Design Copying and the Construction of Legality in the Fashion Industry -
A Study of Emerging Fashion Designers' Legal Consciousness

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Abstract

A growing number of socio-legal scholarship focuses the study of law away from legislative texts and legal institutions and toward the experiences and perceptions of "ordinary" people. This approach has inspired the exploration of the intricate relationship between intellectual property law and fashion designs. Since academic research in this area is mostly based on theoretical considerations revolving around statutory laws or cultural analyses in this domain, the empirical nature of this study represents a novel approach to this phenomenon.

This study investigates emerging fashion designers and their perceptions and experiences in relation to design copying and intellectual property law. Through empirical research, this study seeks to explore the role of legality within the environment of ubiquitous imitation strategies and the corresponding legal consciousness of emerging fashion designers.

Utilizing qualitative interviews and narrative analysis, this analysis suggests that Ewick and Silbey's (1998) three-tiered model of legal consciousness is an appropriate framework to study the legal consciousness of fashion designers. This study affirms the descriptive power of their model since all three types of legal consciousness are displayed by respondents. It further reaffirms the mutually constitutive nature of law and society.
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List of Abbreviations

EC European Community
e.g. for example
EU European Union
i.e. id est (that means)
IP intellectual property
IPR(s) intellectual property right(s)
NGO non-governmental organization
SME small and medium-sized enterprise
U.S.A United States of America
WIPO World Intellectual Property Organization
1 Introduction
With the number of faked high-end fashion products and fraudulent practices such as conspicuous copying of original designs on the increase, the protection of intellectual property (IP) has attracted much public, and industry-specific and academic attention. Ubiquitous malpractices such as the forging of brand names and arbitrage have been facilitated and encouraged by the rise of global markets and digital technologies. They have reached endemic proportions in the fashion industry taking a number of different forms and patterns which include forged logos, brand names and corporate labels as well as the close and direct copies of original designs.

One part of this problem is inherent in the fashion industry itself as a fair number of its commercially expanding members seem to embrace practices such as sampling and appropriation enthusiastically while relying on borrowed inspiration. However, this attitude is only adopted by some. Others condemn these tendencies arguing that they are not only detrimental to the designers of original fashion products but to the entire trade. Original fashion designers are especially affected as forgeries and malpractice have taken a direct financial toll on their businesses and livelihood.

To counter this alarming situation, intellectual property legislation has been explored as a framework that provides legal assistance to fashion designers – at least in theory. Moreover, the growing recognition of fashion design as a form of creative expression has rekindled the interest in the relationship between IP law and fashion (Scafidi, 2006). The major development, however, which brought IP law in fashion more to the fore than ever has been the "increased attention to the counterfeiting of trademarked goods [...] and diffusion of original efforts across all levels of the industry" (ibid.: 115).

This academic and trade-related debate regarding the advantages and disadvantages of design protection is vivid and as a rule demanding the legal provision of stronger IP protection laws. Associations of fashion designers, IP specialists and international non-governmental organizations (NGOs), such as the World Intellectual Property Organization (WIPO), urge governments to strengthen intellectual property rights (IPRs) for fashion designers. One important voice in this debate is that of the fashion designers themselves who engage in creative design in their everyday work. Their perspectives and attitudes on current copying practices, protective legislation and the interrelationship between IPRs and fashion are therefore the subject of this thesis which also intends to set the stage for the exploration of the theory of “legal consciousness” as defined by Ewick and Silbey (1998).
For the mostly pragmatic reasons outlined below, its empirical part will concentrate on the viewpoints and attitudes of emerging designers who have been identified as a group in genuine need of protective legislation (cf. Empirical Choices).

1.1 Research Design

Two areas of academic research are relevant to this master thesis: firstly, the research regarding the relationship between IP law and the fashion industry and, secondly, selected studies concerning themselves with the concept of legal consciousness. Based on this framework, this study approaches IP law in the fashion domain from the viewpoint of those that occupy the lower ranks of the fashion industry, i.e. from a bottom-up perspective.

Academic literature on IP law in the fashion industry mainly focuses on debating the various aspects of design protection. A number of authors weigh the advantages of additional protection against its disadvantages claiming that the latter may be counterproductive (Raustiala & Sprigman, 2006, 2009; Hackett, 2012). Others feel that IP laws will never be completely effective (Hedrick, 2008). This debate is mostly based on theoretical considerations revolving around statutory laws or cultural analyses in this domain. When this topic is dealt with empirically, researchers tend to analyse filed litigation cases (Beltrametti, 2010; Derclaye, 2010) or look at design registrations (Barrère & Delabruyère, 2011; Hedrick, 2008) to determine scope and success of IP laws in the fashion industry. Bottom-up research, which emphasises the perspective of individual designers or fashion companies, has generally not been taken into account. Learning how IP laws are perceived and experienced by fashion designers, therefore, provides new insights into the fashion-specific successes and failures that have so far been reported.

Thus, this study not only makes a contribution to the research conducted on IP law and fashion, but also to the legal consciousness studies, which has been defined as “the ways people understand and use law” (Merry, 1990: 5). These studies explore how law impacts on the lives of people and how people perceive themselves in relation to the laws that affect them. But as there is no legal consciousness study focusing on fashion designers or the fashion industry itself, this study fills a genuine gap. Moreover, it tests the descriptive power of a theory of legal consciousness which was developed by Ewick and Silbey (1998) by applying the findings of a study of situated legal consciousness. The latter theory describes three types of legal consciousness: 1) people can be "before the law", respecting its authority and being convinced of its legitimacy; 2) they can be "with the law", understanding law to be similar to game, and 3) they can be "against the law", resisting or avoiding law. The concept of situated legal consciousness was coined by Nielsen (2000) who situated the study of legal consciousness along three parameters. The dimensions in this study are the fashion
industry, IP law and emerging designers. As the concept of legal consciousness is examined in a particular context, the scope of the categories provided by the two authors is additionally challenged and the causes of variability and contingency contingent upon the legal consciousness are examined.

The research issues of this master thesis derive from the hypothetical assumption that law impacts on the attitudes and behaviour of fashion designers – a concept that has been described by Ewick and Silbey (1998). This imposes the related question as to whether the proposed study can provide a basis for an in-depth understanding of the theory and, more specifically, of how the legal consciousness of emerging fashion designers develops and manifests itself in relation to IP laws.

1.2 Empirical Choices

The empirical part of this study is carried out in the fashion industry where a range of individual social norms, values and beliefs – in addition to the legal framework – shape imitation practices and the resolution of conflicts arising from them. While these aspects do not apply exclusively to the fashion industry, fashion is an interesting case within the creative industries since legal boundaries in relation to fashion design are blurred, as demonstrated by the fact that even fashion experts have difficulties to distinguish between legal and illegal design copies – between derivative designs and identical designs (Monseau, 2011). A derivative design is defined as a “work that appropriates certain design elements of a model design, but is nonetheless visually distinguishable to the average observer” (Raustiala & Sprigman, 2009: 1205).

In legal terms, fashion design is considered to be a “‘difficult’ subject matter” (Suthersanen, 2011: 1). In its context of imperfect information and unambiguous definitions, people rely on various sources to make sense of design copying. The decision to juxtapose this legal consciousness with IP law arose from the fact that this interdisciplinary combination has been marginalized in prior legal consciousness studies. Another important choice made is the emphasis on emerging fashion designers who are all lay people. Although this group may be less knowledgeable of legal issues than legally trained managers – let alone legal experts –, Gies (2003) pointed out that such limitations were no impediment as the study of legal consciousness is concerned with people’s construction of context-specific meaning. The decision to interview emerging fashion designers rather than the stars of the trade was a deliberate one which resulted from several insights: Firstly, this group suffers from malpractice as much as the more prominent exponents of the fashion industry and they may even be more severely affected. The European Commission’s IP guide for the textile and clothing industry may serve as a case in point: “It is not only luxury items from big companies that are copied nowadays – SME’s are increasingly falling victim to counterfeiters. They are the most vulnerable but at the same time the engine of our industry in Europe” (2009: 5). And scholars have come to the
same conclusion: “Small designers are hurt by close copying” (Hemphill & Suk, 2009a: 1229). The respondents involved in this study come from several commercial backgrounds: Some are self-employed, others are on the payroll of established fashion companies. However, all of the respondents are small designers at the beginning of their careers, displaying and/or selling their creative work on personal or third-party company websites. A further more pragmatic reason why this group was chosen for this study is the fact that they were much more accessible than established designers working for well-known fashion companies. Finally, emerging fashion designers represent a research group to whom IP laws matter.

1.3 Purpose of the Research and Research Question
The general purpose of this thesis is to explore the legal consciousness of emerging fashion designers in relation to IP law. This will constitute the theoretical framework – predominantly as it was developed by Ewick and Silbey – for our research enquiry which seeks to establish “how the legal consciousness of fashion designers manifest itself in relation to intellectual property law” and “how their awareness of the existing and perceived legal and quasi-legal framework impacts on their attitudes and behaviours”. In other words, this study seeks to uncover how the concept of legality is experienced by emerging fashion designers and how it shapes their understandings of design copying.

1.4 Delimitations
Due to the constraints imposed by its situated nature, the findings of this study cannot be generalized for contexts in which one of the three parameters (industry, population, area of law) is divergent from this study. However, researchers that situate legal consciousness along similar axes may be able to find parallels between certain types of legal consciousness since the fashion industry shares particular characteristics with other creative industries, as do emerging creative talents working in the said industries.

Furthermore, this study approaches law from a constitutive perspective, that is to say, law is perceived as an integral part of society, rather than a detached, regulatory mechanism of social life. Since it studies law’s influence in society, this study does not uncover law’s effects on society. It explores how emerging fashion designers perceive and experience law and legality, rather than their factual knowledge of actual legal provisions. In this sense, the study does not provide the data to generate a report on fashion designers’ level of knowledge about law.
While this study is designed to uncover meaning making, it also aims to explore fashion designers’ engagement with official law. However, the study is limited by the subjects’ experiences and self-reporting.

Although the sample in this study consists exclusively of women, it is no gender study, i.e. it does not examine any gender specific angle of the research inquiry. Rather, the composition of the sample reflects the fact that the workforce of the garment industry primarily consists of women.

1.5 Structure of the Thesis
This thesis is structured in the following way: After introducing the research project, an informative background is presented (section 2 and 3) which provides an overview of the relations between IP law and the fashion industry. It starts by presenting the intricate relationship between *haute couture* and ready-to-wear, to move on to the industry structure, imitation practices and the role of IP law for fashion designs. In section 4, the second research area relevant to this project is introduced, namely the legal consciousness framework. Legal consciousness is defined as cultural practice and the two key concepts to this study are explained: the typology of legal consciousness as developed by Ewick and Silbey and the concept of “situated legal consciousness”.

Section 5 describes the empirical enquiry. It explains the research approach and its implications for methodological choices and the analytical approach. The empirical findings of this study are presented in the analysis section 6. It will elucidate the meaning construction process of respondents and present the interview data through application of Ewick and Silbey's legal consciousness model. The discussion of findings follows in section 7 and closes with implications and recommendations for future research.

2 Empirical Domain
To understand the relations between intellectual property rights (IPRs) and fashion, it is important to consider how the industry is structured and which role the different segments play in creating novel designs and who and when the creative ideas and products of others are “relied” on.

2.1 Haute Couture and Ready-to-Wear: An Intricate Relationship
Although individually tailored clothing and apparel can be found in most ancient and modern civilisations, the predecessors of contemporary fashion as an economic phenomenon with its own recognizable style came into existence in the middle of the 19th century when *haute couture* was born in Paris (Scafidi, 2006). *Haute couture* is the French term for high(-end) fashion – the art of producing made-to-measure garments. The first couturier was Charles Worth who opened his first
“atelier” in the late 1850s. Although his workshop was still laid out traditionally, the organization of his business represented an innovative approach (Scafidi, 2006). Each season, Worth prepared a variety of new designs that were presented by live models to individual clients. He then took orders for his designs and tailored the clothes to measure. This type of production was very labour intensive with the high quality of the fabrics constituting an additional cost factor. Thus only the wealthy were able to afford new designs. Nonetheless, haute couture had a significant influence on the development of new styles as fashion designers were “no longer mere dressmakers [...but became] creators of style” (Monseau, 2011: 34). According to Scafidi (2006), “this system [...] established the influence of professional clothing designers over the direction of fashion” (117): The “middle classes [...] and the relatively impecunious” were eager to emulate the style of the elite (Scafidi, 2006: 117), thus turning fashion into a status symbol and increasing the importance of the designer name and logo1 (Monseau, 2011).

As a result of the growing industrialization of Europe, and fuelled by the advent of the sewing machine and the emergence of large garment factories, the ready-to-wear clothing industry began to rise and led to the establishment of the contemporary haute couture in Paris (Scafidi, 2006). As fashion became available to the masses, the demand for less expensive versions of the original Paris models and patterns spawned an infamous “industry of knockoff artists” (Scafidi, 2006: 117). Although direct copying in fashion was a well-known issue, more specific practices surfaced over the years (ibid.). Since their rise to fame in the 19th century, couturiers were copied by competitors who came to shows and made sketches of the new designs and patterns or purchased original products with a view to locally producing their own adjusted versions (Hemphill & Suk, 2009b).

A major change occurred at the end of the 20th century with powerful fast-fashion chains entering the consumer market (Barrère & Delabruyère, 2011). Barrère and Delabruyère claim that the business model of these companies was “based on the copying of design elements that are elaborated”(2011: 319) by higher-end designers and scholars added that technological innovations, such as the Internet, digital photography or digital design platforms, have enabled companies to copy and manufacture products even faster (Beltrametti, 2010; Raustiala & Sprigman, 2006; Hemphill and Suk, 2009b). Through the internet, images of new styles are instantly and inexpensively disseminated and consumer interests can easily be traced, thus “aiding in the production of knockoffs” (Scafidi, 2006: 125). While Raustiala and Sprigman maintain that global economic developments such as “global outsourcing of manufacture, more flexible manufacturing technologies, and lower textile tariffs” (2006: 1714f.) have increased the speed of copying, Hemphill and Suk counter that it is not

1 The account of fashion as status good is still relevant today, in academia and in practice, and the importance of the designer’s name or logo is mirrored in the power of brands. See chapter 2.2.
the “speed of copying [that has changed], but the large scale and low cost at which rapid copies can be made” (2009b: 1171). As a result, fast-fashion enterprises such as Zara (cf. chapter 2.2) can produce new garments, from their conception to their delivery, within six weeks or even faster (Hemphill & Suk, 2009).

Scafidi points out that the two facets of apparel production, haute couture and the ready-to-wear clothing industry, have developed a “complex legal and practical relationship” (2006: 177). First and foremost, the problems arise in part from the blurry line between close copies and designs that are merely inspired by haute couture creations (Monseau, 2011). Thus, calling a design copy illegitimate may represent a challenging task, even for fashion experts. Moreover, different laws may protect different aspects of a garment (cf. chapter 3.1), so that the legal basis for a damage claim is unclear. The third aspect that makes the relationship even more complex are the selective enforcement strategies of fashion companies (Barnett et al., 2010). In some cases, designers take action against copyists while in other cases they seem to ignore them (ibid.). In addition to the legal intricacies, fashion designers exert various social controls on copying or rely on mechanical or technological means to fight copyists (Scafidi, 2006). Other designers may even perceive design copying as flattery in the sense that “their work is worth copying” (Scafidi, 2006: 124).

2.2 Structure of the Fashion Industry

Founded on the distinction between “haute couture” and “ready-to-wear” which dominates the fashion industry, the following pages offer an overview of the relationship between the different segments of this industry. They are haute couture, luxury ready-to-wear, high to medium quality ready-to-wear, and fast-fashion.

The fashion pyramid is a popular visualization of the industry structure and authors such as Raustiala and Sprigman (2006) as well as Barrère and Delabruyère (2011), have used this model to explain where new designs originate from and how they are gradually taken down market and mass produced. Their model focuses on the creative production core and marginalizes all peripheral actors, such as producers of garments, retailers, managers and consumers. It displays four definable sectors catering to different economic and social groups.
On moving from the bottom to the top, this model uses a number of criteria, such as variations in production and product cycles, product quality, demand and fashion content, to distinguish between the four segments.

Authors relying on the fashion pyramid perceive the diffusion of fashion as a trickle-down process (Hemphill & Suk, 2009b). Moreover, they assume that fashion is a status good which moves in downward and expanding cycles starting at the top of society where trends are set. As the lower income brackets try to emulate these trends, fashion products move down market and are eventually given up as high-end items. The gap left is filled by new trends that may also serve as social demarcation lines (Hemphill & Suk, 2009b). Although this status-related approach has been “criticized as too simplistic and one-dimensional” (2009b, 1157), Hemphill and Suk point out that status still influences fashion trends. For example, fashion companies publish images of celebrities and other high-status people to inform the readership about new trends and inspire them to emulate the style of those who are wealthier. Fashion companies, such as Georgio Armani, have used this model to commercially expand the value of their brand.

The tip of the pyramid is occupied by haute couture that caters to the super-wealthy customers (Monseau, 2009). Examples of original creators include the designers Karl Lagerfeld, Jean-Paul Gaultier and Raf Simons, the creative director of Dior. The challenge for these creators is to propose collections that are very distinct while remaining true to the style of their particular house (Barrère &

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2 See e.g. Raustala and Sprigman (2006) who describe the “Splurge vs. Steal” feature of Marie Claire. Boutique JACOB has a similar feature, see appendix A.

3 Original designer (also: creators, original producers, or fashion houses): refers to “firms that produce garments whose design is substantially original relative to existing products, as contrasted with firms that produce garments whose design is substantially imitative of existing products” (Barnett et al., 2010: 160). Although Barnett et al. recognized that their definition is imperfect due to its “inherent subjectivity,” they argued that observers familiar with the industry can make such determination “uncontroversially” (ibid.).
Delabruyère, 2011). Barrère and Delabruyère (2011) maintain (somewhat unconvincingly) that *haute couture* designers cannot possibly copy (from) each other because they all create at the same time. Their creative processes are very secret and the houses take precautions to prevent any information about the new designs from being leaked to potential copyists (Scafidi, 2006). The *haute couture* system is mainly organized to “develop creativity and image, then reputation which will be used in the other segments of luxury industries” (Barrère & Delabruyère, 2011: 316f.). Another reason why *haute couture* designers do not directly copy from each other are widely received and overtly acknowledged social norms which stipulate that it is unethical to copy from other designers too closely or too soon after their original innovation has publicly appeared (Scafidi, 2006). Thus, copying entails reputational risks. Although close imitation within the innermost creator’s circle may be rare, other similarities between creations may occur (Barrère & Delabruyère, 2011). Barrère and Delabruyère noted that these similarities generally do “not concern the designs (e.g. Chanel’s or Galliano’s style) but some general properties [...like] the dominant colours” (2011: 316). The authors have argued that such “coincidence” derives from mechanisms other than emulation (ibid.). Firstly, creators need to choose from a limited set of new fabrics, designs, and colours that are defined by the *cabinet de tendances* (trend forecasting companies) and the fabric makers (Barrère & Delabruyère, 2011). Thus, some of the general fashion features which influence the following season may even be determined before the creative process starts. Secondly, “all the creators are immerged in the same cultural ‘mood’” (ibid.: 316), so that their creative output is a product of similar inputs.

The second segment of the fashion pyramid is luxury ready-to-wear. The products in this segment are either “euphemized declinations of *haute couture* models” or come from small style firms (Barrère & Delabruyère, 2011: 317). Examples include Chloé, Lanvin and Stella McCartney. Barrère and Delabruyère argue that “imitation may intervene” (2011: 317) as some creators may derive their inspiration from the designs of the *haute couture* collections or from other small creators.

Scafidi has underlined the fact that the responses of high-end designers to copies of their own design work “are sometimes at odds with one another” (2006: 124). She argued that some designers “publicly claim to be flattered by the tacit acknowledgement that their work is worth copying [...] while] the same designer’s legal team is simultaneously taking whatever action may be available against copyists” (ibid.). As an example, Scafidi quoted the creative genius Coco Chanel who allegedly stated that “Fashion should slip out of your hands. The very idea of protecting the seasonal arts is childish” (Chanel, quoted in Scafidi, 2006: 124). However, in the 1930s, Coco Chanel herself joined fellow designers in a ground-breaking lawsuit against a notorious design pirate which set a
precedence in France (ibid.)\textsuperscript{4}. This example suggests that the position of fashion designers with a view to copying is ambivalent so that closer investigation of this phenomenon is necessary.

The third segment is the high to medium quality ready-to-wear. Examples include Comptoir des Contonniers, COS, and Sandro. The companies in this segment are generally flexible SMEs whose “rate of imitation is more or less important” (Barrère & Delabruyère, 2011: 317). That signifies that their creative designers may use their own imagination when creating new garments or may draw their inspiration from other creations, e.g. by adopting only some of the trendy characteristics. Barrère and Delabruyère claimed that these “imitated products” are “not really counterfeits” (2011: 317). Consumers generally know that they do not buy an original product as “prices, distribution networks and trademarks are generally different from the original” (ibid.)\textsuperscript{5}.

At the lower end of the market, industrial ready-to-wear (also: mass-market fashion, fast-fashion or street fashion) constitutes the forth and largest segment of the industry. The companies operating in this segment are sizeable and benefit from global structures. The most prominent examples are H&M and Zara in Europe and Forever 21 in the U.S.A. They have developed a business model based on cost-efficiency and the most recent fashion trends as they are presented in fashion shows. They benefit from the designs displayed on the catwalks - merely borrowing their more general properties - and reproduce them by means of cheap and quick production processes (ibid.). Thus, they are able to create mass trends. Inditex, the parent of the Zara label is famous for this approach and has experienced its downside. The company was criticized, for instance, for copying Miu Miu and Balmain\textsuperscript{6}.

Some authors have described this hierarchical representation of the fashion industry as dated (Scafidi, 2006; Monseau, 2011). They have pointed out that the top-down structure does not adequately represent today’s fashion industry (nor does it reflect current societal developments), although some features of the pyramidal model still hold true: Haute couture creators still exert significant influence on seasonal trends which are soaked up by the media and the industry-specific attention lavished on the Paris fashion shows (Scafidi, 2006; Barnett at al., 2010). As a result, mass-market retailers at the lower end of the pyramid quickly reinterpret innovations of high-end designers for the mass market (Scafidi, 2006). However, the industry structure has been changing, a change which is characterized by the following distinct characteristics.

\textsuperscript{4} For a more recent example, see the case of cult designer Phoebe Philo at Céline who declared to be “nothing but flattered” by high-street imitations of her design. At the same time, LVMH, the world’s largest luxury conglomerate, of which Céline is part, declared “a ‘zero tolerance’ policy when it comes to fakes, backing up its position with litigation” Information retrieved from counterfeitchic.com.

\textsuperscript{5} For example, Burberry sold an olive wool coat with contrast leather sleeves for EUR 1,395.00, while Helene Berman sold a very similar coat, made of cotton and with faux leather sleeves, for EUR 183.00. See appendix B.

\textsuperscript{6} See appendix C.
Firstly, the hierarchical structure is gradually being eroded. Creative designs are no longer produced exclusively at the top of the fashion pyramid, but in all segments of the industry (Scafidi, 2006). Thus, the hierarchical structure of creativity has given way to a more democratic distribution of influential ideas, leading to what Beltrametti referred to as “democratization of style” (2010: 160). Fast-fashion providers like H&M and Zara have their own in-house design teams who “interpret” seasonal trends (Hemphill & Suk, 2009b) themselves so that adaptations of high-end fashions and collaborating with top designers may just become supplements. Whereas Raustiala and Sprigman (2006) assume that design copying is basically unidirectional, that is to say that low-end designers copy high-end designers, Monseau (2011) has stressed that imitation occurs in all segments of the fashion industry. Even at the top of the pyramid, creators are likely to “appropriate” rival ideas and efforts. A case in point is Nicolas Ghesquière, then creative director of Balenciaga. His emulation of the patchwork design of little known designer Kaisik Wong caused harsh criticism from bloggers\(^7\) and fashion experts\(^8\). In addition, one could mention a famous court case exposing design infringement in France which involved the prominent American designer Ralph Lauren, whose tuxedo dress was found to bear a recognizable resemblance with the Yves Saint Laurent original\(^9\). In spite of this, cases of illegal copying within the creators’ inner circle remain rare (Monseau, 2011) as most imitations occur in the ready-to-wear or mass-markets. Yet, Beltrametti pointed out that “this trend [too] is slowly changing” as some of the most aggressively copied designs can be bought at all price points (2010: 160). Case in point are the Croc clogs and the Ugg boots which have been copied by all segments (ibid.). Moreover, the distinct lines between the different levels of the pyramid have been fading in the recent past (Beltrametti, 2010). Designers working in the haute couture or luxury ready-to-wear segment, may now find it “either necessary or desirable” to collaborate with mass-market retailers (Scafidi, 2006: 124). They include Karl Lagerfeld, Jimmy Choo, Stella McCartney and Roberto Cavalli who have all created lines for H&M\(^10\). Moreover, some high-end fashion companies pursue a vertical product differentiation strategy by introducing product lines of varying quality at different price levels which are referred to as bridge or diffusion lines (Raustiala & Sprigman, 2006). For example, Armani has a produced varied lines to serve different customers, such as Giorgio Armani Privé (haute couture), Giorgio Armani (high-end ready-to-wear), Emporio Armani (second most expensive line), or A/X Armani Exchange (medium ready-to-wear/street fashion)\(^11\). To protect the value of their major

\(^7\)Information retrieved from jezebel.com.

\(^8\)Information retrieved from nytimes.com.


\(^10\)Information retrieved from about.hm.com.

\(^11\)See appendix E.
brand, companies use different labels for down-marketing purposes. They may establish sub-brands and use different sales outlets for each segment (Raustiala & Sprigman 2006).

In addition and more importantly, customer innovation is on the increase and academic writers have observed a decentralization process in the fashion system, “where editors, consultants and consumers rule fashion to a far greater degree” (Frederiksson, 2001: 44) than in the former, centralized system. They are no longer simply consumers and distributors but “active makers of goods, enactors of consumption worlds and producers of value” (ibid.). Thus, innovation may now initiate in the street, be diffused via the Internet and subsequently be adopted by high-end designers. Such processes were apparent by the integration of the punk and the streetwise styles into current fashion styles. They are referred to as “trickle-up” processes (Field, 1970). As a result, a number of fashion blogs as well as fashion magazines are dedicated to discovering the best street styles.

The development outlined above allows the conclusion that the changes in the fashion industry are of a second-order nature and therefore likely to transform the fashion industry for good. They might best be characterized and visualized by circular models which seem more likely to render the dynamics involved in this process.

3 Intellectual Property Law and Fashion

As the concept of legal consciousness lies at the intersection of studies in law and sociology, it is necessary for social sciences to familiarize themselves with IPRs. For this reason the chapter dealing with the information relevant to this study is tackled at this point of this master thesis. This should not be interpreted as prioritizing the legal framework or as putting the “law first”. According to the legal consciousness scholars (Sarat & Kearns, 1993; Ewick & Silbey, 1998), Cowan (2004) such a structure is permissible if the contents thus provided are subsequently challenged by the data collected.

As this study aims at providing a brief overview of IP laws available to fashion designers and at clarifying the terminology for the different copying strategies, it is neither necessary nor within the scope of this thesis to explain the specific IP laws in great detail\textsuperscript{12}.

\textsuperscript{12}A detailed account of the various, potentially relevant IP laws of the countries from which the respondents in this study originate or in which they live is beyond the scope of this thesis. Although the specific IP laws differ in each country, there is a common understanding of the concept of IP and the laws regulating it, laid out in international conventions, e.g. the Berne Convention or the Paris Convention for the Protection of Industrial Property (Hughes, 1988). More importantly, the concept of legal consciousness rejects a “law first” perspective,
3.1 Fashion as Intellectual Property

Before fashion emerged, the consumption and use of material goods, including clothing, were governed by sumptuary laws (Scafidi, 2006). For example, in England, all adornments in purple silk were restricted to noblemen (ibid.). With the technological advances made in textile production and the consequent growth of the fashion industry, the laws shifted from limiting consumption to facilitating production, that is to say, from sumptuary laws to IP laws (ibid.). The history of fashion as IP began in France: In the 18th century, the French silk weavers of Lyons were the first in the textile industry to secure IPRs for their complex original designs. They were followed by British textile manufacturers (ibid.).

In response to the rise of inexpensive design copies, the French haute couture industry requested IP protection for their original creations, and, at the beginning of the 19th century, was granted protection under copyright law and industrial design law (ibid.). Although French designers had legal tools to fight copyists, they were unable to completely eliminate design piracy (ibid.). However, Scafidi argued that the French IP system “contributed to the strength of the [French fashion] industry and its global influence throughout the twentieth century and into the twenty-first” (2006: 117).13

Raustiala and Sprigman (2006) claimed that the fashion industry has relatively weak IPRs compared to other creative industries, like the music industry or book publishing. The enforcement of their rights is difficult so that most fashion items are “still vulnerable to the encroachments of copyists” (Scafidi, 2006: 121). However, a variety of IPRs can formally be applied to fashion designs to whom they offer partial protection for their innovative garments and accessories. Some authors claim that the ideas in the fashion industry are not novel enough to deserve protection one of them being Beltrametti who feels that there is “nothing entirely new or original in fashion design” (2010: 162). Other scholars countered that this view is incorrect (Hemphill & Suk, 2009b) and that creativity in the fashion industry, like in other creative industries, has to be understood as “sequential or cumulative creativity” (Dutfield & Suthersanen, 2004: 390). That means, fashion designers just like artists borrow from prior creations while adding their own original expression to it (Landes & Posner, 1989). Barrère and Delabruyère (2011) conceptualized this creative production process. According to them it consists of an “‘old’ culture”, that is heritage, and a “‘new’ culture” (2011: 318) which intervenes through creativity. Practices such as referencing or adaptation are typical for the fashion industry as is the case with other creative industries (Hemphill & Suk, 2009b). The core instruments of IP law are

On the list of fashion capitals of 2011, Paris ranked 3rd after London (1) and New York City (2). However, the following note was added to Paris: “No. 1 in our hearts but No. 3 in the media” (information retrieved from www.languagemonitor.com), highlighting the influence and tradition of French fashion.

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Copyright, patenting and trademark. Design law needs to be added to this list as does the investigation of the relevance of these four tools for the protection of fashion designs. Although there are considerable differences between national legal systems, it is beyond the scope of this thesis to describe them all. Instead, it will briefly examine the four tools, assuming that different countries share a common understanding of the underlying principles of IP law (Hughes, 1988).

Copyright can be applied to “many forms of individual artistry and creativity” (Dickson & Coles, 1998: 207), such as music, paintings, sculptures and books. It is a self-executing right. This signifies that the protection arises automatically with the creation itself, provided that the work is “original” and falls within one of the protected categories (Barrère & Delabruyère, 2011). In most countries, copyright does not generally apply to fashion designs but concerns itself with the two-dimensional artefacts such as original prints, graphic images and photographs which feature on garments (CFE, 2012). In theory, a three-dimensional design may be protected by copyright if it is considered a work of art (ibid.). This may be the case of a unique hand-made haute couture garment or a costume. Furthermore, there are patent laws that grant protection to certain new inventions. The patent confers an exclusive right which encourages research and innovation (Barrère & Delabruyère, 2011). However, obtaining patent protection is a lengthy and costly process and meeting the inherent requirements and standards, such as a proven high level of novelty, is difficult for fashion designers (ibid.) as their designs often represent aesthetically appealing re-workings of previous designs (Raustiala & Sprigman, 2006). Furthermore, the seasonal nature of fashion makes this form of protection unsuitable for their purposes (Scafidi, 2006). However, patents can be useful for enduring luxury brands and particularly innovative fashion items (Monseau, 2011). For an example, consider

14 The focus is on these four tools due to their relevance in academic literature on design protection. American scholars identified copyright, trademark, trade dress and patent as the core tools for fashion designers in the U.S. (Raustiala & Sprigman, 2006; Cox & Jenkins, 2005; Scafidi 2006; Hemphill & Suk, 2009). However, I chose to consider design law and exclude trade dress in my investigation. Trade dress was originally limited to a product’s packaging, but “has been expanded by many Courts of Appeals to encompass the design of a product” (Supreme Court, cited in Raustiala & Sprigman, 2006: 1702). This is why Raustiala and Sprigman speculated that trade dress “might [...] play an increasingly significant role in the propertization of designs” (2006: 1702). However, Barnett et al.’s (2010) survey on filed lawsuits in U.S. federal district courts suggested that trade dress is not very relevant to the protection of apparel design. My decision to consider design law arose from its relevance in both American and European academic debates on design protection (American studies: Raustiala & Sprigman, 2006; Hedrick, 2008, Hemphill & Suk, 2009b; European studies: Suthersanen, 2011; Derclaye, 2010). 15 It is important to distinguish the copying of fashion designs from the one of brand names and textile designs. While brand names are protected by trademarks and textile designs can be copyrighted, these two IP tools can only under specific circumstances be applied to designs as I explain below.

16 This list of criteria is not exhaustive. Furthermore, different national legislations have different criteria.

17 On the contrary, in France, fashion designs are given the status of “applied arts” and are thus copyrightable (Barrère & Delabruyère, 2011). For example, the black tuxedo dress by French designer Yves Saint Laurent was protected by copyright against a close copy by American designer Ralph Lauren. See appendix D.
the recent case of Lululemon’s yoga pant waistband. Furthermore, patents may prove ideal for the protection of inventive processes in the manufacturing of fashion articles such as the washing and bleaching techniques used with denims. Thirdly, there are trademark laws that are primarily intended to protect consumers from being duped and to provide a cornerstone of the producer’s reputation (Monseau, 2011). In most cases, trademarks are names or signs that are applied to a product so that their ability to prevent copying, depends on their visibility (Barrère & Delabruyère, 2011). But in many cases, trademarks are not directly visible, for example, when used on buttons or on tabs. In these cases, trademarks provide no protection against copyists who produce exact copies of an original but omit its logo (Monseau, 2011). On the other hand, if trademarks are integrated in the product design, they can serve as anti-copying device (ibid.). Examples include Burberry’s signature plaid and the red tab and pocket stitching on Levi Strauss’s jeans. Some authors have suggested that trademark laws encourage design decisions in the sense that fashion designers choose to integrate visible logos in their designs (Scafidi, 2006; Hemphill and Suk, 2009b; Monseau, 2011), a case in point being Louis Vuitton handbags that are covered in “LV” letters. Monseau (2011) has blamed the unavailability of other suitable tools for this particular design feature whereas others attribute it to the diversity of “taste and marketing as well as legal strategy” (Scafidi, 2006: 121). Last but not least, there is the design law. It is a sui generis right. This signifies that it protects a “difficult” subject matter which defies disciplinary and legal boundaries” (Suthersanen, 2011: 1). Sui generis laws usually result from the legislators’ and lawyers’ inability to protect new things under the three main IP regimes (Suthersanen, 2011). Therefore, design law, which falls into this category, incorporates a mixture of principles deriving from these regimes (ibid.). While Barrère and Delabruyère are convinced that design law is “the most relevant [...IP tool] for the fashion industry” (2011: 309), Suthersanen suggests that it is of “little use to design proprietors” (2011: 22). It lies beyond the scope of this thesis to put a conclusive end to this debate. However, there is evidence that the design law is relevant to the protection of fashion designs. In 2007, the British designer Karen Millen won a lawsuit against Dunnes Stores, an Irish retailer, who had closely copied three unprotected designs of women’s clothing as she could provide evidence for the fact that the defendant had intentionally copied her designs.

Although a variety of IPRs can formally be applied to fashion designs, scholars have suggested that fashion designers underutilize or rarely enforce them (Barrère & Delabruyère, 2011; Hedrick, 2008; 2011). Information retrieved from jurist.org.

See appendix F.

For a discussion of the properties of design law, for example the European Community design, see Dinwoodie (1996) or Suthersanen (2011).

Hackett, 2012). The reasons that scholars put forth to account for this underutilization are multiple. Some are related to legally relevant parameters such as costs, time, complexity, threshold for protection or the designers’ unawareness of the design protection system (Barnett, 2005; Hedrick, 2008; Barrère & Delabruyère, 2011). According to Phillips, the design law is a great “conundrum” (2011: 507), and although he refers to design in general – which is a very vast area – the laws available for fashion designs are similarly complex: Designs can be registered or unregistered; they can be protected by patents or by design rights; they can sometimes be registered as trademarks or protected by copyright, they can have national and international dimensions. Other reasons relate to specific features of the industry (Raustiala & Sprigman, 2006; Barnett et al., 2010; Barrère & Delabruyère, 2011). The underutilization of rights can also be explained by the fact that designers resort to other means of protection, such as social norms, mechanical or technological means, and exploitation of the fashion cycle (Scafidi, 2006; Barnett et al., 2010; Dickson & Coles, 1998). From this angle, it may seem that IP law only plays a limited role in the fashion industry. However, Feeley cautioned against jumping to the conclusion that an “absence of activity [means] that the law was having no effect at all” (1976: 516). On the contrary, the law may “operate with perfect efficiency” (ibid.) even when rarely invoked. Hemphill and Suk suggested that “some fast-fashion firms eschew exact or close copies” (2009b: 1172, emphasis added). Similarly, Monseau argues that “designers (particularly lower-end or cheap-chic designers) seek to design around the law” (2011: 61). Furthermore, law’s indirect effects need to be considered (Sarat & Kearns, 1993). For example, confidential settlements of IP disputes may not be what the law itself would have prescribed, but still demonstrate IP law’s effect.

3.2 Terminological context

Scanning through the legal, cultural and economic literature dealing with design copying in the fashion industry, it becomes obvious that there is no universally harmonized terminology. Different scholars render the large variety of copying activities by employing a host of seemingly synonymous terms. Thus, we find references to “close copying”, “participation in common trends”, “imitation”, “inspiration”, “adaptation”, “appropriation”, “homage”, “referencing”, “borrowing”, “remixing”, “counterfeiting”, “knockoffs”, and “design piracy”. Some of these terms refer to the violation of design rights or the copyright, some to trademark infringement. The multitude of terms seems to suggest that scholars find it difficult or unnecessary to adopt a more stringent and consistent terminology for the different imitation methods. But we should also bear in mind that the semantic richness of the English language is one of its intrinsic properties and that its structure allows the creation of expressive terms that can be used to capture multi-layered nuances of the phenomena it seeks to describe.
Nonetheless, the debate between Raustiala and Sprigman (2006; 2009) and Hemphill and Suk (2009a; 2009b) demonstrates the importance of clearly defined terms. Raustiala and Sprigman (2006) refer to “close copying” and “trend-joining activities” as “copying”, whereas Hemphill and Suk (2009b) emphasize the need to clearly distinguish between “close design copies” and other forms of appropriation such as inspiration. Whereas the former is illegitimate and considered harmful to designers, the latter is regarded as legitimate and valuable to fashion innovation (ibid.). Since it is difficult to draw a line between the two practices, Barnett et al. (2010) suggest a taxonomy of imitation strategies, which is based on three product characteristics: trademark, design and quality. The authors have identified three main strategies according to the degree of replication involved. 1) Horizontal imitation signifies the high-end designers’ referencing of each other’s styles with products being sold under varying brand names but at equivalent high quality grades. 2) Legitimate vertical imitation is the strategy of the ready-to-wear firms imitating successful designers’ originals and selling them under different brand names and at various quality grades. 3) An illegitimate vertical imitation strategy is used by informal vendors who provide imitations of original designs to the low-end market, under the same name, similar design but at substantially inferior quality grades. This imitation strategy amounts to trademark infringement. Taking into consideration that Barnett et al. (2010) developed their taxonomy against the background of U.S. American legislation, which includes no law protecting fashion designs, vertical imitations are illegal in the U.S. if they are sold under the same brand name or sign. Placing this taxonomy in a European legal context, vertical imitations are illegal if either the product is sold under the same brand name or sign (trademark infringement) or if the design is a close copy of the original (violation of design rights). Although this thesis focuses on the illegal copying of fashion designs, the terminology it uses in the following also includes trademark infringements in order to account for the fact that a design copy can simultaneously infringe trademark and design laws (see table 1). Beltrametti maintains that “there is no rationale distinguishing counterfeiting from design piracy” (2010: 149) as “counterfeiting generally starts with design piracy” (2010: 150). In this way, counterfeiting is seen as part of the greater process of illegal design copying.

In contrast to the U.S.A., European fashion designs can be protected under Community design. See Hedrick (2008) for a comparison of U.S. and European design protection systems.
Table 1: Design strategy terminology

<table>
<thead>
<tr>
<th>Design strategy</th>
<th>Terms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legitimate horizontal imitation</td>
<td>Homage, reference, borrowed design, remix</td>
</tr>
<tr>
<td>Legitimate vertical imitation</td>
<td>Imitation, inspiration, interpretation, adaptation, derivative design</td>
</tr>
<tr>
<td>Illegitimate vertical imitation of designs</td>
<td>Close copy, exact copy, line-by-line copy, identical copy, design piracy, knockoff</td>
</tr>
<tr>
<td>Illegitimate vertical imitation of trademarks</td>
<td>Counterfeited goods, counterfeits</td>
</tr>
</tbody>
</table>

Source: own illustration, derived from Beltrametti (2010).

4 Legal Consciousness

This chapter provides an overview on the concept of "legal consciousness". “Legal consciousness” refers "to the ways in which people make sense of law and legal institutions, that is, the understandings which give meaning to people’s experiences and actions" (Ewick and Silbey: 1992: 734). Over the last years, researchers have applied the concept in a variety of ways mirroring the change in focus experienced in legal consciousness studies. Moreover, they offer different starting points for the analysis of how law works in society (Engel, 1998). This chapter introduces the two differing perspectives on law - the instrumental and the constitutive - that guide legal consciousness scholars in their study of how law matters in people's lives and how law is represented. The chapter moves on to describe legal consciousness as cultural practice - the conceptual framework for the study at hand. It then expands on Ewick and Silbey's (1998) typology of legal consciousness and the concept of situated legal consciousness which are applied to analyse fashion designers' construction of legality.

4.1 Perspectives on Law in Legal Consciousness Studies

To understand the pervasive issues in legal consciousness studies, it is necessary to illuminate the two prevailing concepts that scholars have developed to investigate “the ways in which law matters – to persons, to organizations, and to social change” (Levine & Mellema 2001: 172). Two main orientations can be distinguished in studies of legal consciousness: the instrumental and the constitutive (Sarat & Kearns, 1993). They differ from each other in their representation of law and the ways in which law affects society (ibid.). While the former focuses on the effectiveness of law and excludes its broader effects, the latter investigates the role of law in constructing social meanings and excludes its more focused regulatory effects (Sarat & Kearns, 1993). In the following, the two
perspectives in legal consciousness studies are explained by demonstrating how law is conceived and how law matters. This thesis is primarily concerned with the second, less tangible orientation to explore in what way law matters to emerging fashion designers.

4.1.1 The Instrumental Perspective
The instrumental perspective conceives of law as a set of distinct norms which stand outside society and which can be used as a regulatory tool of social life (Sarat & Kearns, 1993). To Sarat and Kearns the key to the instrumental approach is a firm division between law and society, with “law being an important influence on society, but standing outside of it” (1993: 25). Legal rules are deployed to “maintain, reproduce, and alter the everyday in conscious, rational and planned ways” (ibid.). Law affects society by imposing external sanctions and inducements, which are perceived or not perceived, used or ignored.

Studies under this approach typically examine the effects of a particular law given its purpose, but are not interested in its indirect effects (Sarat & Kearns, 1993). The research interests in this area can be described by such terms as compliance, impact, or effectiveness. By observing the behaviour of individuals, their use of or resistance to legal rules, or by inferring beliefs from practices, instrumentalists attempt to measure law’s effectiveness (ibid.).

Legal consciousness studies adopting an instrumental perspective focus on people’s knowledge of and opinions about law. Legal consciousness refers here to “the legalistic or law-informed style of reasoning [...] that is functionally equivalent to the reasoning process lawyers use” (Engel, 1998: 119). Researchers are interested in “how well a person navigates the legal system, mobilizes her rights, or responds to her legal responsibilities” (Levine & Mellema, 2001: 173). Assuming that law plays a very important role in developing legal consciousness, the law itself becomes a central constituent of the inquiry of how it matters so that other effects or factors take second place in the analysis (Engel, 1998). Law is treated as an instrument or resource – existing autonomously apart from social life, normative systems, and social institutions. Using large scale quantitative surveys, studies sought to measure levels and degrees of people’s knowledge and opinion about law.

This can be applied to the example of an emerging fashion designer who detects a derivative copy of a dress that she has designed in the sales outlet of a fast-fashion provider. Even though she is convinced that this provider was inspired by her dress, she does not sue it. How can this behaviour be explained? From a competence-based viewpoint, researchers would investigate her knowledge or opinion of the legal system. Alternatively, they would examine the properties of a specific law. We may learn that the fashion designer knows that formal legal action would be futile because derivative
copies are not protected by the EU design law. As her reasoning is law-informed, we may conclude that her level of legal knowledge is high and her legal consciousness is ‘strong’.

The instrumental approach to study legal consciousness is considered too narrow for the analysis performed in this study since it excludes important factors from the analysis that influence people’s understandings and actions (Sarat & Kearns, 1993; Ewick & Silbey, 1998). Sarat and Kearns note that the focus on legal institutions and legal effects "produces a distorted picture of the role of law in everyday life (1993: 50). If we take the above example, but change the term “derivative design copy” into that of “exact design copy”, how can we explain the designer’s decision not to sue the fast-fashion seller? A survey would reveal that the designer’s knowledge of the IP system is profound so that she knows that identical copies infringe on her IPRs. But although she may have the means and funds, she does not use law to address this problem. The instrumental approach with its exclusive focus on law cannot explain this phenomenon. Another point of criticism is expressed by Engel who concludes that this approach is “insufficiently sensitive” to the “thinking self” (1998: 113). Similarly, Merry criticizes large-scale survey research because “this approach flattens the way people understand and use the law” (1990: 5). Merry stresses the interplay between the thinking self and the external factors that affect legal consciousness. These insights initiated a shift in the focus of legal consciousness studies from an instrumental to a constitutive perspective on law.

4.1.2 The Constitutive Perspective

The constitutive approach to socio-legal studies shifts the focus “from tracking the causal and instrumental relationship between law and society toward tracing the presence of law in society” (Ewick & Silbey, 1998: 35). Therefore, researchers pursuing this theoretical pathway look into “law in society” rather than at “law and society” (Ewick & Silbey, 1998).

The constitutive perspective on law recognizes law’s pervasive influence in society (Sarat & Kearns 1993) and legal cases are considered merely as “the minuscule top of a giant pyramid of legal engagements” (Ewick and Silbey: 1998: 19). Proponents of this approach argue that law represents more than a series of formal statutes and that its influence on social life cannot be grasped by taking an instrumental approach (ibid.). From the constitutive perspective, “social life is so saturated with law that social practices cannot be logically separable from, or intelligible apart from, the laws that shape them” (Levine & Mellema, 2001: 172). Law is considered one comprehensive aspect of society and collaborates with other structures, such as family, religion or gender, in shaping social relations (Ewick & Silbey, 1998). This means that ideas about the law (what it is, what it does, why it exists) are an integral part of a society and shape individual self-understandings and people’s relations to others.
(Trubek, 1984). Since “law’s demands seem natural and necessary” (Sarat & Kearns, 1993: 29), law becomes ordinary practice (and thus may become invisible).

Selective enforcement strategies in the fashion industry suggest that fashion designers understand and use legislation in a variety of ways. How can we explain that fashion designers regularly target trademark infringement but only sometimes target close design copying (Barnett et al., 2010)? Similarly, how can we explain that some designers may resort to legal action in order to address cases of close design copying, while others in similar circumstances will hesitate to engage the law, even in situations where the law may provide relief? From an instrumental perspective, we may conclude that low levels of legal knowledge of design rights, or cost and time considerations underlie the fashion designers’ behaviour. But proponents of the constitutive view criticize that this perspective does not show the whole picture (Sarat & Kearns, 1993; Ewick & Silbey, 1998; Nielsen, 2000). For example, on the one hand, the law may be used for purposes unintended by formal lawmakers (Ewick & Silbey 1998). On the other hand, the law may not be relied on in a specific situation although it could have helped to solve a problem at hand. Hoffmann’s (2003) study demonstrates how the social context shapes different forms of legal consciousness. The author showed that employees working for a hierarchical cap company did not register formal complaints to resolve disputes because they were constrained by a grievance culture stressing independence. This caused them to tolerate unpleasant situations, to speak informally with their supervisors or the offending party or quit their job altogether.

These examples show that “we should expand rather than narrow” our perspective (Ewick & Silbey, 1998: 34) if we are to understand the role the law plays in fashion designers’ lives. The constitutive perspective implies three methodological changes in legal consciousness studies (Silbey 2010b). First, the constitutive perspective rejects the “law-first” paradigm of research (Sarat & Kearns 1993). Rather than beginning with an examination of formal legal rules and regulations, scholars turn to ordinary daily life to “trace the way legal power and legal forms exist in social relations” (ibid.: 50). This concern has moved the primary focus away from “legal actors” and “trouble cases” to “the public at large” (Feeley, 1976: 516), which includes ordinary people, that is to say, the unofficial, non-professional actors and their images of law and legal institutions. Secondly, the constitutive perspective abandons the focus on measurable behaviour (Silbey, 2010b). As the constitutive perspective sees law’s effects in the provision of meanings and self-understandings rather than in the results of external sanctions or inducements (Sarat & Kearns, 1993), scholars have explored internal meaning-making processes. Levine and Mellema assume that “our thoughts and behaviours

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23 The term “ordinary people” designates laypeople and is used in opposition to legal actors or knowledgeable people.
simultaneously reflect, incorporate, and create law’s meanings and representations, which we have internalized and somehow made our own” (2001: 173). Rejecting large-scale quantitative data collection tools, scholars applied research methods from anthropology and qualitative sociology to studying actors’ meaning-making, such as observation and in-depth interviews (Silbey, 2010b). For example, scholars used observation in courts (Yngvesson, 1988), lawyers’ offices (Sarat, 1990), welfare agencies (Cowan, 2004), or public places (Nielsen, 2000) to analyze legal consciousness. The third component of the new approach is a change in theoretical materials and research methods (Silbey, 2010b). The turn to everyday life, ordinary people and cultural meanings demanded a shift away from the “traditional” objects of study, such as official rules, formal legal institutions, and opinions of people, to an analysis of culture (ibid.). In addition to the cultural analysis, scholars appropriated concepts from the social studies dealing with consciousness, ideology, and hegemony (ibid.). The shift from the institutional to the social, from the exceptional to the routine, from the legal system to mental representations allowed scholars to investigate law’s indirect effects in social relations, the cultural constraints and social norms that influence law, and in this way understand how legal consciousness is shaped.

4.2 Legal Consciousness as Cultural Practice

In line with Ewick and Silbey (1998) this thesis refers to legal consciousness as “cultural practice”. This notion relies on a constitutive perspective to study law in society, but stresses the continual interplay between the legal system and cultural settings. The notion is defined as follows:

“[Legal consciousness is] part of a reciprocal process in which the meanings given by individuals to their world, and law and legal institutions as part of that world, become repeated, patterned, stabilized, and those institutionalized structures become part of the meaning systems employed by individuals. We understand consciousness to be informed within and changed by social action” (Ewick & Silbey, 1992: 741).

Defining legal consciousness in this way, Ewick and Silbey (1998) distinguish the concept from alternative definitions of consciousness as mere ideas and attitudes (as detached from the lived experience) or as a by-product of social structures from which the thinking individual is absent. This means that external factors (that shape individual experiences) and the capacity of the individual to construct meaning are crucial factors in a study of legal consciousness. Since people internalize legal ideas, law constitutes social life. Yet, at the same time, law is constituted by social relations and cultural practices. In the words of Trubek “law creates society and society creates law” (1984: 609).

To expand the perspective on law, Ewick and Silbey (1998) have developed the concept of “legality” which they define as “the meanings, sources of authority, and cultural practices that are recognized as legal, regardless of who employs them or for what ends” (1998: 22). By adhering to this notion,
the authors recognize that legality may be enacted or invoked “in ways neither approved nor acknowledged by law” (ibid.). Ewick and Silbey also identify institutionalized forms of legality to which they refer as “law”. The concept of legality makes it possible to move beyond the traditional focus on formal legal institutions to a perspective that examines “how, where and with what effect law is produced in and through commonplace social interactions [...]. How do our social roles and statuses, our relationships, our obligations, prerogatives, and responsibilities, our identities, and our behaviors bear the imprint of law” (Ewick and Silbey 1998: 20)? The concept of legality is useful to this study as its aim is to explore fashion designers’ common-sense understandings of law as well as non-specific legal rules and regulations (i.e. quasi-legal social structures).

Ewick and Silbey have described the above mentioned interplay between meaning and action in terms of “schemas” and “resources” (1998: 39-43). Legality is constructed as people continually rely on and invoke cultural schemas, in other words publicly exchanged understandings, such as “cultural codes, vocabularies of motive, logics, hierarchies of value, and conventions” (Ewick and Silbey 1998: 41). These schemas are employed to endow the world with “sense”. Every time people invoke schemas to understand a certain experience or event (legal or quasi-legal), they construct legality, even when the schemas are not legal. Further, people may draw upon legal concepts in new and imaginative ways, thereby adding to what legality means. By including other, non-legal structures (e.g. gender, age, economy, and religion), Ewick and Silbey supplement legality with “meanings and resources that do not derive from legal practices alone” (1998: 50). In this way, legality is constantly constructed by the social practices of ordinary individuals, unlike official legislation that is imposed by policymakers and exists autonomously. Marshall and Barclay note that “law is what people think it is, what they say it is, and what they do to implement the meanings they create” (2003: 621). Levine and Mellema point out that schemas “sometimes cause the law to recede from center stage” (2001: 180). In this sense, the identification of cultural schemas in the fashion world may help to explain why designers do not engage the law to solve copying disputes, but refer to extra-legal forces. While invoking schemas, people also deploy social and material “resources”, such as “legal knowledge, capital, property” (Ewick and Silbey 1998: 41). Resources influence how much power an individual has to wield schemas. Ewick and Silbey claim that this “make[s] the expression of one type of legal consciousness more likely than others” (1998: 53). To understand why emerging fashion designers invoke one schema or another and display particular types of legal consciousness, this study pays attention to the resources and support structures that emerging fashion designers have at their disposal to make sense of law.

Engel points out that it is possible that a person is not aware of the ideas that constitute consciousness because they “seem” so much a part of the natural order of things that the self never
reflects on them” (1998: 116). Thus legal consciousness can be present even when legal language is not used to describe an event (Nielsen, 2000). Therefore, the concept of legal consciousness needs to include “the unconscious and the subconscious” engagement with law (Engel, 1998: 116; Harding, 2006). With a view to analyzing the subconscious engagement with law, scholars have investigated situations where people neither talked about the law nor did they use legal language or the legal system even though this might have been an option to deal with their problems (Ewick & Silbey, 1998; Levine & Mellema, 2001; Hull, 2003).

4.3 Typology of Legal Consciousness by Ewick and Silbey

Ewick and Silbey (1998) have developed a theory of legal consciousness based on extensive qualitative research. They identified three types of legal consciousness, namely the “before the law”, “with the law”, and “against the law” (1998: 47-49, 74-220) orientations.

The “before the law” type of legal consciousness treats legality as a separate realm of social life. People acknowledge law’s authority and experience law “as a formally ordered, rational, and hierarchical system” (Ewick & Silbey, 1998: 47). The law is characterized by objectivity and impartiality and people are convinced by its legitimacy. People adopting a “before the law” perspective turn to legal advice only if they feel that a situation constitutes some real or potential threat to the community. For many, narrow self-interest does not justify the mobilization of the law, even if it requires accepting injury or harm. The law is understood as an institution of “ordered rationality” (ibid.: 76) and people believe that legal decisions and procedures are objective, appropriate and just. However, people may not always believe in the fairness of outcomes and express frustration as regards the authoritative power of the law that leaves them powerless. Ewick and Silbey conclude that this perception of law "can be read as law's own story" (1998: 164) as it "embod[i]es the same characteristics that liberal law claims for itself" (1998: 106), namely neutrality and fairness.

People who are conscious of being “with the law” perceive legality like a game where pre-existing rules can be deployed and new rules can be invented. The law is used as a resource and resort assisting people to look after their interests in their interactions with others. In contrast to people who are "before the law", here self-interest is understood as a legitimate instrument. Law is available for one’s own interests, but can also serve the same intents of others, thus resulting in conflicting interests which the skilful and resourceful will win. When playing this law game, people are less concerned about the legitimacy of legal procedures but about their efficiency regarding the achievement of their goals. The rules and norms that govern behaviour in other areas of social life, such as empathy or reciprocity, do not correspond to those that characterize legality. Whereas in the
first case legal statutes and provisions are understood as limiting human action, the game players' view of legality demarcates the leeway within the legal system for intervention and the pursuit of self-interest. It understands law as "enframed by everyday life" (Ewick & Silbey, 1998: 48) rather than discontinuous and distant from everyday life. This discourse represents law as a "realist tale" (Ewick & Silbey, 1998: 164); nonetheless it is "no more illusory than the story 'before the law'" (ibid.).

In the “against the law” dimension of legal consciousness, law is presented as a product of unequal power. Rather than understanding legality as objective and fair, people experience it as arbitrary ("might makes right") and capricious. It is "something to be avoided" and "dangerous to invoke" (Ewick & Silbey, 1998: 192). The law is seen as powerful, but ineffective in resolving disputes, recognizing truth, or responding to injustice. Given the pervasive authority of law, many people describe themselves as being caught within its powerful system, unable to "maintain its distance from their everyday lives or play by its rules" (ibid.: 48). In this situation, people use resources in unexpected and inventive ways in order to assert autonomy. While some people accept minor disputes and losses (when the costs of mobilizing the law are considered too high), others openly challenge the legal system by criminal acts or more subtle forms of resistance such as "pilfering, violence or threats of violence, tricks, institutional disruptions, foot-dragging, humor, storytelling, and gossip" (Ewick & Silbey, 1998: 183). The main purpose of such behaviour is to "forge moments of respite from the power of law" (ibid.: 48).

While identifying three different discourses regarding the law, Ewick and Silbey (1998) point out that the types of legal consciousness are neither exclusive nor tightly bound as they may coexist in a particular situation and even be integrated. Furthermore, the different orientations are neither person nor case-specific but pluralistic and variable across contexts. This means that people may display more than one type of legal consciousness even in the context of one legal experience. This polivocality was demonstrated by a variety of researchers (Sarat, 1990; Ewick & Silbey, 1998; Nielsen, 2000). The resulting variation and contradiction within a single person’s discourse is acknowledged by Ewick and Silbey to reflect the "different understandings, values, and expectations" (1998: 51) of a person within a specific context, and the intended purpose of the talk. Further, images and ideas about law are not static constructs, but are connected to people’s lived experience, that is to say, legal consciousness may change over time, across interactions and contexts. According to Ewick and Silbey, "woven together [...] the three stories collectively constitute the lived experiences of legality as a struggle between desire and the law, social structure and human agency" (1998: 29). Although legality is continually in the making, it manages to "sustain itself as a durable and powerful institution, in other words, to constitute a "rule of law" (Silbey, 2005: 329). Ewick and Silbey’s
research raises questions about when and whether emerging fashion designers’ legal consciousness can be described as either “before the law”, “with the law” or “against the law”.

4.4 Situating Legal Consciousness

Since legal consciousness “is forged in and around situated events and interactions” (Ewick & Silbey, 1998: 50), it is “crucial” to recognize “the situated character of understanding” (Cooper, 1995: 522) when analyzing legal consciousness.

Nielsen (2000) proposes that legal consciousness studies should attempt to describe the contingency in legal consciousness. To this effect, she has constructed an analytic framework in which legal consciousness is situated along specific axes. By narrowing the focus of inquiry and keeping certain variables constant, Nielsen seeks to explore variation in legal consciousness across social groups. To establish how race, gender and class shape legal consciousness, she situates her study doctrinally with regard to a particular socio-legal phenomenon and within a particular location. Although other legal consciousness scholars have not adopted an analytical framework comparable to the one provided by Nielsen (2000), other scholars similarly “contextualize legal consciousness by situating their studies in particular problems, particular organizations, and particular social institutions that mediate the meaning of legality” (Marshall & Barclay, 2003: 617). Different dimensions, along which legal consciousness is situated, have been identified in various studies as particular groups of individuals, locations or socio-legal phenomena. Subjects included, inter alia, women (Marshall, 2003), welfare applicants (Cowan, 2004) and local government actors (Cooper, 1995). Locations ranged from legal service offices (Sarat, 1990), to public places (Nielsen, 2000) and the workplace (Marshall, 2003). And a range of legal issues was covered, such as sexual harassment (Marshall, 2003), welfare (Sarat, 1990) and discrimination (Harding, 2006). This list of examples - as well as the list of dimensions - is not exhaustive.

Nielsen’s (2000) analytical framework has been adapted to the purpose of this study. The research focus has been placed on emerging fashion designers and design copying in the fashion industry. As mentioned, Nielsen (2000) has used this framework to analyze variations in legal consciousness. But her study had also a further aim which was to test the scope of Ewick and Silbey’s (1998) legal consciousness construct. While Ewick and Silbey seek to give an overview of legal consciousness, Nielsen provides “a format to examine the orientations toward law [...] thereby ‘testing’ the scope of their theory” (2000: 1061). The aim of this study is a similar one, namely to demonstrate how legal consciousness takes shape with reference to a particular population, a particular legal issue and a particular industry, thereby testing the scope of Ewick and Silbey’s typology of legal consciousness.
Particular Population

As a large number of authors hold the view that the social identity of individuals shapes their legal consciousness (Gies, 2003; Sarat, 1990; Nielsen, 2000), there is no shortage of studies in this field that have investigated the legal consciousness of those who are marginalized\(^\text{24}\) by social class, gender, race, sexual orientation or disability. Scholars have considered the legal consciousness of welfare recipients/applicants (Sarat, 1990; Cowan, 2004) or working class people (Merry, 1990). Others have investigated women’s understanding of sexual harassment in the workplace (Marshall, 2003), women in a street-level drug economy (Levine & Mellema, 2001), same-sex couples’ attitudes and beliefs regarding marriage (Hull, 2003; Harding, 2006) or individuals with disabilities (Engel & Munger, 1996). Most of the respondents taking part in these surveys benefitted from governmental welfare programmes or were victims of discrimination and sexual harassment.

Scholars’ reasons for studying the presence and consequence of law in combination with social status were two-fold: Firstly, they intended to lend a voice to the excluded, a voice that had been silenced in academic research by doctrinal analyses and disputes (Bumiller, 1988). Secondly, the manner in which marginalized social groups experience the law differs from the mainstream experience where life may be cushioned by fixed abodes, regular employment and status (Levine & Mellema, 2001). It is assumed that the legal consciousness of marginalized people has distinct characteristics (Gies, 2003): On the one hand, they perceive the law as visible, immediate and powerful; on the other hand the law constitutes a burden, nuisance or harassment (Sarat, 1990; Merry, 1990; Ewick & Silbey, 1998). Thus, relations of power and resistance are the markers of marginalized people’s legal consciousness (Sarat, 1990; Gies, 2003). While the authors of these studies emphasize the dominance and immediacy of the legal system, one should not forget that the law is often invisible in social relations. Sarat and Kearns point out: “invisibility, this taken-for-grantedness, makes legality and legal forms extremely powerful” (1992: 52).

The sample (i.e. emerging fashion designers) contributing to this study does not represent a social margin in the ‘traditional’ sense. Instead, it comprises individuals who live in mainstream environments. They are different from the socially marginalized, victimized and otherwise disadvantaged people who might draw a portrait of the law that is predominantly negative or authoritative. Ewick and Silbey’s (1998) empirical study included mainstream as well as marginal groups and it is interesting to note that it is the stories of the latter that generally contain typical features of the “against the law” discourse. By investigating the targeted research group, this study may be able to detect that other types of legal consciousness prevail or a different combination of

\(^{24}\) Marginalized people are defined as individuals “who experience socio-economic deprivation, but also people who are affected by a cultural ‘misrecognition’ of their identities, for example ethnic minorities and refugees” (Gies, 2003: 20).
dominant orientations. It will be interesting to find out if emerging fashion designers have forged a homogeneous or heterogeneous view of the law.

4.4.2 Particular Socio-Legal Phenomena

Perceptions of law do not only depend on social identity; instead, they are shaped within a particular socio-legal phenomenon (Nielsen, 2000) and thus depend on the area of law that is being investigated (Wilson, 2011). Wilson’s research has (2011) demonstrated that the legal issue, they are concerned with, is an important determinant in people’s construction of legal meaning. The author showed that his subjects employed two conflicting conceptions of law: resistance against law and conformity with law. Maintaining both orientations simultaneously became possible because they referred to two distinct legal issues: free speech and abortion.

The socio-legal phenomenon investigated in this study is design copying in the fashion industry. Thus, the analysis of legal consciousness was focused on an area of law that has been neglected by other scholars, namely IP law. Prior research was concerned with welfare laws (Sarat, 1990; Ewick & Silbey, 1992; Cowan, 2004) or laws on same-sex marriages (Hull, 2003; Harding, 2006). While these laws regulate the lives of marginalized people – those who experience socio-economic deprivation or are discriminated against – the IP system was not designed for marginalized people. Instead, it grants rights to every person that creates original or innovative products – and it penalizes those who illegally appropriate other people’s ideas. The IP system offers a compelling context in which legal consciousness can be explored because it is potentially relevant to everyone. However, it is not understood by ordinary people. With reference to copyright, Litman stated that ordinary “people do seem to buy into copyright norms” (2001: 112) but that they do not understand the specific rules. In this context of imperfect knowledge, people rely on alternative rules and norms to make sense of their experiences, thus constructing legality. Exploring this process of meaning construction is the matter of the study at hand.

One study in the area of IP law and legal consciousness is Silbey’s (2011) book-length project of which the first two chapters were published as an academic article. The aim of her project is to analyze “the intersection between intellectual property law and creative and innovative activity” (Silbey, 2011: 2091). To access perceptions of IP law and its role in the creative process, Silbey adopted the legal consciousness concept. By collecting stories of creative people from various disciplines, as well as of their employers, managers and lawyers, she aims to discern how perceptions of IP “facilitate creativity and innovation” (Silbey, 2011: 2113). At the heart of this project lies the
incentives-for-authors rationale. Her study reveals that individuals are not motivated by IP law at the beginning of creative and innovative endeavours. Instead, it is suggested that IP law plays its role at the later stages of the creative process (Silbey, 2011). In relation to legal consciousness, the study offered some but limited insights into how the interviewees perceived and experienced law. They mentioned various forms of law, ranging from statutory IP law, to “ideas of natural law, norms, and customs” (Silbey, 2011: 2100). Official law accounted for “only one small slice of the kind of ‘law’” (ibid.) that respondents mobilized or encountered. Furthermore, law was described “as top-down and authoritative [...] as well as facile, relational, and capable of being shaped by individual will” (ibid.). This understanding of law suggests that the interviewees’ legal consciousness is “before the law” and “with the law”. Furthermore, the variety in structures (legal and quasi-legal) confirm the scholars’ claim that "law" stands for much more than the "official law" and that a particular culture (with its norms and customs) shapes perceptions of law and legality. It is important to note that Silbey’s study collects stories from lay persons as well as legal professionals. By analyzing these stories collectively, it is not possible to differentiate between the legal consciousness of creative people (lay persons) and the one of knowledgeable agents. In contrast to Silbey’s study, this thesis exclusively deals with the legal consciousness of non-specialists.

4.4.3 Particular Industry

Prior studies have not been concerned with situating legal consciousness in relation to particular industries. However, one could argue that the particular norms, customs and values of the fashion industry form part of the cultural context in which legal consciousness is shaped.

Silbey (2010a, 2011) has interviewed people from a number of creative and innovation-driven industries, such as musicians, writers, software developers, jewellery designers, scientists and engineers. However, she was unable to take into account the specific structures and relations characterizing each individual industry. Although her interviewees were all active participants in these industries, there are considerable differences between them, for example in relation to their history of IP law. Publishing, for instance, has traditionally enjoyed the benefits of copyright laws, and authors, as well as publishers, have relied on the IP system to secure revenues and distribution channels. By contrast, the computer software industry is a relatively recent example and the IP system has played less of a structuring role there: Although codes can be protected by copyright, individual users may freely reveal detailed information about their innovation (von Hippel, 2005). People that have sympathized with the open source movement distributed their products over the

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25 “The incentive thesis holds that without robust enforcement of intellectual property rights against unauthorized imitation, producers of intangible goods would have few practical defenses against third-party appropriation of sale proceeds and, as a result, would rationally limit or cease to invest in the development and production of new items” (Barnett, 2005: 1381f.).
Internet so that anyone could use, improve and redistribute it (ibid.). This means that IPRs are voluntarily given up. On the other hand, there are certainly software developers who would never forfeit the rights to their innovation. Similarly, with the rise of the Internet, many authors make text freely available, for example in the form of blog posts or book and film reviews. These examples demonstrate the multiple variations contingent upon legal consciousness. For this reason, the specific characteristics of an industry should be given due consideration, as this will further our understanding of how legal consciousness is shaped.

5 Methodology

In this section, the philosophical perspective and methodological approach are elucidated to demonstrate the implications of the chosen approach for the research method and analysis strategy. In the end, the quality of the study is assessed and its limitations are outlined.

5.1 Research Approach

This study is guided by a number of assumptions about the nature of reality and how we understand and seek to explain it (ontology) and ways of expanding our knowing and learning capacity (epistemology). These assumptions relate to the philosophy of science that shapes the methodological choices and the relationships between theory and data.

5.1.1 Ontology

What is reality? Many philosophers have assumed that the social world does not exist independently of human perception and that its existence can be explained in words. Each individual constructs his or her own version of reality under the influence of their specific context (e.g. socialisation, experience and culture). I assume that there is no absolute account of reality based on facts that can be measured and quantified. On the contrary, there are different ways of understanding multiple and alternative social realities. However, I do not believe that the existence of diverse perspectives makes it impossible to “capture” one specific reality but that each reality is diverse and multifaceted. Consequently, most understandings are context-specific. For my study, this signifies that its subjects choose from a limited “inventory” of schemas and practices available to them in a given context so that a “stabilized” set of meanings will eventually emerge. Thinking about law from this perspective means to comprehend it as experienced, constructed, plural and shaped by context. This diversity of perspective adds to our understanding of the various ways in which fashion designers experience legality and express a legal consciousness that is diverse, poly-vocal, and contingent on social structures.
5.1.2 Epistemology
How do we acquire knowledge? I assume that our knowledge of reality is not gained by means of
direct experience, but that rational thinking is an important aspect of the process of knowing. As
such, knowledge of reality cannot be arrived at solely through experiments (as reality is not limited
to observable phenomena), but must be accessed via people. Since it is the people who construct
social reality, their reality is only accessible for us through their discourse and our interpretations
thereof. I am aware of the fact that my specific position affects the approach taken, the questions
asked, and the analysis produced.

5.1.3 Methodological approach
Like many behavioural studies, the one at hand uses an inductive approach which arrives at
conclusive generalisable findings by exploring how a group of individual emerging fashion designers
develops legal consciousness in the specific context of the fashion industry. For this reasons and to
this purpose, perceptions of and experiences with design copying and IP law were accessed through
qualitative interviews and cross-referenced with Ewick and Silbey's typology of legal consciousness.
This has provided an avenue for in-depth exploration which is indicative of how this population
constructs the ontological entity of legality for itself.

The approach is further specified by the techniques of data analysis outlined in chapter 5.4 and 5.6.

5.2 Research Objectives
As mentioned previously, the general aim of this thesis is the application of an appropriate
theoretical framework – by using Ewick and Silbey’s typology of legal consciousness – that elucidates
the development of legal consciousness in the sample of emerging fashion designers selected for this
study. Moreover, the empirical enquiry conducted in the course of this thesis is to identify the
particular orientations that prevail in this sample. The research objectives related to the empirical
part have been formulated on the basis the general aim. They are to be achieved by means of semi-
structured interviews which comprise situations in which preselected individuals talk about the law
in general and where and/or how they have made use of it or decided not to do so.

Thus, the interviews seeks to explore the emerging fashion designers’ perceptions with regard to

(1) design copying in the fashion industry and the explanation they have for this practice,
(2) commonly used explanations of IP law and quasi-legal concepts they feel might be relevant
   for them.

Moreover, this study seeks to
(3) identify how the group reacts to design copies and whether they resort to legal means as a counteraction, and to

(4) establish differences and similarities between the forms of legal consciousness apparent in the individual members of the sample.

5.3 Conceptual Framework and Implications

Several assumptions have guided this investigation of the legal consciousness developed by emerging fashion designers. Firstly, in line with Ewick and Silbey (1998), legal consciousness was interpreted as a form of cultural practice. This means that the focus was not on people’s knowledge of the legal system, but on the meanings that the interviewees have constructed for themselves. This also signifies that legal consciousness reveals itself in words as well as in actions. Thus, not only the respondents’ attitudes and opinions were recorded but also their behaviours and the meanings they attached to those behaviours. Secondly, legal consciousness is understood to be contingent on social contexts. Therefore, the analysis was limited to a specific set of actors and a specific socio-legal phenomenon: emerging fashion designers and design copying in the fashion industry. Thirdly, this study embraces the concept of legality that includes alternative sources of power and institutions and is not confined to official law. Fourthly, a law-centred perspective was avoided in the methodological approach. This study applied a qualitative method, namely the interview, to capture the legal consciousness of fashion designers by investigating their everyday lives and experiences, their personal stories and relationship, and by examining their approach to design copying (inter alia: choice of terminology, assessment of design copying).

5.4 The Empirical Enquiry

To understand how design copying in the fashion industry is perceived and experienced and how IP law squares with this phenomenon, the discourse of people working in this industry has been examined. As a result, the research approach of this study is an inductive and qualitative one. To meet the aims and objectives of this study, two rounds of interviews were conducted with 11 designers. The advantages and disadvantages of interviews, whose contents, form, style and transcription method are explained below, were taken into consideration. A specific method was used to identify the respondents for this study whose characteristics are also described below.

5.4.1 The Interview as Research Method

The choice of the interview as research method is in line with the inductive nature of this research project. Interviews are particularly useful for accessing people’s attitudes and opinions, values, and experiences. They tend to produce explanations that can only be insufficiently be captured by formal questionnaires (Byrne, 2004). Moreover, interviews allow to establish personal contact with research
samples. This was specifically important for this project as the interviewees were asked to provide stories of personal experience which included sensitive information. All interviews were conducted via Skype which offered additional advantages compared to face-to-face or telephone interview. The costs incurred are lower and time is used more efficiently as travelling to and from the interviews is not required. Furthermore, the sample can be dispersed across an unlimited geographical area. Another advantage is convenience as the respondents remain in familiar surroundings and may therefore be more relaxed. Finally, by using a webcam, observation of the respondent is possible so that nonverbal behaviour can be integrated in the analysis. It is also easier to establish trust when the respondent can see the interviewer. All in all, Skype interviews combine the advantages of face-to-face and telephone interviews while bypassing their disadvantages. Last but not least, Skype interviews can be recorded in an easy and unobtrusive way by using audio-recording software.

I conducted two rounds of interviews with semi-structured interview guides that were developed in advance. As the two interview rounds differed in aim, focus and time, they are treated separately in this chapter. The first round of interviews was undertaken at an early stage of this study between August and October 2012, when the focus of the research project was not yet clearly shaped. Therefore, the first interview guide was not initially built to access the legal consciousness of fashion designers. Instead, it was designed to explore IP law's role (broadly conceived) in the lives of emerging fashion designers. Analysis of the answers has shown that the interviews provide some insights into perceptions of law and construction of legality. To dig deeper into the legal consciousness of respondents, follow-up interviews were conducted with 8 of the 10 respondents (one respondent was unavailable for the second interview, the other one did not reply to the request). This second stage took place from December 2012 to February 2013. At that time, the theoretical foundation of the project had been built up so that the questions were designed to access the legal consciousness of the respondents. The goal of the follow-up interviews was twofold: Firstly, they allow re-addressing comments from the first interview round, so that the designers' perceptions and experiences could be accessed from the perspective of a legal consciousness study. Secondly, by emphasizing the meaning construction process, the follow-up interviews explored fashion designers' legal consciousness more thoroughly.

5.4.2 Identification of Respondents

To find participants for this research project, specific criteria were identified that guided the selection of potential respondents, a method called “purposive sampling” (Kenneth, 1987). The two criteria are the following: Respondents needed to 1) work in the fashion industry, 2) be able to be characterized as “emerging designers” in the fashion industry. These criteria result from the design of the research project. As explained above, I chose to focus on the fashion industry for its particular
characteristics and examine fashion designers because I am interested in how this specific group constructs legal meaning. The sample is a group that is relatively young and at the beginning of their career. In order to add credibility to my sample I included the opinion of industry experts when characterizing my sample. Thus, I searched for respondents on the website of Vogue, “the most visible and important” fashion magazine which “exerts tremendous influence on consumers and the fashion industry” (Hemphill & Suk, 2009b: 1157). On its Italian website, Vogue has a talent section that introduces emerging fashion talents. Vogue also provides links to other institutions and organizations that showcase emerging talents. From these talent pools, I chose designers, making sure that a variety of nationalities was covered. This last aspect was important because my intention was to not situate the research in a specific country.

I did not know beforehand whether the contacted fashion designers had had any personal experience with illegal or derivate design copying or dispute resolving in the context of the creative process. This aspect was not considered a problem since fashion designers experience different forms of design copying in their daily lives if not directly, then indirectly. The sample included designers who did not personally experience official law and whose IPRs were not infringed by identical copying. I chose this approach because I consider it important to understand how these individuals evaluate the phenomenon of design copying and whether they relate legal concepts to it or provide alternative solutions to deal with it. Even those whose ideas were not copied in the past can be the target of copyists. It is important to understand how these individuals experience the fashion world, how they position themselves in relation to law, and whether they feel the need for legal entitlements or protection. Fashion designers are immerged in a culture characterized by imitation and adaptation strategies and thus build on previous knowledge or get inspired by other things to create something new - just like the creative individuals in other industries. They get inspired by other people’s creative work and, at the same time, may themselves be a source of inspiration. Thus, there are three ways in which IP law may be relevant to fashion designers: They may observe instances of objectionable design copying, be the target of too close imitation, or produce work that is too close to another designer’s creation.

The research sample was relatively small and consisted of 10 respondents plus one test-respondent. While some legal consciousness studies have small samples (Merry, 1990; Sarat, 1990; Wilson, 2011), other studies advocate a broader range of data collection (Ewick & Silbey, 1998; Nielsen, 2000). As Nielsen notes, the difference in sample size reflects the different aims of the studies: While the former studies were designed for an in-depth analysis of legal consciousness, the latter aimed to “understand variation in legal consciousness and to map the relationship between consciousness and social structure” (2000: 1062). As the aim of this study is not to explain causal relationships, but to
explore situated legal consciousness by application of Ewick and Silbey's (1998) legal consciousness framework, focusing on a small sample was advisable as this allows in-depth examination of a particular group. By focusing on only a few respondents, I was able to fully examine how respondents relate to law. A further advantage of a small sample is that data remain manageable and can be better analyzed, which is an important aspect considering the scope of this thesis. I started out with a target number of 10 to 15 respondents since this sample was considered to be manageable within the scope of the thesis. However, this target was used flexibly in order to see what kind of data the interviews would produce as the research proceeds. With 10 interviews conducted and patterns emerging, I decided to not interview additional fashion designers, but to interview my respondents a second time. The decision to follow up in more depth than originally planned was crucial to exploring the legal consciousness of my respondents. After two interview rounds, I had gained significant insight into the respondents’ opinions and experiences in relation to design copying.

5.4.3 Establishing Contact
Potential respondents were contacted by email. The first 15 emails generated three interviews. In the following weeks, more fashion designers were contacted in the same way and with similar results. By responding to my email, the applicants were self-selecting themselves. In total, 61 designers were contacted and this produced 10 interviews and one test interview.

On approaching the respondents, I told them who I was, where I had found them, and why I had contacted them. Moreover, I described the purpose of the project which was my intended exploration of their “experience gained from working as a fashion designer”. The purpose was to prevent them from reading up on IP law prior to the interview or from focusing on the law or on legal concepts during the interview. As Speer points out, the researcher is “much more likely to gather reliable data by studying how people actually [behave and deal with a specific topic] in everyday environments” (Speer, 2002, cited in Saunders et al., 2009: 326) rather than by asking participants to comment on a specific topic. This approach was also used by Ewick and Silbey (1998). Instead of telling people about the aim of their research project, namely to “map and understand th[e] variety of law’s presence in everyday life” (1998: 17), Ewick and Silbey told respondents the interview was about “community, neighborhood, work, and family issues” (1998: 25). Kenneth (1987) argues that it is unethical to deceive respondents about the real purpose of a study. However, Sumner points out, explaining the purpose of a research project may in some cases “affect the validity of the responses” (2006: 98). In the case of legal consciousness studies, telling respondents about the true purpose may bias answers towards accounts of the official law thereby jeopardizing the aim to explore people’s own perception of legality. Nonetheless, as it is important to make all participants aware of what is required from them, a concise form of the interview guide with 15 questions was attached to
the email. The topics mentioned covered all essential aspects, such as the motivation for becoming a fashion designer, the joys and difficulties of their jobs and the issue of design copying. I took care to not stress the law theme and earmarked only 4 of 15 questions for this topic. In addition to the interview guide, I provided information about the length of the interview and how I wanted to conduct it (via Skype). Furthermore, in line with the ethical requirements of behavioural research, I assured all respondents complete anonymity.

5.4.4 Characteristics of Respondents

To understand how individual legal consciousness is produced, it is important to consider the social characteristics of respondents. As Nielsen points out: "the social location of subjects, and the experiences that arise from that location, are a vital part of our understanding of legal consciousness" (2000: 1087). Studies that ignore "structural and social constraints" have been harshly criticized by legal consciousness scholars (Harding, 2006; Mackin, 2005; Garcia-Villegas, 2003).

Gender is considered an important variable in legal consciousness studies as women are considered to be socially marginalized, that is, they are more often subjects of discrimination and thus may express a type of legal consciousness that differs from that of men (Nielsen, 2000). The respondents in this study are all women, a fact that resulted from two aspects: the dominance of women among fashion designers and the self-selecting process in the recruitment stage. Although I contacted men and women, only women agreed to participate in the study. It could be argued that their willingness to participate in this study strengthens its argumentation as it refers to a more homogeneous group. However, this study does not examine any gender-specific angle of the research enquiry.

The age of the respondents was between 23 and 29 years which indicates that they might lack experience in the fashion industry. However, this is not considered problematic since it is the aim of this study to examine how this particular group constructs its concept of legality. The respondents originated from 8 different countries and had a variety in nationalities (see table 2). This was considered an important aspect because the fashion industry operates on a global scale - in terms of physical goods that cross borders and fashion designers that move for educational or employment. It was assumed that similar rules and norms regulate fashion designers' behaviour and opinions in different countries.
Table 2: Nationality and country of residence of respondents

<table>
<thead>
<tr>
<th>Nationality</th>
<th>Number of designers</th>
<th>Country of residence</th>
<th>Number of designers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>1</td>
<td>Belgium</td>
<td>1</td>
</tr>
<tr>
<td>Germany</td>
<td>4</td>
<td>Germany</td>
<td>3</td>
</tr>
<tr>
<td>Moldavia</td>
<td>1</td>
<td>The Netherlands</td>
<td>1</td>
</tr>
<tr>
<td>Norway</td>
<td>1</td>
<td>Norway</td>
<td>1</td>
</tr>
<tr>
<td>Sweden</td>
<td>1</td>
<td>Poland</td>
<td>1</td>
</tr>
<tr>
<td>Thailand</td>
<td>1</td>
<td>United Kingdom</td>
<td>4</td>
</tr>
<tr>
<td>United Kingdom (UK)</td>
<td>1</td>
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<tr>
<td>USA</td>
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<td><strong>Sum</strong></td>
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</tr>
</tbody>
</table>

As pointed out before, the current occupation of respondents may influence their legal consciousness (cf. Silbey, 2010a). As the fashion designers in my study were involved in several projects and jobs at the same time, it is difficult to detail the jobs of every designer and name a "principal" occupation. What needs to be underlined, however, is that my sample covers a great variety of occupations. Every designer had her work or parts thereof put up for sale on a website, although most designers did not depend financially on this work. Instead, they considered it a sideline of their major occupations. The following types of employment were given: self-employment, employed by company (as intern, junior designer), teacher (at fashion school), consultant, stylist, and involvement in various projects and collaborations. The work experience of my sample ranged between some months only and 9 years; some had recently graduated or just started their own business. While this does not mean that their capacity to construct their own concept of legality was limited, it may influence the construction process itself and result in particular type of legal consciousness.

5.4.5 Interview Form and Technique

Although the first round and the follow-up interviews were not completely identical, I organized them similarly and adopted the same interview technique. Both interview rounds were conducted using a semi-structured interview guide. The interviews were designed to be open-ended conversations thus allowing for flexibility and unanticipated responses. In contrast to closed questions, this type of questions allows the respondents to interpret and describe all processes, behaviours, events and relationships in their lives in their own words. The interviews generated many stories about design copying which have provided an avenue for investigation into the legal
consciousness of respondents. The interviews lasted between 42 and 68 minutes (av. 56 min.) in the first round and between 20 and 65 minutes (av. 36 min.) in the second round.

The respondents were given space and time to answer questions and I made sure not to manipulate the respondent in order to achieve a particular output. I probed for details, asked for clarification, showed appreciation and understanding. I also asked the respondents to give examples, elaborate on answers, and reflect on their own responses in order to secure a maximum level of information. A pre-test of the interview guide was meant to test my interviews skills (and the questions); however, the process of gathering data through interviews was a learning experience for me as well. As the study progressed, I gained more skills in handling the interview process and eliciting the views and perceptions of the designers. The interview is seen as a meaning-creating conversation, that is to say, it is collaboratively produced since I decided which strand of talk to follow-up and when to open and close various topics. In this sense, the interview process was “interactional” and constructive (Silverman, 2011). It needs to be stressed that I did not attempt to monopolize the conversation, but I maintained a certain level of control.

5.4.6 Interview Round I

The first interview guide was designed to explore the role (broadly conceived) of design protection in the lives of emerging fashion designers. It was designed specifically for this study as no previous research reports are available in this area. The interview was composed of three parts: 1) introduction, 2) everyday life, and 3) design copying. The first part contained biographical and general questions, such as “What are you doing at the moment and where?” and “What made you pursue a career in fashion?” The introductory and easy questions were aimed to establish comfort and rapport. The questions in the second part were designed to explore the everyday life of emerging fashion designers and to find out where in the creative process IP rights may be relevant. Therefore, questions were not exclusively focused on problems and disputes – a typical focus in legal consciousness studies (cf. Ewick & Silbey, 1998) – but on a range of topics relevant to the creative process. For example, I asked about positive and negative aspects of the job, difficulties, achievements, and money issues. The reason for this approach was that fashion designers may resort to IP law at various moments in the creative process. Thus, IP law may play a role at the initial stage of the creative endeavour. Alternatively, it may be relevant when distributing or commercializing creative work (e.g. licensing, branding) or it may be relevant when disputes arise (on claiming IPRs in a creative work). Furthermore, the questions were designed to explore what fashion designers do and how they evaluate what they do. In this way, I was able to explore how the designers’ experience in the fashion industry had shaped their understanding of the various processes and structures.

See appendix H.
third part of the interview dealt with design copying and protective measures. This part occupied nearly half of the interview time. I asked questions such as: "Which role do design copies play in the fashion industry?" and "How would you react if someone copied one of your designs and sold it as his own?" It was not before we reached this part that I introduced the idea of law because I did not want to bias respondents’ perspectives on everyday life by introducing legal issues. I did not want them to have conventional definitions of law in mind, since it was the aim of this study to explore how fashion designers construct their perception of legality. This is why I chose to use the term "copy" to address the variety of imitation strategies in the fashion industry. During the research process that implied investigation of various fashion blogs, online newspapers and academic articles, I found that the term "copy" was used to refer to both illegitimate and legitimate imitation practices, as it is mostly the degree of which this activity is performed that defines its legal aspects. The term itself has evidently no clearly defined meaning. I considered this to be an advantage since it allowed respondents to interpret it in their own way and use the language they thought appropriate in order to make sense of design copying. This is particularly relevant for a legal consciousness study that seeks to find out how legal concepts are used in the process of meaning construction.

The interview guide relevant to this group was relatively standardized, putting the same questions to everyone, although I made sure to be responsive to the interviewees' interventions. The first interview round allowed me to introduce myself to the designers, establish a common basis for mutual understanding and build up trust. I learned to assess situation, the experiences they had had in the fashion industry and the challenges they had met. It was an explorative undertaking as I did not know beforehand whether and where in the creative process IP legislation had been relevant to these emerging fashion designers. In relation to the aim of this research project, it provided first insights into how my sample positioned themselves in relation to the law and their constructed legality.

5.4.7 Follow-up Interviews
The decision to conduct follow-up interviews resulted from the insight that the first interview round had provided insufficient information on the legal consciousness of emerging fashion designers. Some questions turned out to be irrelevant for the construction of the legal consciousness of respondents while others merely touched the surface of legality perception. The questions guide for the second round of interviews was more individualized than the first one. For each interview, I prepared a separate semi-structured interview guide that allowed me to pick up on specific topics of each of the interviews. For example, when a respondent had mentioned a troubling event or an annoying experience in the first interview that she had not elaborated upon, or when she had

See appendix I.
expressed a particular opinion, the topic was re-addressed in the follow-up interview. Since the framework of the study was clearly shaped in this phase of the project, I was able to identify which of the comments from the first interviews were relevant to a study of legal consciousness and needed to be re-examined. The possibility to explore more thoroughly particular perceptions and observations was a great advantage of the follow-up interviews. Another advantage was the possibility to move legality to the foreground. Yet, I did not mention this aspect to respondents and avoided, whenever possible, the usage of legal terms when formulating questions. Instead, I focused on the practice of design copying, thus getting to the core of the meaning construction process of the respondents. I proceeded by seeking further details, explanations and interpretations from the interviewees’ own responses by asking questions such as "Why do you think the fashion industry has to accept copyists?", "What did you do and why?", or "What do you think of her behaviour?" In this way, I made fashion designers reflect upon their responses so that they constructed detailed accounts of their perceptions and experiences.

5.4.8 Transcription of Interviews
When transcribing the interviews, I made sure to preserve the voice of my respondents. This was achieved by accessing not only the content of what they had said but also the way in which they had told their story. I reproduced the language as I had heard it, added notes on non-verbal behaviour and pauses, reproduced sounds of disapproval or wondering and highlighted emphasized words. I deleted speech items that seemed distracting or unrelated to the intended meaning. Through the process of listening, selecting and reproducing the voices of respondents, I participated in the meaning construction process. In this way, the process of transcribing interviews was a further step in analyzing the data.

5.5 Secondary Resources
Secondary research methods include books, academic articles, fashion magazines, online newspapers, websites of fashion designers and fashion companies, fashion blogs, legal acts, legislative regulations, as well as the online registry for designs. Books and academic articles provided an overview on the relevant empirical, academic and methodological domain. Fashion magazines, online newspapers, and fashion blogs delivered pictures and background information on practical examples of design copying. The accompanying text offered valuable reflections of “fashion experts” on particular cases. Websites offered an avenue to access potential respondents. In the course of the expansive research that I undertook to familiarize myself with IP law and the practice of design copying, I also looked at legal material, such as legislation and the European online registry for designs.
5.6 Analytical Approach

In his section, I will explain the method I have chosen to examine the interview data which is that of narrative analysis. This signifies that I developed a coding scheme to organize themes and looked at the way in which respondents talked about their experiences.

The interview transcripts are accounts of how fashion designers think about design copying and the legal mechanisms that surround this phenomenon. Narrative analysis became the central tool to approach my interview data in order to investigate fashion designers’ processes of meaning construction. Thus, in order to explore how fashion designers constructed their concept of legality, I focused on the narratives about design copying, the law and other events of their lives they had supplied me with. This was based on the assumption that stories are useful for communication and sense-making and that they constitute individual reflections of and upon the world. In this sense, they form individual accounts of law and legality. The act of telling a story does not only convey meaning but is also an act in itself – of persuasion, resistance or engagement. While exploring the narratives on design copying, I became sensitive to the silences expressed about law, that is to say, where law was absent in comments or just implicitly used. As Cowan argues, “it is the silence about official law in the interviews that is often most interesting” (2004: 938).

All interviews were read several times and were simultaneously coded. My decision not to apply Ewick and Silbey’s categories of legal consciousness, but to develop my own coding scheme, resulted from two insights: Firstly, applying pre-set categories to interview data limits the insights you can gain from analyzing it. I did not want to miss any themes that were relevant to my respondents or misinterpret information. Second, Ewick and Silbey’s framework may not be appropriate for a situated legal consciousness study. The scope of their theory was only tested by means of this study and I was not in a position to assume that their categories are applicable to the legal consciousness of emerging fashion designers. The codes for this study were developed deductively from cultural analyses of the fashion industry and inductively from the emergent language and conceptual themes contained in the interviews. Previously identified codes were applied to subsequent interviews and new codes were added as I read through the interviews. Through this process, codes were adapted, abandoned, generalized or specified in order to organize emergent themes in a meaningful way. All interviews were analysed with a view to generating insights into the legal consciousness of emerging fashion designers. This required a focus on those parts of the interviews where respondents talked about design copying and invoked legal concepts to construct legality. Thus, in the interviews from the first round, I focused on the third set of questions that approached the issue of design copying and protection strategies. The follow-up interviews were almost completely relevant to the analysis. I identified three typologies of narratives – unacceptable copying, tolerated copying, and beneficial
copying – that were organized by themes. For example, in the case of tolerated copying, the themes included “nature of the design process” and “resource constraints.” If applicable, data was grouped according to sub-categories based on more specific themes. I applied these categories to various interviews to see how they connected with other categories and to detect nuances and variability. This data-analysis approach ensured that the categories were data-driven and meaningful.

Subsequently, I applied Ewick and Silbey’s three-tiered model to these categories in order to test the scope of their theory.

I did not only look at what respondents said, but also at how they talked about their experiences and at the context that constituted the framework of their meaning construction. This approach was important to fully understand the legal consciousness of fashion designers. Thus, after I had identified the concepts and themes, I looked more closely at the language used to understand the reasons and motivations and to elicit implicit statements about the law in fashion designers’ lives. I realized that the different meanings of particular words could only be understood within their context or by considering the characteristics of respondents. For example, to understand how respondents understood the term “copy,” it was necessary to investigate how they constructed it (e.g. using legal or moral language, using it in the context of brands or the creative process). This approach could not be applied to the whole data set, but it was used for detailed analyses of specific text parts. In this sense, it constituted a subsequent step towards the thematic analysis of interview data.

5.7 Quality of the Research

How can the quality of this project be established and assessed? In quantitative research, researchers aim to meet the criteria of “validity” and “reliability.” While validity concerns the “truth-value of a research project” and its applicability, reliability refers to the “consistency with which research producers deliver their results” (Seale, 2004: 72). Researchers ask for example: Are the results true? And can they be reproduced? These questions are not relevant to a qualitative project that sees the social world as constructed by individuals and acknowledges the co-existence of multiple accounts of social reality. For this reason, establishing the “truth” is not the purpose of this study, but understanding a phenomenon in its context. This is why researchers have suggested that qualitative studies should be evaluated according to criteria that differ from those used by quantitative researchers (Kvale, 1996). In line with this approach, Lincoln and Guba (1985) substituted reliability and validity by the parallel concept of trustworthiness which relies on four criteria: credibility, transferability, dependability, and confirmability. I will discuss each criterion blow.
5.7.1 Credibility
The fact that there are multiple accounts of social reality is particularly relevant for the criterion of credibility. Not only do research participants construct social meanings, the researcher, too, produces a particular version of reality; another person may interpret the interview data differently. The question is not whether the account is true, but whether the account offered is credible and therefore acceptable to others. To build up credibility, I engaged in extensive research in this field to become a knowledgeable researcher with regard to the culture and economics of the fashion industry and its relation to IP law. Further, I provided a well-supported reflective account by explaining how I approached and analysed the data collected. Moreover, I reflected on my role as researcher in generating knowledge.

5.7.2 Transferability
The nature of small groups integrated in a unique context in qualitative studies challenges the transferability of the study. To allow readers to make judgments about the possible transferability of findings to other areas – such as other creative industries, legal domains, or populations – I provided a rich account of details about the culture of the fashion industry and the relationship between IP law and fashion.

5.7.3 Dependability
Qualitative studies are impossible to replicate – at least in the sense in which quantitative researchers understand this term (Kvale, 1996). Lincoln and Guba (1985) suggest that “dependability” signifies to assess the consistency in qualitative research studies. The question is in how far proper procedures have been followed. To establish dependability, Lincoln and Guba proposed a procedure which they called “auditing”. It requires that the researcher keeps records of all phases of the research process in an accessible manner, so that “auditors” are able to scrutinize the project. To allow the reader to check how I reached conclusions, I have kept interview transcripts and provided detail on how I analyzed the data.

5.7.4 Confirmability
Confirmability replaces the conventional criterion of objectivity. It has often been stated that complete objectivity is unattainable in research (Kvale, 1996), and it seems somewhat irrelevant in qualitative research projects. The criterion of confirmability is therefore concerned with ensuring that interpretations of data are not overtly influenced by “personal values or theoretical inclination” (ibid.: 289). To establish confirmability, I provided a self-critical account of how the research was done. That means, while I acknowledged my position in relation to the study, I made sure to analyze data in a value free manner. For example, I repeatedly checked the data when developing themes from the interviews.
5.8 Delimitations

Each research project is delimited by its research area and approach. Since this study is designed to uncover meaning creating and cognitive processes, it provides only limited information on the subjects' behaviour which is part of their legal consciousness. By relying on interviews as a research method, this study is subject to the constraints imposed by the self-reporting of human behaviour. Furthermore, the interview limits the scope of interaction between respondents and the researcher. The designers in this study were interviewed once or twice within a roughly defined time frame, so that I was dependent on the interviewees' responsiveness to reveal culturally circulating schema, interpretations and understandings of law. By extending the time frame, it would be possible to spend time in the environment under scrutiny and to observe the subjects researched in their everyday life. Increased interaction with fashion designers, immergence in the field, familiarization with cultural values and access to insider knowledge would make my claims and conclusions even more credible.

Another limitation lies in the interpretive nature of the research approach that – as a rule – provides limited insights. A fruitful avenue to a fuller understanding of design copying consists in drawing other people into the research process in order to discuss findings and conclusions. Due to time constraints, I was unable to get back to respondents in order to check my interpretation of their responses with them. Although respondent validation is impeded by risks (e.g. defensive reactions leading to (self-)censorship), this approach can help to develop conclusions (Kvale, 1996). Furthermore, involving other researchers into the project and discussing emerging themes, or even jointly collecting and analyzing data, would lead to a fuller understanding of the phenomenon. By collectively developing common parameters, interpretive bias can be reduced.

6 The Legal Consciousness of Emerging Fashion Designers

The analysis of emerging fashion designers' legal consciousness is built around the stories that were identified through cross-examination of the empirical data. Three equally powerful orientations emerge from these stories: respondents perceive copying as unacceptable, tolerated and beneficial. Like in other legal consciousness studies, the legal consciousness of these respondents is polivocal and variable, that is to say, different and contradictory strains of legal consciousness coexist and fashion designers rely on a variety of schemas to make sense of design copying. This points to the fact that the legal consciousness of fashion designers is influenced by a variety of powerful forces, of which legality is only one. Before analyzing the meaning construction process, i.e. how respondents build their argument, I will discuss the schemas in the three orientations. Subsequently, Ewick and Silbey's typology of legal consciousness is applied to the fashion designers' orientations towards
design copying. It is shown that all three perspectives – "before", "with" and "against the law" – can be traced in the stories of emerging fashion designers.

6.1 Schemas and Meaning Construction

In line with the analytical approach chosen for this study, the interviews are examined in relation to what fashion designers say and how they talk about their experiences. These dimensions are captured by the terms "schemas" and "meaning construction" which are explained below. Only by exploring legal consciousness through these combined perspectives can an overall picture of emerging fashion designers' legal consciousness be drawn.

Each orientation – unacceptable, tolerated and beneficial copying – is characterized by a set of schemas, i.e. concepts and ideas that respondents invoke to make sense of design copying and position themselves in relation to this practice. This analytical layer provides insights into why respondents construct design copying as either unacceptable, tolerated or beneficial, thereby uncovering the existence of external constraints and social forces and acknowledging their roles in the meaning making process. See figure 2 for an overview on the schemas that fashion designers invoke. They are discussed in detail in the analysis that follows.

Figure 2: Schemas in the three types of fashion designers’ legal consciousness

Source: Own illustration

To understand how the three types of legal consciousness are constructed, it is necessary to look at "meaning construction", that is to say the designers' reasoning about design copying and the role of legality in dealing with it. Analyzing the stories on copying without probing beyond opinion would limit the insights that a legal consciousness study can provide. Therefore, we need to examine how the law and legal concepts reveal themselves in fashion designers' comments. Using a constitutive perspective, I investigated the ways in which legality affects the meaning making process, that is to say, how legal and quasi-legal concepts are used to construct concepts of self and others, evaluate conduct, and relationships to the law and other actors in the fashion industry.
Investigation of the interview data provides rich insights into how fashion designers rely on legality to make sense of design copying. To understand this phenomenon, fashion designers invoke concepts of law, but also alternative, quasi-legal structures, such as social norms and values inherent in the fashion industry. Thus, official law plays an important, albeit not an exclusive, role in the meaning construction process. Respondents use legal tags such as “crime”, “fraud”, “property” and “steal” to describe design copying, which indicates that they have incorporated some notions of law into their understanding of events. In other cases, reliance on legal concepts was more subtle, for example when designers talked about protection, right and wrong conduct, or competition. While these concepts can be related to law, they are not exclusive to law. As Ewick and Silbey point out, “structures such as gender, economy, and legality [...] share some schema” (1998: 50). As an example, conduct may be seen as worthy of blame because it is illegal, but it may also be objected to because it is considered unmoral and does not conform to social norms. The language of legality is used in all of the three stories on copying.

6.2 Integration of two Typologies

To test the scope of Ewick and Silbey’s (1998) legal consciousness model in relation to a study of situated legal consciousness, the two typologies have been integrated. Having examined how law matters to fashion designers, the interview data have been re-evaluated in light of the legal consciousness framework set forth by Ewick and Silbey. All three types of legal consciousness – "before", "with" and "against the law" – were found in the interviews with emerging fashion designers demonstrating the descriptive power of their theoretical framework. However, the strains of legal consciousness are not evenly distributed: stories that can be allocated to “with the law” are outnumbered and overshadowed by accounts “before the law” and “against the law”. While Ewick and Silbey’s typology of legal consciousness is not directly applicable to the orientations elaborated in this situated study, some parallels are discernible: stories of “unacceptable copying” can be described as “before the law” or "with the law", stories of “tolerated copying” are "before the law" or "against the law" and stories of "beneficial copying" can also be found in either the "before the law" or "against the law" perspective (see figure 3).
The following sections examine the legal and quasi-legal structures on which respondents rely to make meaning of events and relationships. The two typologies have been integrated so that the schemas explain why fashion designers are either "with the law", "before the law" or "against the law".

6.3 With the Law

"With the law" accounts are rare in the stories of emerging fashion designers. Traces of this type of legal consciousness can be found in stories of "unacceptable copying" where fashion designers describe legality as an arena of competitive tactical maneuvering where the skilful and resourceful pursue their self-interest goals. Although the designers in this study did not mobilize the law themselves, they describe law’s usefulness for those who have the resources to mobilize it.

6.3.1 Free Riding

Some designers consider copying an illegal practice since companies or individuals enjoy a benefit accruing from original designers’ effort, without paying for the cost of the benefit. This practice has been termed "free riding". Respondents describe the arena in which free riding behaviour is performed as one in which rules exist, but these rules can be deployed to serve individual interests – like in a game. Consider the following comment:

"You can protect a design up to three years [...] and then if an infringement takes place, you are protected against that. But it’s also very difficult because as long as the other party changes like a certain amount of parts, it’s not an infringement anymore even if it still kind of looks like one. So it becomes quite difficult to really clearly say it’s an infringement" (D10, 26/10/2012).
This designer explains that infringers use rules strategically (they know what to do in order to not get caught by the legal system), thereby controlling the presence of law in their lives. Respondents do not stress law’s power but the power of others to successfully deploy law and achieve their self-interested goals. For example, Gap who had closely copied a shoe design by Charles Philip (CP) seemed to successfully evade the legal system, as one designer commented.

"The shoes, they look very much like each other, even the lining and the insole. I mean this is copy paste. I mean poor, poor CP. You worked hard on these shoes and then Gap comes and steals everything. [...] That was just ridiculous. [...] I had a different feel when there would have been [some changes in the design]. I don’t know. Slightly more okay at least maybe" (D5, 21/01/2013).

Since legality is understood as game, there is always a winner and a loser. However, at the beginning of the contest the outcome is not predictable. As the above designer notes: "We’ll see who wins in the Charles Philip versus Gap. But I think it’s very difficult actually" (D5, 21/01/2013). Determining factors that influence the course of the game and the outcome are experience and resources. They are considered essential for playing the game well. Since small designers are considered to generally not have the resources to engage law, this game is perceived to be the privilege of the powerful. Consider the case of Christopher Raeburn, a young British fashion designer. His signature parker was closely copied without the designer’s consent for The Hunger Games, an American film production, but since he was so small he could not use law. One of the respondents reported:

"It looks almost exactly identical. There is nothing he could do about it because his business is so small. He couldn’t afford to do anything, so he kind of just had to accept it. They had never at any point approached him or bought any of his stock or anything. They obviously just – I don’t know what they did. But he couldn’t do anything about it" (D6, 20/09/2012).

In stories about free riding, the law is described as tool that can be mobilized for self-interest. It is an intricate system, or game, whose rules can be manipulated and which is won through skill and resources. Since emerging fashion designers lack experience and resources, law is a game which they observe from the outside but in which they do not participate.

6.4 Before the Law

“Before the law” accounts of legal consciousness are more numerous than “with the law” stories in fashion designers’ understanding of design copying. This type of legal consciousness is reflected in all three orientations relating to design copying. In some of the stories, fashion designers acknowledge law’s authority and frame law as righteous mechanism that has the power to restrict illegal acts of copying. In other cases, the law’s power is recognized, but the law itself seems so remote from fashion designers’ affairs, that it loses its relevance. When the designers cannot rely on legal concepts to bring their argument forth, they shift to another, a quasi-legal structure to construct
meaning, namely social norms. Social norms are invoked to explain unequal power relations, the importance of credit and reputation, and the role of flattery.

6.4.1 Official Law
Some fashion designers understand law as formally ordered system. In these stories, law is not described as a game where the rules can be manipulated and the outcome is insecure; instead, law is rational and has clearly defined rules, like the following comment illustrates:

“Of course, things like trademarks or so, if you make an Ed Hardy t-shirt, then it’s obvious, because that’s a special case. Here, the name is protected” (D1, 24/02/2013, own translation).

Fashion designer describe the law as a powerful mechanism, like D10 who told the story of how Louis Vuitton had won a lawsuit against an artist who had used the company’s logo: “I do think that they [the company’s law department] are successful somehow. [...] I think it is efficient insofar as they can prevent people from having a bad image of the brand” (D10, 17/02/2013, own translation). In addition to its authoritative power, fashion designers describe law as appropriate and just: “It shouldn’t be made easy to steal somebody’s idea. So I think it [design protection] is definitely justified” (D6, 20/09/2012). Similarly, another designer said “I think it’s legitimate to protect a logo or even certain stitchings or even certain details” (D10, 17/02/2013).

Since no definition of design copying was provided for the interviews, respondents came up with a variety of things that are subject to unacceptable, unlawful copying, such as brands, names, signs, details, stitching, slogans, pictures and styles. In addition, many respondents mentioned ideas. The designers rely on concepts of rights and property to explain why they object copying of ideas. Like with real property, they argue, it should not be allowed to steal ideas:

“I think anyone who comes up with their own idea should be protected, you know, because it was theirs. It shouldn’t be made easy to steal somebody’s idea. So I think it is definitely justified to have it there and to have certain guidelines” (D6, 20/09/2012).

In comments like the one above, law is perceived as a distinct, rational and formally ordered system – distantly removed from normal everyday life. Respondents respect law and abide by its rules, like D1:

"They always needed to be careful with what to write on t-shirts because the words could be a part of a song and they have the rights on it. And then you’re not allowed to use a certain slogan because it could be part of a song” (D1, 24/02/2013, own translation).

Accounts in which respondents claim proprietorship of their ideas are numerous. This perception is most clearly expressed by D7 who compares stealing ideas with stealing physical property: “[Copying
a design,] it’s like stealing an idea and an author’s right and making a profit on it. I’m not going to any house to steal some furniture or the carpet” (D7, 04/10/20).

When invoking the schema of "official law", fashion designers use the language of rights to express the injustice of appropriating ideas and rely on official law to demarcate the boundaries of illegal conduct.

6.4.2 Resource Constraints
Like the individuals in Ewick and Silbey's study, fashion designers who are "before the law" stress the distance which separates them from the law. As mentioned in the above chapter "with the law", individual designers and companies who want to engage with law need skills and resources. However, since emerging fashion designers lack time, money and knowledge, legal remedies seem to be out of their reach. The respondents in this study depict huge fashion companies as those having the skills and resources to use law whereas they themselves – the designers – do not have the means to mobilize law. The following comment highlights these unequal power relations:

“Huge brands have got their own legal teams and they’ve got a lot of money behind them. And so they can afford to sue someone and take them to court when they think they’ve been copied [...]. You know, all of the profit that you make has to go back into the next collection. So there is no extra money and there is no law advice and probably a lot of young designer just don’t really know enough about it to pursue it” (D6, 29/12/2012).

Since law is out of reach, fashion designers feel somehow powerless. One designer described her feelings as follows:

“When you are like me, a quite new designer and you’re on your own, you don’t have a lot of weight in the legal sense. Usually you just accept what is in there [in the contract] and then maybe negotiate a bit about the pay. But usually it’s very straight forward who owns the work and stuff like that. So usually it’s okay. But you feel kind of small – compared to the companies, when you work as a freelancer” (D8, 28/12/2012).

Often, law seems so remote from the designers’ affairs, that they would not consider engaging with legality even when someone appropriated one of their designs. When analyzing the cost and benefit of mobilizing law, it is always the cost that dominates in the respondents' reasoning. Considering the fast-moving nature of the fashion industry and their apparent weakness vis-à-vis huge companies, respondents argue that mobilizing law takes too much time and costs money – time and money that are better invested in the core business which is designing. Furthermore, since designs are so quickly replaced by new ones, it is better to focus on the creative work and just move on. One designer explained:
"The fashion industry turns so quickly that people wouldn’t have even [...] time to actually follow up certain copying because you’re actually the one having the deal. So you come up with ideas and [...] you just need to kind of move on” (D2, 20/01/2013).

In contrast to a "with the law" perspective, designers displaying consciousness "before the law" would not mobilize law out of self-interest. They would turn to legal institutions only in extraordinary circumstances and when no alternatives exist. Many requirements must be met before an emerging fashion designer would consider invoking the power of law. Consider the following comment:

"So if I would see it, I would always ask how much, what I can do against it, and then just see. But yea, if I have the money and I see it’s clearly an infringement and I see that my career is in danger, so then of course I would go against it” (D10, 26/10/2012).

Provided that she has the resources (knowledge and money), this designer would only take legal action against an infringer if she feared serious individual harm.

In these accounts, legality never seems to form an integral part of everyday life; instead, it remains an independent entity that is removed from the fashion designers’ affairs. Engaging with law requires the availability of resources and represents a disruption in the life of fashion designers.

6.4.3 Nature of the Design Process
"Nature of the design process" is another schema on which fashion designers rely to explain their tolerance of design copying. Within this story, respondents invoke three rationales: cumulated creativity, unconscious copying and independent creation. In their meaning making process, respondents contrast the law with the design process and find that the properties of the two concepts are not compatible, that is to say, law is considered unfeasible for fashion designs.

The designers in this study accept that cumulative creativity is tacit in their creations. This means that creative works are understood as combination or rearrangements where fashion designers use prior work or existing ideas and add their creativity to it. With this conception of creativity, it is difficult for respondents to draw a line between inspiration and copying. D2 argues: “In design, you get inspired by so many other people. And what is copying then? What is inspiration? Is it not a copy when design houses buy a vintage Dior dress and exactly copy it” (D2, 20/01/2013, own translation)? Similarly, the phenomenon of unconscious copying makes the design process complex. It implies copying of ideas, forms or styles without being aware of it. Even without wanting it, fashion designers may copy something that they have seen before. The third aspect of the design process is independent creation. It occurs when two people coincidentally create the same or similar work, without having knowledge of the other activity.
Many respondents do not consider the law to deal with design copying because it cannot resolve the ambiguities inherent in the design process. While they perceive the law as a rational, consistent and objective system, design is the exact opposite, namely unpredictable, flexible and subjective. To draw a line between the copy and the inspiration and to apply a legal rule seems an impossible task. D1 explains: “In design it’s difficult because you can’t say ‘either right or left’ or ‘either black or white,’ because it’s always like: It depends, on how and what and where. It always depends. Somehow, you can never be 100 percent sure” (D1, 24/02/2013, own translation). Since the inherent nature of law and fashion is so different, the two concepts seem incompatible. The same designer doubts whether it is possible to apply legal rules: “I don’t know if you can exactly define it [...]. Somehow you have to copy something. [...] And where do you want to start? How do you want to determine it? How do you want to invent a rule” (D1, 24/02/2013, own translation)?

Although some respondents would be happy to protect their creations from copying, they think that law is the wrong means for this purpose. One designer said: “Intellectual property in fashion is unattainable and you can’t do anything. I guess the best thing is just always come up with new ideas” (D4, 08/09/2012). They acknowledge the law's authority but this system is not perceived relevant for fashion designers' everyday lives.

6.4.4 Power Relations
Where official law is absent, designers invoke alternative forms to law, such as social norms, to construct copying as wrongful behaviour. One of the schemas that respondents mention is power. When power relations between actors are unequal, i.e. when a stronger actor takes advantage of another actors' social and economic weakness, copying is considered "mean" and "unfair", like the following quote demonstrates:

“I think it’s meaner to do it when a big company copies someone that’s really small and really just starting out because if they just go on and take their ideas and they have no chance sort of. So if you’re going to copy, I think it’s slightly nicer to copy someone who’s already made it sort of, who won’t be so affected. And also in the end, because like Zara and say Chanel they have completely different target customers. So if Zara copies them, for Chanel I guess it doesn’t really matter because it’s not their target customer. It’s not the same people who shop there anyway. But if Zara and H&M copy someone who’s really small like a company that’s just starting out, then maybe that would be much bigger a problem for them” (D5, 21/01/2013).

Respondents describe relationships of moral obligations between the powerful and the weak. Since official law is not available, they use the language of responsibilities related to social relationships to explain why copying is wrongful. According to respondents, it is not "right" if the powerful exert their power towards the weak and appropriate their ideas. Designers morally judge such behaviour, like
D2 who said “big fashion houses [...] don’t have any kind of morals” (D2, 20/01/2013). Similarly, another designer claimed:

“I understand if they knock off Balenciaga shoes or whatever because they are like established. But you cannot knock off a young designer who has just graduated! I think that that is like ridiculous. So I’m definitely against things like that” (D3, 09/08/2012).28

Fashion designers mention three different aspects that make actors powerful, namely time, scale and money. Thus, the dichotomy between the powerful and the weak, mentioned in the category of “with the law”, also appears in stories of “before the law”. However, in the latter, the focus is not on the opportunities that law provides for the powerful, but on the powerful actors' blameworthy conduct by capitalizing on the original ideas of the weaker party. When power is not unequally distributed, that is to say, when respondents perceive actors to be on the same level, copying becomes acceptable. For example, D5 claimed that it would be “okay [...] if it was a friend” (D5, 17/09/2012) and D8 said “if there was another independent designer or a smaller designer who stole my ideas, I would just think: ‘Well, then I just have to do it better than them the next time’” (D8, 07/10/2012).

In line with the “before the law” perspective, fashion designers explain that they would not use law for self-interested purposes: “When I knock other people, I do not become better myself. I would rather focus on myself and the fact that I do a good job” (D1, 24/02/2013, own translation).

In stories of "power", fashion designers cannot rely on official law to make sense of copying. This gap is filled by social norms which are similarly distinctive, predictive and relatively fixed.

6.4.5 Credit
Another schema that respondents invoke to make sense of copying is "credit". Respondents describe copying as objectionable because the designer does not receive any credit for her original design, that is to say, she is denied the recognition as the original creator. This is explained by D8:

"when it comes to copying things directly and sort of cheating someone for what should have been their earnings or ideas, or getting the credit for something someone else did, that’s not cool” (D8, 07/10/2012).

Since official law is not available to regulate this kind of misconduct, designers rely on unofficial rules related to ethical behaviour. They feel that these rules need to be respected because a designer's career depends on it. Getting recognition is considered even more important than getting money since "you’re going to make all the money from that anyway" (D6, 29/12/2012). According to the respondents, it is crucial for a designer to be related to her work since this is the way she can build

28 Italics in quotes indicate original emphasis if not otherwise stated.
up an identity and promote her work (cf. chapters on reputation and flattery). This idea was expressed when D6 told the story of the Christopher Raeburn copy:

"It’s only a select group of people that would have known [that he originally designed the parker]. So it could have got him a lot more recognition if they had perhaps just credited his name in it [the movie]. It wouldn’t necessarily had to be any kind of money but at least to credit him or something" (D6, 20/09/2012).

Although official law is not available to designers when invoking "credit", they rely on normative rules that are similarly rational, consistent and awe inspiring. Not respecting them means risking reputational harm and disrespect by the trade.

6.4.6 Reputation

Another schema that designers invoke to construct copying as beneficial is related to its promotional and reputational effect. The designers believe that copies can function as a form of advertisement and thereby build up reputation since copies attract attention to the work of designers, reassure potential customers or employers as to the value of the work and thus may entail sales, collaborations or jobs. Consider the story of Christopher Raeburn's signature parker. D6 explained:

"I think he was annoyed, but then at the same time, it attracted a lot of attention because everybody that saw 'The Hunger Games' then was sort of like writing to him or on facebook: ‘Ah, I just saw 'The Hunger Games.' Was that all of your stuff in it?’ And he was like: ‘No, they ripped me off.’ So it’s kind of like: any press is good press. So I think he was annoyed, but at the same time it brought is name up a lot in conversations. So maybe it wasn’t such a bad thing after all" (D6, 20/09/2012).

If a copy is to have a promotional effect, it is crucial that it is possible to identify the original source of the design. As seen in the stories on "credit", copying is assessed negatively when the original designer cannot be identified with her work. In the case of the Christopher Raeburn copy, it was only a small group of people that knew who the original creator was so that the reputational effect of the copy was limited. For a design to be identifiable with the original designer it must be recognizable, that is to say, it should be exceptional or reflect a designer's particular style.

"Reputation" relies on the recognition of and respect for another designer's economic and creative resources. Although respondents do not invoke the law in stories of "reputation", they construct legality by sustaining the legitimacy of "reputation" which is a cultural construct.

6.4.7 Flattery

"Flattery" is a schema that respondents invoke to construct copying as something positive. The designers argue that copying makes their work more valuable through the implicit acknowledgement that it is worth copying. D2 explained: "After all, to a certain extent, it's a compliment. You also have to see it that way, because if the design was bad, nobody would copy it" (D2, 08/08/2012, own
translation). However, some respondents seem to have internalized this belief more than others. Many designers understand the concept of flattery as historical aphorism or cultural value circulating in the fashion industry rather than arising from their own inner feelings. One designer cited Coco Chanel to have expressed this value:

"I know that’s supposed to be like – there is that famous Chanel quote that says that to imitate someone is the highest form of endorsement or something like that. But I just think I would be pissed. Yea, I would" (D5, 17/09/2012).

Introducing the concept of flattery by referring to it as "quote" or "saying" was a common procedure of respondents. It points to the power that this cultural value has on fashion designers' perception of self and their relations with others. However, the designers' usage of language suggests that they are not wholly committed to the idea of flattery as recurrence of the verbs "must", "have to" and "should" illustrates, like in the following comment:

“On the other hand, it should actually be an honour, because there is a quote [...] that says: You recognize a good design or a good concept by the fact that it is copied [...] Therefore you actually have to feel quite flattered, because if someone else thinks it is so great that she is going to copy it, it must be really well received or it must have touched the nerve” (D1, 24/02/2013, own translation, emphasis added).

It remains unclear whether the designers were trying to convince me or themselves. However, analyzing the above and similar comments in the context of each interview suggests that respondents rely on "flattery" because it is one of the available "rules" to make sense of copying. The idea of flattery is often invoked together with other schemas. For example, respondents said “It kind of depends” (D8, 07/10/2012) and “I think it’s fifty-fifty” (D6, 20/09/2012) in this context. Although it seems that respondents admit only reluctantly to this value, they adhere to it and thereby sustain it. This suggests that fashion designers consider "flattery" a powerful, consistent and respectable value or cultural "rule".

6.5 Against the Law

Designers in the "beneficial copying" accounts espouse a legal consciousness similar to Ewick and Silbey's subjects who are "against the law". Some stories of "tolerated copying" can also be related to this type of legal consciousness. Ewick and Silbey name resistance and avoidance as the signs of an "against the law" legal consciousness - both are displayed by the fashion designers in this study. However, while Ewick and Silbey describe active and passive forms of resistance, the resistance of fashion designers is of a passive nature reflecting the distrust of authority displayed in stories of "control mechanisms". Other forms of resistance and avoidance can be found in stories of "nature of the fashion industry" and "creativity".
6.5.1 Nature of the Fashion Industry

One schema that respondents use to frame copying as beneficial is the "nature of the fashion industry". Designers believe that copying is necessary for the fashion economy to work and explain that copying is part of the history of fashion: “Copying and fashion has always been there” (D4, 08/09/2012). So if copying did not exist, fashion could not exist. In analogy, if legal rules prevented copying, fashion would go down. Respondents rely mainly on non-legal cultural constructs to make sense of copying, such as the trickle-down concept. Ideas of law were scarce in these accounts; when they were invoked, designers framed law as disruptive force that would negatively affect the high street (on which the whole industry depends), like in the following comment: “It became really strict within the copyright. I just think it could really mess up the high street fashion that we have now, because that’s sort of how the trickle down effect works for us” (D6, 29/12/2012). This means that high-end fashion would be affected too, because the different segments depend on each other. “[They] sort of need each other” (D8, 07/10/2012), said one designers. In this sense, fashion designers avoid the law 29 not because they perceive it as arbitrary, but because its pervasive authority to organize the lives of individuals represents constraints on everyday action.

6.5.2 Creativity

Another reason that makes copying beneficial is that it allows designers to be creative. As mentioned above, the design process of fashion designers is characterized by cumulative creativity. According to D8 "it’s a good thing that it’s open for everyone so that the creativity has no boundaries. You can sort of be a bit more reckless about what you do” (D8, 07/10/2012). With too strong IP laws, this sort of creativity would not be possible. One designer commented:

"Fashion lives on it, that particular trends or particular garments are dug up some day and are revived. And it would be a shame if it wasn’t possible any more, if there was a patent on a jacket or a design law. [...] I think it might pay off when companies have typical bestsellers. But basically, I don’t think much of super serious laws because design lives from reviving trends or rediscovering trends or combining them with something else" (D10, 17/02/2013, own translation).

Law in these accounts is described as disruptive force since its authoritative power would pose constraints on the creative process. One designer believed “the more you [think] about it [law], the more you are afraid of it and therefore you become over-cautious and restrict your own creative flow, your own ideas” (D2, 08/08/2012, own translation). The same respondent argued that designers should not bother with the law and waste their time engaging with it, in order to have the time and energy for generating new ideas:

29 Italic in quotes indicate original emphasis if not otherwise stated.
“You can actually make a product the best you can, but then you move on as well. I mean it’s not good for your own creative flow as well to be too protect[ive] or just stuck on your old ideas. You need to always move on. And that makes a good designer in my eyes. Because if you’re always afraid that someone will copy it, [...] that’s not the focus I want to have in my work” (D2, 20/01/2013).

In these accounts, the law is avoided since its power represents a constrictive force in fashion designers’ everyday lives and the creative process.

6.5.3 Control Mechanisms

Some fashion designers tolerate copying because a structure is missing to efficiently and effectively prosecute those individuals who violate IP laws. In these stories of "control mechanisms", respondents resist the law by avoiding it, expressing distrust of authority or being cynical about the law.

Some of the respondents believe that control mechanisms cannot effectively regulate copying in the sense that they do not have the power to prevent the production and distribution of illegitimate copies. One designer explained:

“I just think that it is very, very difficult to control where the fake bags are produced and how they are passed on to the consumer. [...] I don’t know in how far you can control it. I mean there are some laws that say it is illegal to buy such fake goods [...] , that you must pay a fine [when you import them into Germany]. But as I said, until now, I didn’t see that it helped in any way" (D10, 17/02/2013, own translation).

Another aspect that respondents mention is law's inability to alter the behaviour of those who engage in copying practices. Consider this designer’s comment:

“I think a lot of designers are worried about this, but I just think, in general, when you design something people always [copy it] and it’s not really avoidable. I don’t think you can do anything about it. [...] I mean people do it in music, in art and pretty much everything. It’s just a reality” (D4, 28/12/2012).

According to this designer, copying is endemic in all creative industries, but although industries like music and art have an apparently better established IP system, law seems to have no regulatory power and thus fails. Due to its perceived inefficiency, respondents avoid taking legal action. When asked how she reacted as someone stole her idea, D9 explained "I didn’t do anything to the person because it would be useless. They’re not the first person to steal an idea and they won’t be the last" (D9, 09/10/2012). Although some designers express concern about their designs being appropriated by someone else, they do not believe that any official mechanism could grant relief.

Other designers perceived the law as unhelpful and capricious. One designer recounted her frustration in the following way:
"They can just take everything because the one who designed it originally made the hard groundwork. And then someone else just comes in at the finish line and says: ‘Thank you. I’ll take this’. And it’s almost impossible to get someone put in jail for that. But I mean you can’t fight. If you go to a judge, it’s really hard for that crime to be recognized” (D5, 17/09/2012).

Comments like the one above suggest that the designers have lost faith in a just and reasonable legal system. Consider also the following comments: “No one ever wins in the trials. Even when a company tried to sue companies who steal what they have, they never win. So apparently it’s not working that well” (D5, 21/01/2013). And another designer said: “I think it’s justified but I don’t think it’s possible to achieve because people will just copy anyway and get away with it in court” (D4, 08/09/2012). In some accounts, respondents are even more cynical. When one of the designers was asked about the Louboutin red-sole lawsuit\textsuperscript{30}, she said: “I think that’s ridiculous. It shows that we are living in an era of capitalism. I cannot either paint a shoe sole golden for 10 years and then say: ‘From now on, you all are not allowed to make golden shoe soles anymore’” (D10, 17/02/2013, own translation).

In many cases, respondents’ distrust of authority is based on prior disappointing experiences with authority. Several respondents have made their first experiences with copying at fashion school. They told stories about other students stealing their ideas and the teachers not reacting to this behaviour. Although at first, the situation was perceived as unfair, through the teachers’ passivity, the designers learnt that copying in the fashion industry must be accepted. D4 explained “That kind of taught me a lesson in how fashion design works and that people don’t really take copying seriously or do anything about it” (D4, 28/12/2012).

Rather than being objective and fair, these accounts described legality as arbitrary and capricious. This does not mean that the law is unconstrained. It is still characterized by its size and visibility, but respondents describe the law’s inability to act, and to effectively respond to injustice, resolve disputes or recognize truth.

7 Discussion

This study was designed to elucidate the development of emerging fashion designers’ legal consciousness by application of Ewick and Silbey’s theoretical framework. It could be shown that the designers invoke a variety of schemas to construct legality – IP law and various quasi-legal concepts. The latter are deeply rooted in society and the industry specific culture. This section will demonstrate

\textsuperscript{30} Christian Louboutin sued Yves Saint Laurent for using red soles on the bottom of its red pump. The red sole is Louboutin’s trademark. Information retrieved from huffingtonpost.com.
how the different schemas mutually sustain each and in this way create the durable and powerful construct that we have termed legality.

By applying Ewick and Silbey's model to the legal consciousness of the sample, we can observe that the quasi-legal concepts that fashion designers invoke to understand copying dominate in accounts "before the law". Instead of seeing official law as the exclusive regulatory mechanism in their everyday lives, emerging fashion designers rely on cultural and social concepts to construct legality. The question arises as to why fashion designers find it either useful or necessary to sustain an alternative source of authority. To answer this question, we need to examine the other schemas on which they rely and explore how these schemas impact on fashion designers' attitudes and behaviour. Consequently, we also need to investigate how these perceptions and actions then constitute legality. In short, we need to examine how culture sustains legality and vice versa.

From looking at accounts "with the law" we learn that most emerging fashion designers do not use IP law (in the sense that they do not mobilize it but they still invoke it to construct meaning). Few of the designers mentioned legal strategies to protect their work from misappropriation. For example, they add a signature to graphical work displayed on their personal websites. But in most accounts "with the law", the designers believe that the law is out of reach, that they do not have the experience and resources to use it. This means that they must look for and rely on alternative resources in their interactions with others, represented by quasi-legal (and non-legal) structures. The finding that legal consciousness is polyvocal and variable is particularly relevant in this context since it implies that strains of legal consciousness must not be attributed to particular individuals. Instead, all designers may display all three types of legal consciousness (even in relation to the same area of law) meaning that fashion designers shift between different structures and concepts when making sense of events and relationships. For example, when D6 told the story of the Christopher Raeburn copy, she initially expresses a consciousness of "with the law", emphasizing the room within the legal system for intervention, but then shifts to a consciousness of "before the law". To make sense of design copying and construct an understanding of her own position in relation to this phenomenon, she no longer relies on official law, but invokes the concept of credit, a quasi-legal concept. Since IP law is not available to regulate illegitimate design copying, the designer relies on unofficial rules that she considers to be similarly rational and consistent. This story demonstrates how cultural concepts sustain legality (the idea of credit is invoked to establish authority) and, vice versa, how legality sustains society (individuals rely on legality to make sense of events and social relationships).
8 Conclusion and Outlook

This thesis demonstrates that emerging fashion designers display a variety in legal consciousness reflecting perceptions of legality as space of conformity, engagement and resistance - analogous to the "before the law", "with the law" and "against the law" types of legal consciousness as they were identified by Ewick and Silbey. In addition, this study highlights the importance of situating legal consciousness in a specific legal and cultural context in order to uncover the structural constraints (schemas and resources) that operate to define social life and influence people's meaning making process. By adopting the concept of legality the study demonstrates that emerging fashion designers construct a kind of legality in the absence of official law or replacing official law. They achieve this through the use of social norms as alternative sources of legal authority. These structures represent strong forces in the fashion industry (and in the creative industries in general), enabling and constraining emerging fashion designers' attitudes, opinions and behaviour. At the same time, it is through the designers' stories and actions that legality is constituted. Through repeated invocations of legal concepts as well as quasi-legal social structures, the everyday practices of emerging fashion designers coalesce into a recognizable, durable construct that has been termed the "rule of law".

In conclusion, it is important to note that qualitative studies of this nature are limited in a variety of respects. The findings and ideas presented in this thesis may thus serve as starting point for further research using mixed methodologies and larger sample sizes that include people with different background and experience.

This study was able to show that legality matters to all social groups independent of the fact that they represent social margins in the 'traditional' sense or live in mainstream environments. The sample chosen, which falls into the latter category, has displayed all three types of legal consciousness, as they were defined by Ewick and Silbey, thus sustaining the "rule of law". Future research should not refrain from including populations who, at first sight, seem to be less relevant to a legal consciousness study. This provides insights into how law matters in everyday life that is not characterized by disputes, troubles and conflict.

To identify and understand the structural constraints of legal consciousness, researchers need to situate their study in a specific context. In this way, they will be able to determine parameters that can be used to identify causal relationships – an aspect that was constrained by the scope of this thesis. While some researchers already move along this avenue, the thesis at hand will profit from future studies in other cultural and creative industries, like the music industry. In contrast to the fashion industry's "low IP regime", the music industry is considered to have a "high IP regime", making this case particularly interesting since both industries are characterized by similar creative
cultures. This study demonstrated that legal consciousness is explicitly constructed in an environment that is characterized by strong cultural values and social norms. Further, causalities may exist between the characteristics of the sample and their legal consciousness, so that the inclusion in the sample of more experienced or established fashion designers may provide insights into whether and into how far the legal consciousness displayed by emerging fashion designers is contingent upon their resources and experiences. This may provide additional insights into "with the law" accounts which were underrepresented in the study at hand.

This thesis contributes to the socio-legal field and to those interested in the construction of legality in a context of ubiquitous malpractices. It also contributes the academic literature regarding the relationship between IP law and the fashion industry as it is one of the first empirical studies to investigate this relationship from the bottom-up perspective.
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Interviews

Interview Round I

Dubois, I. (2012), test interview with TR1, 4 May 2012.

Dubois, I. (2012), interview with D1 on Skype, 7 July 2012.

Dubois, I. (2012), interview with D2 on Skype, 8 July 2012.


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Dubois, I. (2012), interview with D8 on Skype, 7 October 2012.

Dubois, I. (2012), interview with D9 on Skype, 9 October 2012.


Follow-up Interviews


Dubois, I. (2012), interview with D8 on Skype, 28 December 2012.


Dubois, I. (2012), interview with D6 on Skype, 29 December 2012.
Appendix

A. Fashion as status good

Companies publish images of celebrities to inform the reader about the new trends and inspire them to emulate the style of those who are wealthier.

Source: Boutique JACOB, retrieved from facebook profile
B. Close copy

Burberry vs. Helene Berman

Left: Burberry olive wool coat with contrast leather sleeves for EUR 1,395.00.

Right: Helene Berman coat, made of cotton and with faux leather sleeves, for EUR 184.00.

Source: retrieved from de.burberry.com  
Source: retrieved from lyst.com
C. Knock-off

Zara copies Miu Miu cats print

source: retrieved from blog.krisatomic.com

source: retrieved from fashionista.com
Zara imitates the style of Balmain

Source: retrieved from trendland.com
D. Copyright infringement

Yves Saint Laurent vs. Ralph Lauren

Source: retrieved from Hemphil and Suk (2009b)
E. Democratisation of style

Armani privé (haute couture) (price unknown)

Emporio Armani (high to medium ready-to-wear) trousers, checked pattern, 100% silk, EUR 355,00

Source: retrieved from style.com

Source: retrieved from armani.com
F. Trademarks in relation to fashion design

Burberry's signature plaid

Source: retrieved from onlinedesignerdeals.com  
Source: retrieved from www.lyst.com

Levi Strauss: The usual identifiers are the Red Tab Device® on the back pocket and the arcuate design on both back pockets

Source: retrieved from style.popcrunch.com
Louis Vuitton: handbag covered in “LV” letters (left) and Dooney & Bourke's legitimate imitation (right)

Source: retrieved from nymag.com
G. Design right

Karen Millen’s unregistered designs of women’s clothing (left) and the copies of Dunnes Stores (right)

Source: retrieved from rsvpmagazine.ie
<table>
<thead>
<tr>
<th>Question</th>
<th>Probing questions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PART I: Introduction</strong> Biographical and general questions</td>
<td></td>
</tr>
<tr>
<td>What are you doing at the moment and where?</td>
<td>What is your task exactly? Do you like it? Do you plan to stay there?</td>
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<tr>
<td>What made you pursue a career in fashion?</td>
<td>Why fashion?</td>
</tr>
<tr>
<td>What do you like best about being a fashion designer?</td>
<td>Why? What is your favourite part of the work?</td>
</tr>
<tr>
<td>What do you not like?</td>
<td>Why?</td>
</tr>
<tr>
<td>What did you imagine being a fashion designer was like before fashion school?</td>
<td>How far are your expectations in line with your actual experiences in the fashion industry?</td>
</tr>
<tr>
<td><strong>Part II: Everyday life</strong></td>
<td></td>
</tr>
<tr>
<td>What are some of the difficulties you come into when you are doing your work?</td>
<td>What was the biggest challenge you faced until now? How did you deal with it? Why? What made you continue?</td>
</tr>
<tr>
<td>Can you tell me about a situation where somebody did not do justice to you?</td>
<td>How did you deal with the situation? Why?</td>
</tr>
<tr>
<td>What was your greatest achievement until now?</td>
<td>How did you manage to achieve this?</td>
</tr>
<tr>
<td>Do you take any precautions to ensure that your ideas or designs are not appropriated by someone else?</td>
<td>Are you worried that someone could appropriate one of your designs?</td>
</tr>
<tr>
<td>If you are thinking of other successful designers, what do you think was most important for their success?</td>
<td>Why? What role plays original design?</td>
</tr>
<tr>
<td>What would you like to achieve? What is your dream?</td>
<td>What do you need to do in order to get there? How close are you to your goal?</td>
</tr>
<tr>
<td>How free are you as designer?</td>
<td>Are there any external constraints? Do you follow trends/specifications of the industry? How do you deal with this? (if limits/constraints are mentioned)</td>
</tr>
<tr>
<td>Do you have any principles when designing clothes?</td>
<td></td>
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<tr>
<td>How do you make money with your work?</td>
<td></td>
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<tr>
<td>How do you plan making money with your work in the future?</td>
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<tr>
<td>How do you make sure that you get value for your design work?</td>
<td>Contract? Which aspects are important? Why?</td>
</tr>
<tr>
<td>How do you get recognition for your work?</td>
<td>What would be the best compliment?</td>
</tr>
<tr>
<td><strong>PART III: Design copying</strong></td>
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</tr>
<tr>
<td>Which role do design copies play in the fashion industry?</td>
<td>Which role did they play at fashion school? How legitimate do you perceive this practice to be? Why are they accepted? Are they damaging for someone? For whom?</td>
</tr>
<tr>
<td>What could be done to make the situation</td>
<td>Which alternatives do you have?</td>
</tr>
<tr>
<td>Question</td>
<td>Answer</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<td>How would you react if someone copied one of your designs and sold it</td>
<td>What experience have you made?</td>
</tr>
<tr>
<td>as his/her own?</td>
<td>Was one of your designs ever copied by anyone?</td>
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<tr>
<td></td>
<td>How did you deal with it?</td>
</tr>
<tr>
<td>What would be a new design for you?</td>
<td>Are there any new designs?</td>
</tr>
<tr>
<td>What is a design with individual character?</td>
<td>In how far are your designs new and have individual character?</td>
</tr>
<tr>
<td>What do you know about legal means to protect your work?</td>
<td>Where did you learn about it?</td>
</tr>
<tr>
<td></td>
<td>Do you know someone who knows about this?</td>
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<tr>
<td></td>
<td>Would you consider asking him for help?</td>
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<td></td>
<td>Why?</td>
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<tr>
<td></td>
<td>Which advice did you get?</td>
</tr>
<tr>
<td></td>
<td>Why do you consider it to be (not) relevant?</td>
</tr>
<tr>
<td>What, in your opinion, justifies design protection?</td>
<td>Are fashion designs worth protection?</td>
</tr>
<tr>
<td></td>
<td>Is a specific kind of design worth protection?</td>
</tr>
<tr>
<td></td>
<td>Describe.</td>
</tr>
<tr>
<td></td>
<td>Would you protect your own designs?</td>
</tr>
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<td></td>
<td>Why?</td>
</tr>
</tbody>
</table>
I. Follow-up interview guide

Since the interview guides for the follow-up interviews were individual, the following "guide" comprises a selection of exemplary questions from diverse interviews.

<table>
<thead>
<tr>
<th>Questions</th>
<th>Subsequent questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>What are you doing now? What happened since we talked last time, career wise?</td>
<td>What kind of job? Did you move on? Did it work out?</td>
</tr>
<tr>
<td>What difficulties have you encountered when you were [referring to a specific event]? (selling pieces in the shop/ promoting the design work/ involved in projects...)</td>
<td>What could have made the situation/ process better? Was there something that you tried and that did not work out?</td>
</tr>
<tr>
<td>How are you planning to establish your brand? How did you do it?</td>
<td>How do you approach it? Who helps you?</td>
</tr>
<tr>
<td>Did you talk to anybody to get advice [for your business/ in cases of copying...]?</td>
<td>Where do you get advice? Which advice did they give you?</td>
</tr>
<tr>
<td>How do you make sure that you get value for your design work?</td>
<td>What is specifically important to you? Why? What is in the contract? To which aspects do you pay specific attention? How important/relevant is it to you?</td>
</tr>
<tr>
<td>Did you experience once a situation where there was a problem and it wasn't covered in the contract?</td>
<td>How do you deal with it? Why do you (not) accept it that someone appropriates your ideas? What would you do if it happened? How realistic is it that you would do [the thing mentioned]?</td>
</tr>
<tr>
<td>If you put your designs out there, are you worried that someone could appropriate your ideas?</td>
<td></td>
</tr>
<tr>
<td>Is there a specific situation where you have been in conflict with a person/ where someone did not do justice to you, in the design context?</td>
<td>How did you feel in that situation? How did you handle it? Did you contact the person? Why?</td>
</tr>
<tr>
<td>Last time, you told me about [a specific situation/ experience with copying/ practices...] Can you tell me more about the situation?</td>
<td>What did you do in that situation? To whom did you talk? Why?</td>
</tr>
<tr>
<td>Do you take any precautions to ensure that your ideas or designs are not copied?</td>
<td>What possibilities/ means do designers have? Why do you think you should (not) do it? What could help?</td>
</tr>
<tr>
<td>Would you like to prevent other people from using your ideas?</td>
<td>Why? When does it become unacceptable for you? Would you do anything?</td>
</tr>
<tr>
<td>How effective do you perceive the practices of big companies to be in order to prevent copying?</td>
<td>Why does it (not) make sense for them to fight copying/ to sue someone? Why is it difficult? Why does it (not) work?</td>
</tr>
<tr>
<td>How legitimate do you perceive copying by companies like Zara?</td>
<td>Why do you think they get away with it? Why is it different?</td>
</tr>
<tr>
<td>Why do you think are designers not prosecuting copying?</td>
<td>What do you think/ feel?</td>
</tr>
<tr>
<td>How important is a brand/ name/ style?</td>
<td></td>
</tr>
<tr>
<td>Have you ever thought about protecting your work with legal means?</td>
<td></td>
</tr>
</tbody>
</table>
### J. Transcription symbols

<table>
<thead>
<tr>
<th>Symbol</th>
<th>Examples</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>–</td>
<td>That wasn’t – I mean I didn’t...</td>
<td>Micro-pause</td>
</tr>
<tr>
<td>word-</td>
<td>I mean she looked fab-, like brilliant.</td>
<td>Hyphen indicates unfinished word</td>
</tr>
<tr>
<td>WORD</td>
<td>I’m SURE that he didn’t know.</td>
<td>Capitals, indicates speaker’s emphasis stress</td>
</tr>
<tr>
<td>(???) 00:00</td>
<td>(???) 23:01</td>
<td>Brackets with three question marks and time indicate inability to hear what was said and place in the interview</td>
</tr>
<tr>
<td>(word)</td>
<td>(laughs); (waives fists); (pause)</td>
<td>Word in brackets describe sound, contain non-verbal behavior, or pauses</td>
</tr>
<tr>
<td>((word))</td>
<td>((disturbance))</td>
<td>Author’s comment</td>
</tr>
<tr>
<td>[word]</td>
<td>[...]; I participated in the [name] award; I think it [protection] is useful</td>
<td>Squared brackets indicate that (1) speech was not reproduced due to disturbances, irrelevance of the speech to the interview question, or to preserve anonymity, (2) text was added to make understanding easier</td>
</tr>
<tr>
<td>‘words’</td>
<td>They were like ‘That’s no problem’.</td>
<td>Reported speech or reported thought</td>
</tr>
</tbody>
</table>