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Cultural IP in Fashion



How to Use The Handbook:

This handbook is short and practical. Each section gives you essential knowledge, examples relevant to African contexts, and key takeaways. You don't need a legal background, just curiosity and a desire to protect and grow within fashion.

This handbook is part of a 10-part series by the Fashion Law Academy Africa (FLAA) to make fashion law accessible to African creatives and stakeholders.

Purpose:

To address the protection of African cultural expression and indigenous fashion practices, while balancing creativity, commerce, and community rights.

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Cultural IP in Fashion

Introduction

African fashion is deeply rooted in culture. From Ghana's Kente to Nigeria's Adire, to the Maasai's iconic red shúkà, these expressions are more than aesthetics: they carry identity, history, and meaning.

Yet, global brands often use African cultural symbols without consent, credit, or compensation. This creates tension between celebration of African culture and exploitation. Protecting cultural intellectual property (IP) is therefore critical for sustaining heritage and ensuring that communities benefit when their traditions inspire global fashion.

What is Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs)?

- **Traditional Knowledge (TK):** Knowledge systems developed over generations, such as weaving, dyeing, or embroidery techniques.
- **Traditional Cultural Expressions (TCEs):** Tangible and intangible cultural elements — designs, motifs, textiles, symbols, dances, or songs.

Examples in African fashion:

- Adire indigo-dyeing from Nigeria.
- Beadwork of the Maasai and Zulu.
- Kente weaving in Ghana.

Key point: Unlike regular IP (e.g., trademark), TK and TCEs often belong collectively to communities, not individuals.

The Legal Vacuum

Conventional IP systems (copyright, trademarks, patents) are designed to protect individual ownership, but culture is collective. This creates a gap.

- **WIPO Efforts:** The World Intellectual Property Organization (WIPO) has been negotiating international agreements through its Intergovernmental Committee (IGC) to protect TK and TCEs. Progress has been slow.
- **National Policies:**
 - South Africa has proposed legislation to protect indigenous cultural expressions.
 - Nigeria recognises folklore under copyright law but enforcement is weak.
 - Kenya has passed laws on traditional knowledge and cultural expressions.

Despite these steps, many African countries still lack strong frameworks, leaving communities

vulnerable to cultural misappropriation.

Misappropriation vs Appreciation in Fashion

- **Cultural Appropriation:** Taking cultural elements without permission, credit, or benefit-sharing.

Example: A Western brand copying Maasai bead patterns for a runway collection.

- **Cultural Appreciation:** Respectfully engaging with a culture, often by collaborating directly with artisans or communities.

Example: A designer working with Nigerian dyers to produce authentic Adire, with royalties returning to the artisans.

Rule of thumb:

Ask: Am I copying or collaborating?

Community-Based IP Models

Communities are finding ways to protect their cultural heritage outside traditional IP systems:

- **Collective Trademarks:** A mark owned by a community to certify authenticity. (Example: Ethiopian coffee collectives use this for export branding.)
- **Geographical Indications (GI):** Linking a product to its origin, giving it unique protection. (Example: Champagne in France, potential for Kente in Ghana.)
- **Community Protocols:** Agreements within a community that outline how outsiders may use cultural elements.
- **Cooperatives/Associations:** Groups of artisans that regulate production standards and negotiate licensing.

Case Study: The Maasai IP Initiative

Maasai (Kenya/Tanzania): The

Maasai Intellectual Property Initiative estimates that brands use Maasai imagery in products worth over \$10 billion annually. The community is pushing for recognition and licensing agreements.

Lesson: Protection requires both government recognition and community organisation.

Practical Tips for Creatives & Brands

- Research origins before using cultural elements.
- Collaborate with artisans and communities rather than imitating.
- Negotiate fair compensation or licensing agreements.
- Respect dignity: Avoid distorting or misrepresenting sacred symbols.
- Highlight provenance: Giving credit enhances authenticity and brand value.

Further Reading / References

- WIPO: Traditional Knowledge & Cultural Expressions resources.
- UNESCO: Intangible Cultural Heritage Convention.

Glossary

Term	Meaning
Traditional Knowledge (TK):	Long-standing community knowledge systems.
Traditional Cultural Expressions (TCEs)	Expressions of culture such as designs, motifs, and textiles.
Cultural Appropriation	Unauthorised or disrespectful use of cultural elements.
Cultural Appreciation	Respectful use that involves credit and collaboration.
Geographical Indication (GI)	IP right linking a product to its place of origin.
Collective Trademark	A trademark owned by a group or community.
Benefit-Sharing	Ensuring communities gain from commercial use of their culture.
Misappropriation	Exploiting culture without consent or compensation.
Community Protocol	Local rules governing use of cultural expressions.
Intangible Cultural Heritage	Traditions, practices, and expressions recognised by as worthy of safeguarding.

