

Interview: Philippa Bergin-Fisher

Eli Fisher, co-editor, sits down with **Philippa Bergin-Fisher** (of no relation, unless the COVID police are asking why we're chatting) to talk about all things fashion law. Philippa is the General Counsel of one of Australia's most loved fashion brands, Zimmermann. Zimmermann's story is one of legend. Nicky and Simone Zimmermann, two Sydney sisters, began designing garments in their parents' garage and selling them at Paddington markets. Today, Zimmermann is an international fashion powerhouse, and its clothing has been worn by celebrities and supermodels around the world. Zimmermann is truly one of Australia's most impressive global exports in the fashion industry. And yet, it still has the charm of a local family business. To my mind, in a world full of copycats, Zimmermann is a triumphant story of the power of creativity and originality - and a great lesson for CAMLA's IP lawyers.

Eli Fisher: Hi Philippa - on behalf of all of our readers, thank you so much for chatting fashion law with us.

Philippa Bergin-Fisher: You're welcome - thanks for inviting me.

EF: Where have you worked previously and what (apart from it being an obvious dream job) led you to your current role?

PBF: My primary background was in private practice, working in IP. It was varied and interesting, with a highlight being acting for Apple in its enforcement efforts against Samsung. However having spent some time in-house, I wanted a new challenge and to say goodbye to billable hours. I was very fortunate that Zimmermann was looking to create this role at this time, and that it enables me to use my IP enforcement skills within a more generalist role. On top of it being a great role, I can't lie - being surrounded by all these gorgeous clothes is very uplifting!

EF: Your IP background is obviously helpful to such a creative company as Zimmermann. But as General Counsel, I'm sure you get a mix of everything. What is a typical day at the office like for you?

PBF: I've been with Zimmermann for a year, and of course for most of that time we have been in this unusual COVID-19 period. So I'm not sure what typical means right now. Some days I am in the office, some days at home. There is usually a mix of contract work (such as leases, suppliers and contractors), IP enforcement work, liaising with foreign counsel and a wide variety of

other matters (which might be privacy, employment, working with production, retail, HR or design on various matters and initiatives).

EF: What do you consider to be some of the most interesting and challenging aspects of your role? As IP lawyers, do we overestimate the extent to which piracy is a business challenge for fashion designers?

PBF: I find it interesting to learn about the commercial side of the business: the design process, the supply chains, standards on sourcing and sustainability, new ideas being trialled and implemented.

The most challenging part is IP enforcement when it is difficult - when there is a recalcitrant copier, or a web host that does not understand copyright in fabric artwork. Stemming the flow of low-quality counterfeits is also an ongoing challenge.

The problem of piracy feels personal, since I can see the labour and dedication that goes into designing the original fabrics and garments. However for the fashion industry generally, the mass production of low quality counterfeits is a catastrophe from many directions - particularly environmental and human rights - and that is an equally strong reason to tackle piracy.

EF: I know that Zimmermann registers designs for its garments. Do you have thoughts about the designs process, and the reforms currently underway?

PBF: Yes, many!



I think most of us agree there is room to improve the Australian design system. It is expensive to register, and the requirement to register prior to public disclosure means that businesses must try to predict which designs are most likely to be copied. This is not easy. To put it in context, Zimmermann has 5 collections a year, with a large number of original designs in each collection. Counterfeiters can start advertising copies for sale within days of a catwalk show, long before garments have even gone into production and months before they are available in stores.

It's great that IP Australia is looking at ways to improve the system. The current proposal of a 12 month grace period is wonderful in theory, as it would give designers a chance to see how a product is received in the market before registering. However the draft prior use defence really negates the benefit of that grace period for many including us, since

it would allow any individual who copies the product during the grace period to continue copying it (even after registration). Given the speed at which copiers move, Australian designers would still need to register prior to public disclosure if they wanted to protect their design. We would love to see the draft prior use defence exclude deliberate copiers.

Long term, we would like to see a way to protect unregistered designs, for example through an unregistered design right system like the United Kingdom.

EF: What do you wish you had known about the legal profession before becoming a lawyer? What are some tips for young lawyers looking to work in this area of law?

PBF: My first tip would be not to feel rushed and not to feel like you must only practise in the area in which you want to specialise. In the long run, I believe having a range of experiences makes us better lawyers even if we do ultimately end up with a deep speciality. Personally I have many examples of when I reluctantly worked on a matter in a different legal area, only for the knowledge I gained to be useful down the track. My other tip would be to try to work with good people who are nurturing and generous in their training of you.

EF: How has COVID-19 affected the industry and your role?

PBF: In both cases, there is much more going on than usual and we need to be flexible. Nobody has

been in this situation before and so there is a lot we're all doing for the first time. The industry was first impacted back in January, and since then we have seen store closures, reopenings and reclosures. Zimmermann has stores in Europe, the USA and of course Australia, and each country and state has its own evolving rules and laws to manage the pandemic. Amidst it all, two beautiful Zimmermann boutiques have opened in Milan Italy and Dallas Texas, such an achievement and show of resilience at this time. Here's to the day that we have the ability to travel again.

EF: Thank you so much for this. We're all very grateful for your insights!

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