goods with practical utility. There have been, however, several legislative attempts to provide *sui generis* protection for fashion designs, but without success. Most of the arguments against *sui generis* protection have been along the lines of how fashion industry has so far prospered without copyright protection. Nevertheless, in 2017, the US Supreme Court judgement in the landmark case *Star Athletica, L.L.C. v. Varsity Brands, Inc.* enabled copyright protection for certain elements of a fashion design⁵³ but, while the judgement gave hope for fashion designers, it is still unclear “what the practical impact of the decision will be on the US fashion industry”⁵⁴. Although it would seem that in the case of LV Archlight Trainer there is no copyright protection granted for the sneaker in the US, this might not necessarily be the case. In the US, there is a copyright registry for litigation purposes and, for example, Louis Vuitton has registered many different Monogram prints to the registry before. Thus, whether the whole sneaker or some parts of it, such as the Monogram canvas, could be actually protected by copyright would be a task left to the courts.

Naturally, copyright protection relates also to other stages of the value chain than just the final product ready for sale. For example, the sketches and drawings of the product created by the fashion designer in the conception and design stage, illustrations and images made for manufacturing purposes in the production stage, and the photographs and videos taken of the final product for marketing, sale and advertising purposes in the retail and communication stages would most probably be protected with copyright.

2.1.3. Trademarks

Trademarks have also an important role in protecting the intellectual property of the fashion industry; especially in the luxury industry because “[s]ome established fashion brands, such as Louis Vuitton, have adopted a strategy of making the [trademark] to its

⁵³ See: *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct, 1002 (2017).

⁵⁴ John Zarocostas, ‘The role of IP rights in the fashion business: a US perspective’ (WIPO Magazine Article) <https://www.wipo.int/wipo_magazine/en/2018/04/article_0006.html> accessed 13 April 2020.

bags and apparel”.⁵⁵ The fundamental purpose of a trademark is to identify the goods of one manufacturer from those of another and to indicate the origin of a product – a critical aspect of success in the fashion industry. In addition, trademark protection can last indefinitely as long as the signs are used and the registration renewed. Hence, many luxury goods bear the logos and symbols of fashion brands because registered trademarks are a relatively easy but strong form of protection, especially for established brands, against copying and counterfeiting. Similarly to design rights, there are two parallel systems at the EU level: the Trade Mark Directive⁵⁶ harmonizes the national registered trademarks of the Member States whereas the EU Trade Mark Regulation⁵⁷ sets one trademark covering the whole Union, the European Union Trade Mark (EUTM).

LV Archlight Trainer in white with the classic Monogram canvas bears many Louis Vuitton’s EU trademarks which will be assessed next. Firstly, the famous Monogram canvas⁵⁸ and its print of LV logo and flower emblems⁵⁹ are registered as figurative EUTMs in the Nice class 25 of clothing, footwear and headwear. Interestingly, Louis Vuitton has also registered the same LV logo⁶⁰ and each one of the flower emblems⁶¹ in the Monogram canvas separately as figurative EUTMs in the same class. Secondly, there is a round LV logo in the outsole as well as the tongue of the sneaker which is also registered as a figurative EUTM in the Nice class 25.⁶² All of the trademarks in question were registered many years before the production of LV Archlight Trainer which indicates the brand’s tendency to use same logos, symbols and emblems in most of its

⁵⁵ Matej Michalec, ‘IP protection tools in the fashion industry’ (The European IPR Helpdesk Bulletin No. 29, 2018) 4, 4.

⁵⁶ Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ 2015 L 336 p. 1-26).

⁵⁷ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June on the European union trade mark (OJ 2017 L 154 p. 1-99).

⁵⁸ Trademark number: 000015602. See EUTM registration:

<<https://euipo.europa.eu/eSearch/#details/trademarks/000015602>> accessed 21 April 2020.

⁵⁹ Trademark number: 009844391. See EUTM registration:

<<https://euipo.europa.eu/eSearch/#details/trademarks/009844391>> accessed 21 April 2020.

⁶⁰ Trademark number: 000015628. See EUTM registration:

<<https://euipo.europa.eu/eSearch/#details/trademarks/000015628>> accessed 21 April 2020.

⁶¹ Trademark numbers: 000310151, 000311985, and 003958444. See EUTM registrations:

<<https://euipo.europa.eu/eSearch/#details/trademarks/000310151>>

<<https://euipo.europa.eu/eSearch/#details/trademarks/000311985>>

<<https://euipo.europa.eu/eSearch/#details/trademarks/003958444>> accessed 21 April 2020.

⁶² Trademark number: 0133692336. See EUTM registration:

<<https://euipo.europa.eu/eSearch/#details/trademarks/0133692336>> accessed 21 April 2020.

goods in order to build distinctiveness but also to have a strong trademark protection in the market. Therefore, trademarks are invaluable for protecting the luxury brand in the long term and, for example, Louis Vuitton's Monogram print has become one of the most well-known marks in the world.

Interestingly, Louis Vuitton has not, however, registered its logos and symbols as specifically and comprehensively in the US Patent and Trademark Office. It is also noteworthy that, in addition to trademark registration, there is a subset of trademark law – trade dress – that can provide protection for fashion designs in the US. Trade dress protection refers to a product's packaging or overall image, that is, the design and appearance of the product, but, in order to claim trade dress protection, one must prove that the trade dress is inherently distinctive or has acquired secondary meaning.⁶³ In other words, a fashion brand must be able to show that the design is “distinctive enough for consumers to identify [...] its source” and such distinctiveness and secondary meaning usually requires a significant period of time spent in the market.⁶⁴ However, scholars have criticized the US trade dress protection in the case of fashion because of the long timeframe of achieving secondary meaning and, by contrast, the short timeframe of fashion goods staying “in fashion”.⁶⁵ Thus, in the case of LV Archlight Trainer, trade dress protection would not be the most effective or definite way to protect the design of the sneaker.

2.1.4. Utility Patent

It should be mentioned that the author of this paper was not able to find any utility patents relating to LV Archlight Trainer although one could expect there to be some. For example, the double lace of LV Archlight Trainer might have been eligible for a utility patent registration as other shoelace tying systems and devices have been registered before around the world. Although in this case an assumption is made that such patents

⁶³ Samantha L. Hetherington, ‘Fashion Runways Are No Longer the Public Domain: Applying the Common Law Right of Publicity to Haute Couture Fashion Design’ (2001) 24 *Hastings Comm. & Ent. L.J.* 43, 53.

⁶⁴ *Ibid*, 53-54.

⁶⁵ *Ibid*, 55.

relating to LV Archlight Trainer do not exist as Louis Vuitton does not own them but it does not necessarily mean that the possibility of someone else owning such patents does not exist; there is just no information about it available to the public. This is, however, only speculation and the author of this paper does not have the facts on the matter.

2.2. Intellectual Property Strategy of Louis Vuitton

As intellectual property rights are legal tools for luxury brands to protect their innovation and creativity, intellectual property strategy is usually seen as a method to maintain competitive advantage and to protect brand image in the luxury industry. Louis Vuitton's website states that their "Intellectual Property Department is managing over 18 000 intellectual property rights including trademarks, designs and copyrights with support of 250 agents around the world".⁶⁶ At first, the figures appear to be unbelievably large but, when taking into consideration the long history of the brand, the quantity of Louis Vuitton goods, old and new, in circulation all over the world, and the amount of intellectual property assets, registered and unregistered, relating to the goods, the brand's contribution to its intellectual property protection makes much more sense. The intellectual property strategy of Louis Vuitton is analyzed more closely next.

Firstly, as observed above, the intellectual property portfolio of Louis Vuitton is extensive which indicates the diligence of the brand to acquire and maintain its intellectual property rights, mainly by registering and renewing its design rights and trademarks. For example, there are currently 92 trademark and 1092 design search results under the owner of Louis Vuitton in the EUIPO's database.⁶⁷ The brand's comprehensive portfolio of different intellectual property rights can be explained by the fact that one distinct or explicit legal right does not exist for the protection of fashion goods but also by the fact that the brand has embraced the strategy of having overlapping rights, in particular, by making its trademarked signs a prominent feature of its products. Secondly, Louis Vuitton has mainly exploited its intellectual property rights exclusively by exercising its market

⁶⁶ -- 'Brand Protection' (Louis Vuitton Website) <<https://eu.louisvuitton.com/eng-e1/magazine/articles/brand-protection#preserving-creativity>> accessed 21 April 2020.

⁶⁷ See: -- 'Louis Vuitton Malletier' (EUIPO Database) <<https://euipo.europa.eu/eSearch/#details/owners/6708>> accessed 23 April 2020.

power and by excluding others from using its rights. Hence, Louis Vuitton goods are exclusively manufactured in its workshops and sold in its boutiques with standard prices which guarantees the overall control of the brand. Although licensing is not an unfamiliar concept in the luxury industry, Louis Vuitton does hardly ever, at least to the author's knowledge, license its intellectual property rights, and the same applies to selling and donating. That being said, it is public knowledge that a company named Thélios, a joint venture between LVMH and Marcolin, an Italian eyewear manufacturer, produces Louis Vuitton eyewear in Italy.⁶⁸ Louis Vuitton has also collaborated with other designers, artists and brands such as Supreme.⁶⁹

Finally, Louis Vuitton is very vigilant in monitoring and enforcing its intellectual property rights – in fact, the brand is known for being one of the most aggressive actors in the industry and there are numerous litigation cases filed by Louis Vuitton against alleged infringers and diluters. It is even stated in the brand's website that “Louis Vuitton has a zero tolerance policy to counterfeiting” and “[t]he fight against counterfeiting is a long-term element of Louis Vuitton's worldwide sustainability strategy”.⁷⁰ Therefore, the intellectual property strategy of Louis Vuitton could be described as ‘a sword’; the brand uses its intellectual property assets to attack other actors, not necessarily even in the same industry, who seek to exploit or take advantage of some aspects of intellectual property owned by Louis Vuitton. However, at the same time, there are some aspects of ‘a shield’ strategy where Louis Vuitton has acquired an extensive and large intellectual property portfolio to prevent competitors attacking the brand's own business. Nevertheless, Louis Vuitton has evidently concentrated more on using its intellectual property assets as weapons, ‘a sword’, to attack alleged infringers in order to develop a strong market position in the industry rather than as ‘a shield’ to defend its own business.

⁶⁸ -- ‘The LVMH group inaugurates the Manifattura Thélios, a new Italian production site dedicated to eyewear’ (LVMH Website) <<https://www.lvmh.com/news-documents/news/the-lvmh-group-inaugurates-the-manifattura-thelios-a-new-italian-production-site-dedicated-to-eyewear/>> accessed 30 September 2020.

⁶⁹ See: Isabelle Truman, ‘The Best Louis Vuitton Collaborations of All Time (Marie Claire Article) <<https://www.marieclaire.com.au/louis-vuitton-best-collaborations-time-capsule-exhibition>> accessed 23 April 2020.

⁷⁰ *Brand Protection* (n 66).

2.3. Louis Vuitton's Fight Against Counterfeiting and Dilution

Counterfeit goods are particularly a fashion and luxury industry specific issue which imposes many negative impacts on the affected companies as well as the innovation-driven economy. The 2016 OECD-EUIPO study depicts well how the illicit trade in fake goods has developed into a global phenomenon: “In 2013, international trade in such products represented up to 2.5% of world trade, or as much as USD 461 billion” and “up to 5% of imports in 2013 in the European Union, or as much as EUR 85 billion”.⁷¹ Furthermore, “[t]he importation of infringing goods to the European Union appears to be most intensive for luxury products”.⁷² Thus, this illegal phenomenon sets certain intellectual property management and strategic challenges for luxury brands and, as a consequence, brands have adopted different legal approaches to the intellectual property infringement of counterfeiting. As already mentioned, Louis Vuitton's zero tolerance policy to counterfeiting reflects the brand's hard line approach; the brand believes counterfeiting to be the ultimate violation of creativity. The attitude of the brand is, however, understandable because Louis Vuitton has been one of the most counterfeited luxury brands in the world.⁷³

Louis Vuitton's website states that “[i]n 2017, Louis Vuitton initiated more than 38 000 anti-counterfeiting procedures worldwide”⁷⁴ which indicates further the brand's eager commitment as well as investment to fight against illicit trade in fake goods. The case *Louis Vuitton Malletier S.A. v. Singga Enterprises (Canada) Inc.* in the Federal Court of Canada has been considered as one of the landmark cases of Louis Vuitton; in the case, the Court awarded the brand over a million Canadian dollars in damages for trademark and copyright infringement because the defendant had knowingly manufactured and sold counterfeit Louis Vuitton goods in Canada.⁷⁵ Surely there have been numerous cases of both success and loss for Louis Vuitton and, although the costs of lawsuits and procedures

⁷¹ OECD/EUIPO, *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact* (OECD Publishing, Paris 2016) 11.

⁷² *Ibid.*, 72.

⁷³ See: John Crudele, ‘Louis Vuitton No. 1 with counterfeiters – again’ (New York Post Article) <<https://nypost.com/2019/06/06/louis-vuitton-no-1-with-counterfeiters-again/>> accessed 28 April 2020.

⁷⁴ *Brand Protection* (n 66).

⁷⁵ *Louis Vuitton Malletier S.A. v. Singga Enterprises (Canada) Inc.* 2011 FC 76, T-1276-10.

are very likely higher than the monetary awards collected, the brand still continues actively to defend its intellectual property rights. Interestingly and conveniently, South China Morning Post reported in May 2019 that Louis Vuitton brought action against two subsidiaries of Belle International, a Chinese footwear company, in the High Court of Hong Kong for copying LV Archlight Trainer.⁷⁶ Unfortunately, the case has not been decided yet.

Furthermore, Louis Vuitton has spent a lot of time and effort to fight brand dilution – and it has even received criticism for it. One example is the case *Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC* in the US Court of Appeals where Louis Vuitton sued the defendant, who manufactured “Chewy Vuitton” dog toys mimicking the brand’s handbags, for trademark infringement and dilution as well as copyright infringement.⁷⁷ The Court ruled, however, in favor of the defendant; the chew toy was a successful parody of Louis Vuitton handbag and, therefore, did not infringe the intellectual property rights nor harm the brand of Louis Vuitton.⁷⁸ Another similar but more recent case is *Louis Vuitton Malletier, S.A. v. My Other Bag, Inc.* in the US District Court for the Southern District of New York where Louis Vuitton brought claims against the defendant for trademark dilution and infringement as well as copyright infringement for selling canvas tote bags with the text “My Other Bag...” on one side and a drawing of a Louis Vuitton handbag on the other.⁷⁹ Once again the Court did not agree with Louis Vuitton; the District Court Judge Furman even stated that the defendant’s totes are “obviously a joke” and “maybe [Louis Vuitton] just cannot take a joke”.⁸⁰

There are numerous similar famous cases, some successful and some not, which have received criticism for Louis Vuitton aggressively pursuing against alleged intellectual property infringers and brand diluters: for example, the lawsuit against Hyundai for showing a basketball decorated with Louis Vuitton symbols in their commercial⁸¹ and the

⁷⁶ Chris Lau, ‘Louis Vuitton sues two subsidiaries of Chinese shoe giant Belle International for copyright infringement’ (South China Morning Post Article) <<https://www.scmp.com/news/hong-kong/hong-kong-economy/article/3008764/louis-vuitton-sues-two-subsiaries-chinese-shoe>> accessed 28 April 2020.

⁷⁷ *Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC*, 507 F.3d 252 (U.S. App. 4th Cir. 2007).

⁷⁸ *Ibid.*

⁷⁹ *Louis Vuitton Malletier, S.A. v. My Other Bag, Inc.* 156 F. Supp. 3d 425 (US S.D.N.Y. 2016).

⁸⁰ *Ibid.*, 1.

⁸¹ *Louis Vuitton Malletier, S.A. v. Hyundai Motor America*, 10 Civ. 1611 (PKC) (US S.D.N.Y. 2012).

lawsuit against Warner Brothers for using a fake Louis Vuitton bag in *The Hangover Part II* movie⁸². Hence, Louis Vuitton has been condemned as a “trademark bully” due to its aggressive and strict enforcement strategy.⁸³ Scholar Irina D. Manta points out in her article ‘*Bearing Down on Trademark Bullies*’ that “[t]rademark bullying engenders a number of costs for society” such as a reduction of legitimate competition in the market and an inhibition of commercial and non-commercial speech.⁸⁴ It is unlikely, however, that Louis Vuitton sees itself as a bully but rather as a company entitled to protect and enforce its intellectual property rights in order to preserve its exclusive and valued brand image. Thus, it should be kept in mind that the success of Louis Vuitton lies solely in the brand’s dedication and effort to be among the world’s most valuable luxury brands.

On the vigilant intellectual property strategy of Louis Vuitton, the author of this paper can see ‘both sides of the coin’: on the one hand, the motives behind the rigid strategy to protect the Louis Vuitton brand as it is the cornerstone of its business but, on the other hand, the criticism and backlash Louis Vuitton has received for its actions. It is indisputable that often the intellectual property strategy of Louis Vuitton has been, and does not seem to change from being, overly aggressive and excessive up to the point that it is seen only as bullying rather than legitimate. The author of this paper realizes that it must be somewhat challenging for Louis Vuitton to draw the line at what type of actions by alleged infringers are actually considered as serious infringements of intellectual property rights worth litigating, but such line should be drawn. Taking the role of a villain through litigation is not only expensive but it can backfire. For example, in 2008, Louis Vuitton received bad publicity by suing Dutch artist Nadia Plesner for drawing a starved African child holding a chihuahua and Louis Vuitton bag, a work called “Simple Living”, to raise attention to the genocide occurring in Darfur.⁸⁵ Although it is understandable that Louis Vuitton did not want to be associated with the genocide, the negative media

⁸² *Louis Vuitton Malletier S.A. v. Warner Brothers Entertainment Inc.* 868 F. Supp. 2d 172 (US S.D.N.Y. 2012).

⁸³ See: David Post, ‘My other case is...’ (The Washington Post Opinion) <<https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/01/27/my-other-case-is/>> accessed 30 April 2020.

⁸⁴ Irina D. Manta, ‘Bearing Down on Trademark Bullies’ (2012) 22 *Fordham Intell. Prop. Media & Ent. L.J.* 853, 855.

⁸⁵ Cat Weaver, ‘Blurring Luxury and Art: Naida Plesner vs Louis Vuitton’ (Hyperallergic Article) <<https://hyperallergic.com/21392/nadia-plesner-vs-louis-vuitton/>> accessed 30 September 2020.

attention surrounding the lawsuit might have been more detrimental to its reputation than the drawing itself. Thus, the author of this paper would recommend Louis Vuitton to consider re-evaluating its hypervigilant attitude and, consequently, re-adjusting its intellectual property strategy.

CONCLUSION

Louis Vuitton is one of the most well-known and valued brands in the world. There are many reasons for the long success of the luxury brand: being part of LVMH group, having a business strategy based on growth and exclusivity, controlling every step in the value chain, and investing in a sufficient intellectual property strategy. As intellectual property rights are legal tools for a luxury brand to protect its innovation and creativity, luxury goods typically consist of many different components of intellectual property. The analysis of LV Archlight Trainer in white with the classic Monogram canvas reveals that the pair of sneakers contain many different intellectual property rights, depending on the country, such as design rights, copyright and trademarks. Thus, Louis Vuitton has embraced the strategy of overlapping rights to have the strongest possible protection for each of its luxury goods. Naturally, the intellectual property portfolio of Louis Vuitton is extensive. Furthermore, Louis Vuitton is known to be one of the most aggressive and active brands in the industry to monitor and enforce its intellectual property rights against alleged infringers and diluters. The brand's constant battle against counterfeiting as well as brand dilution has resulted in interesting case law which has also brought up some criticism towards Louis Vuitton's hypervigilant attitude to defend its intellectual property assets.

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