

FASHION *LAW* & AFRICAN LUXURY HANDBOOK

A Practical Guide to the Legal Framework of African Luxury Fashion

HB 012

Published in 2026 by FLAA Publishing, the publishing arm of the Fashion Law Academy Africa (FLAA)

Lagos, Nigeria / Remote

www.fashionlawacademyafrica.org

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Fashion Law Handbook Series: HB 012

Fashion Law & African Luxury: A Practical Guide to the Legal Framework of African Luxury Fashion

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Graphic Design: FLAA Design Team

How to Use the Handbooks in the Series

This handbook is designed to be practical, accessible and easy to navigate. Each section introduces key legal concepts, explains their relevance to the fashion industry, and highlights practical considerations, examples and legal authorities. You do not need a legal background to use this handbook. It is designed for anyone seeking to better understand the legal issues shaping fashion.

This handbook is part of the FLAA Fashion Law Handbook Series, published by FLAA Publishing, the publishing arm of the Fashion Law Academy Africa. The expanded series explores fashion law through jurisdictional, sector-specific and emerging perspectives, providing deeper insight into the laws and legal issues affecting fashion across Africa and beyond.

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African Luxury Fashion and Its Legal Landscape

Introduction

African luxury is not a single market or legal category. It encompasses designer fashion, accessories, jewellery, leather goods, textiles and other premium products created across distinct national and regional markets.

The sector is nevertheless connected by several recurring sources of commercial value: **brand identity, design, craftsmanship, cultural heritage, provenance, scarcity and reputation.** These characteristics make law particularly important to luxury.

A luxury product is rarely valuable primarily because of the physical materials from which it is made. A substantial part of its value may derive from intangible assets: the product's trademark, design, the designer's reputation, the craftsmanship associated with its origin, or the story communicated to consumers.

The legal framework surrounding African luxury therefore draws principally from:

- intellectual property law;
- contract and commercial law;
- consumer protection;

- advertising law;
- competition law;
- trade and customs regulation;
- cultural heritage and traditional cultural expression frameworks; and
- dispute resolution.

Africa Is Not One Legal Market

A fundamental starting point is that there is no single body of "African fashion law." Currently, each country on the continent has its national laws that regulate its industries, including fashion.

Regional systems add another layer. The African Intellectual Property Organisation (OAPI) administers a uniform intellectual property system across its 17 member states under the Bangui Agreement. The Agreement covers, among other matters, trademarks, industrial designs, trade names, geographical indications, literary and artistic property and unfair competition. The African Regional Intellectual Property Organisation (ARIPO) administers regional mechanisms covering patents, industrial designs, and trademarks for participating states. Its Swakopmund Protocol also establishes a framework for protecting traditional knowledge and folklore among its member states.

At the continental level, the AfCFTA Protocol on Intellectual Property Rights provides an emerging framework for greater coordination of intellectual property protection and commercialisation across Africa. Its provisions expressly address traditional cultural expressions and contemplate further rules on areas including geographical indications, industrial designs, and traditional knowledge. For a luxury business, legal strategy must follow the markets where the brand creates, manufactures, sells, and intends to expand.

Intellectual Property and the Luxury Brand

Trademarks, Copyright, Designs, Trade Dress and Protecting Exclusivity

Intellectual property is a principal legal foundation of luxury. Luxury businesses invest heavily in creating distinctiveness. Their commercial value may reside in a name, logo, silhouette, pattern, packaging design or other characteristic that consumers associate with a particular source.

WIPO describes intellectual property as foundational to fashion's creative and commercial ecosystem and identifies IP as central to licensing, collaborations and merchandising.

i. Trademarks

For most luxury businesses, trademark protection should begin early. Potentially protectable assets may include:

- the brand name;
- logo;
- product or collection names;
- slogans;
- distinctive symbols; and
- where national law permits, certain non-traditional brand identifiers.

Registration should be considered in relation to the products and services the business actually offers and the markets it intends to operate in.

For example, a Kenyan luxury brand planning to expand into any other African country or internationally must not assume that registration in Kenya protects the mark in those markets. Trademark rights are principally territorial.

ii. Copyright

Copyright may protect original creative expression associated with a luxury business, including photographs, textile artwork, illustrations, advertising material and other qualifying works. But copyright should not be treated as a universal protection for every fashion product. The extent to which fashion designs themselves receive copyright protection differs between jurisdictions. Brands should therefore determine what specific work is being protected and under which law.

iii. Industrial Designs

Industrial design law can be particularly important for luxury products. The appearance of a handbag, shoe, jewellery piece, accessory or other product may itself carry significant commercial value. Where the relevant requirements are met, industrial design registration can protect a product's visual features independently of the brand name attached to it.

Timing also matters. Because novelty is important in many design systems, brands should consider protection before publicly launching a commercially significant design.

iv. Trade Dress and Distinctive Presentation

In some jurisdictions, the distinctive appearance or presentation of a product or retail environment may receive protection through trademark, unfair competition

or related doctrines.

The availability and requirements of such protection vary significantly.
A luxury business should therefore avoid assuming that a distinctive product shape or packaging format automatically creates enforceable rights.

v. Ownership

Registration is only part of the IP analysis. A luxury business must also know who owns the underlying rights.

Designers, employees, photographers, agencies, consultants and manufacturers may all contribute intellectual property. Contracts should address ownership, assignments, permitted uses, confidentiality and pre-existing rights.

A brand that cannot establish ownership of its creative assets may discover that its most valuable property is not legally its own.

Craftsmanship, Heritage and Cultural Expression

Traditional Knowledge, Traditional Cultural Expressions, Artisan Relationships and Legal Ownership

African luxury frequently draws commercial value from craftsmanship and cultural heritage. Traditional textiles, weaving, embroidery, beadwork, symbols, patterns, leatherworking and other forms of craftsmanship may form part of the identity of particular communities while also appearing in contemporary luxury products. This creates one of the most complex areas of fashion law.

i. Traditional Cultural Expressions

WIPO describes traditional cultural expressions as forms through which traditional culture is expressed, including designs, symbols, handicrafts, art, attire and other cultural expressions passed between generations. Conventional intellectual property law does not always map neatly onto these forms of creativity.

Copyright systems, for example, were largely designed around identifiable authors and defined terms of protection. Traditional cultural expressions may instead be collectively created, transmitted across generations and governed by customary practices.

The legal position also differs significantly across African jurisdictions.

Ghana provides a particularly useful example. Under the Copyright Act 2005 (Act 690), folklore includes cultural expressions created, preserved and developed by Ghanaian ethnic communities and expressly includes certain kente and adinkra designs where the authors are unknown. Rights in folklore vest in the President on behalf of, and in trust for, the people of Ghana, and specified uses require permission.

Nigeria's Copyright Act 2022 separately protects expressions of folklore and requires the source of identifiable folklore to be stated in specified public uses. At the regional level, ARIPO's Swakopmund Protocol provides protection against misappropriation, misuse and unlawful exploitation of traditional knowledge and expressions of folklore in its contracting states.

ii. Cultural Inspiration Is Not Simply an IP Clearance Exercise

A finding that conventional copyright does not prohibit a particular use does not necessarily end the inquiry. A design may involve community expectations, customary rules, attribution, consent and benefit-sharing even where conventional intellectual property rights are uncertain.

WIPO has therefore encouraged fashion businesses engaging with Indigenous Peoples' traditional cultural expressions to consider meaningful engagement, consent and mutually beneficial collaboration rather than treating the absence of conventional IP protection as permission to use cultural material freely.

iii. Working with Artisans

Artisan relationships should also be documented. An agreement should address:

- the work being commissioned;
- compensation;

- ownership of newly created designs;
- use of existing cultural designs;
- attribution;
- exclusivity;
- production quantities;
- quality standards;
- confidentiality; and
- where appropriate, benefit-sharing.

The objective should not be to strip artisans of rights through contract. A well-structured relationship identifies each party's contributions and allocates commercial rights accordingly.

Ultimately, responsible cultural engagement is a priority and, therefore, for brands, both a legal issue and an important component of long-term brand stewardship.

Provenance, Authenticity and “Made in Africa”

Geographical Indications, Certification Marks, Origin Claims, Traceability and Authenticity

Luxury depends heavily on authenticity. Consumers may pay a premium because of who made a product, where it was made, the materials used, or the craftsmanship associated with a particular place. The law can protect some of these associations.

i. Geographical Indications

A geographical indication identifies a product whose qualities, reputation or other characteristics are linked to its geographical origin. For African luxury, geographical indications may be particularly relevant where textiles, leather goods, crafts or other products derive commercial value from geographically rooted production traditions.

Under the **Bangui Agreement,** geographical indications form part of the uniform intellectual property framework applicable within OAPI member states. OAPI describes geographical indications as intellectual property rights used to protect and promote traditional and local products.

Geographical indications should be distinguished from ordinary trademarks. A trademark generally distinguishes the commercial source of goods or services.

A geographical indication links products to a geographical origin and the qualities or reputation associated with that origin.

ii. Certification and Collective Marks

Certification and collective marks can also help communicate authenticity. Depending on the jurisdiction, they may be used to indicate that goods meet defined standards or originate from members of a particular association. In artisan communities and producer groups, these mechanisms can sometimes provide a more appropriate form of collective commercial identification than attempting to allocate an individual trademark to one producer.

iii. What Does "Made in Africa" Mean?

"Made in Africa" is commercially attractive but can be legally imprecise. Africa comprises 54 countries with different manufacturing systems and origin rules. A garment designed in Ghana, manufactured in Morocco using imported fabric and finished in Italy presents an obvious question: what origin claim can legitimately be made? Country-of-origin requirements vary by the relevant customs, trade, and consumer protection regime.

Brands should therefore avoid treating "Made in Africa" as purely promotional language. Origin statements should accurately reflect the product and comply with the rules applicable in the market where the claim is made.

iv. Traceability

For luxury brands, provenance must be substantiable. Records concerning suppliers, artisans, materials, manufacturing locations and production processes can help a brand establish the origin of its products and defend authenticity claims. The stronger the story a luxury brand tells about provenance, the more important it is that the business can support it.

Commercialising African Luxury

Contracts, Licensing, Collaborations, Manufacturing, Distribution and Retail

Creative recognition does not automatically produce a durable luxury business. Commercial growth requires contracts that translate intellectual property and brand reputation into revenue while preserving ownership and control.

i. Licensing

Licensing allows a luxury business to permit another party to use specified intellectual property without transferring ownership. A licence should identify:

- the rights being licensed;
- products covered;
- territory;
- duration;
- exclusivity;
- distribution channels;
- royalties or other payment;
- quality standards;
- approval rights;
- sublicensing;
- reporting and audit rights; and

- termination.

For luxury businesses, **quality control is particularly important**. A commercially successful licence can still damage a brand if licensed products don't meet the standards consumers associate with it.

ii. Collaborations

Luxury collaborations may involve designers, artists, celebrities, retailers, artisans or other brands. The agreement should determine what each party contributes and who owns what is created. Important questions might include:

- Who owns the collaboration name?
- Who owns new designs?
- Can either party use the designs after the collaboration ends?
- Who controls campaign imagery?
- How are revenues divided?
- What happens to unsold inventory?
- Can either party license the collaboration to someone else?

These issues are substantially easier to resolve before launch than after commercial success.

iii. Manufacturing

Manufacturing agreements should address specifications, quantities, pricing, delivery, quality, rejected goods, confidentiality, IP ownership, subcontracting and termination. Luxury businesses should pay particular attention to **unauthorised production**.

A manufacturer engaged to produce 500 handbags should not have an implied right to manufacture additional units, sell rejected stock or reuse the brand's

patterns for another customer.

iv. Distribution and Retail

Distribution agreements should define territory, sales channels, exclusivity, marketing responsibilities, online sales, pricing arrangements (where lawful), intellectual property use, and termination.

Luxury businesses must also consider the tension between **expansion and selective distribution**.

Summarily, luxury depends in part on controlled presentation and customer experience. The legal structure should therefore support growth without unnecessarily surrendering control over where and how the brand appears.

Counterfeiting, Infringement and Enforcement

Copying, Counterfeits, Parallel Imports, Customs, Online Enforcement and Disputes

The commercial value attached to luxury products makes them particularly vulnerable to copying and counterfeiting. Effective enforcement begins before infringement occurs.

i. Building an Enforcement Position

A luxury brand should maintain clear records of:

- trademark registrations;
- design registrations;
- copyright ownership;
- assignments;
- licences;
- product photographs;
- launch dates; and
- authorised manufacturers and distributors.

Establishing ownership quickly can materially affect enforcement.

ii. Counterfeiting

Counterfeiting commonly involves the unauthorised use of trademarks on goods intended to imitate genuine products. It should be distinguished from other forms of copying. A product may copy the appearance of a handbag without reproducing the trademark. That may raise design, copyright, passing-off or unfair competition questions rather than, or in addition to, counterfeiting. The correct legal claim depends on the rights involved and the jurisdiction.

iii. Parallel Imports

Parallel imports present a different problem. The goods are genuine, but they have entered a market outside the distribution channels the rights holder prefers. Whether the rights holder can prevent those sales depends in part on the applicable exhaustion regime and other national law. A genuine product sold outside an authorised distribution network should therefore not automatically be described as counterfeit.

iv. Online Enforcement

Luxury infringement increasingly occurs through online marketplaces, social media, independent websites, domain names, and digital advertising. Brands should establish procedures to monitor infringement, preserve evidence, and use available platform or legal enforcement mechanisms.

v. Customs and Litigation

Customs authorities may provide mechanisms for intercepting suspected counterfeit goods at borders, depending on national law. Civil litigation may provide remedies such as injunctions, damages or other relief. Criminal enforcement may also be available for certain forms of counterfeiting or IP infringement. Contracts may separately provide for arbitration or mediation in commercial disputes. The appropriate mechanism depends on the right, the defendant, the jurisdiction and the commercial objective. Enforcement should therefore be strategic rather than automatic.

Key Takeaways

1. Luxury value is often intangible. Trademarks, designs, craftsmanship, provenance and reputation can be as commercially important as the physical product.
2. Africa is not one legal jurisdiction. Brands must identify the national, regional and international rules applicable to their activities.
3. IP protection should begin early. Trademark and design strategy should generally precede significant expansion and public launch where appropriate.
4. Cultural heritage requires a distinct legal analysis. Traditional cultural expressions do not always fit conventional IP frameworks, and some African jurisdictions provide specific protection.
5. Provenance must be supportable. Origin, craftsmanship and sustainability claims should be accurate and capable of substantiation.
6. Contracts protect commercial value. Artisan, collaboration, manufacturing, licensing and distribution relationships should clearly allocate rights and responsibilities.
7. Counterfeit and parallel goods are not the same. The legal analysis and available remedies differ.
8. International visibility should be matched by international legal planning. African luxury brands should protect key assets in commercially important markets before problems arise.

Glossary

- **Certification Mark:** A mark used, subject to the applicable law, to certify that goods or services meet specified characteristics or standards.
- **Collective Mark:** A mark used by members of an association or collective under rules governing its use.
- **Counterfeit Goods:** Goods bearing unauthorised marks that imitate protected branded goods, subject to the definition under applicable law.
- **Geographical Indication:** A sign identifying goods as originating from a particular territory, region or locality where a quality, reputation or other characteristic is essentially attributable to that geographical origin.
- **Industrial Design:** Legal protection for qualifying visual features of a product, subject to national or regional law.
- **Intellectual Property:** Legal rights relating to creations and commercial identifiers, including trademarks, copyright, industrial designs and patents.
- **Licensing:** Permission granted by a rights holder allowing another party to use specified rights subject to agreed conditions.
- **Parallel Imports:** Genuine products imported and sold outside distribution channels authorised by the rights holder, the legality of which depends on the applicable law and exhaustion regime.
- **Provenance:** Information concerning the origin, history or source of a product, material or method of production.
- **Traditional Cultural Expressions:** Forms through which traditional culture and knowledge are expressed, which may include designs, symbols, textiles, handicrafts, attire and other cultural expressions.
- **Trademark:** A sign capable of distinguishing the goods or services of one undertaking from those of others, subject to applicable law.

Further Reading

- UNESCO, The African Fashion Sector: Trends, Challenges & Opportunities for Growth (2023). A useful overview of Africa's fashion ecosystem, including production, markets, infrastructure and growth challenges.

- WIPO, Traditional Cultural Expressions and Fashion. Particularly relevant to the handbook's discussion of cultural heritage, fashion collaborations, consent and the use of traditional cultural expressions.

- WIPO, Protect and Promote Your Culture: A Practical Guide to Intellectual Property for Indigenous Peoples and Local Communities. Useful for understanding how IP tools can support the protection and commercialisation of culture and traditional cultural expressions.

- WIPO, Intellectual Property in Fashion. A practical resource on trademarks, designs, copyright, patents and the commercial use of IP within fashion.

- ARIPO, Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, together with its Explanatory Guide.

- OAPI, Bangui Agreement, Act of 14 December 2015. An important source for African luxury businesses operating within OAPI jurisdictions.

- OAPI, resources on Geographical Indications.

- AfCFTA, Protocol on Intellectual Property Rights.

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The Handbook Series is a growing collection of practical, accessible guides that explore the legal issues shaping fashion for students, professionals, creatives, and fashion businesses.

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