

Interview: Justin Cudmore

Emma Johnsen, Senior Associate at Marque and CAMLA Board member, sits down with **Justin Cudmore**, Partner at Marque, to discuss fashion law, the Australian Fashion Council and current changes to the industry.

Emma Johnsen: Could you provide us with an introduction into the AFC, and also yourself?

Justin Cudmore: The Australian Fashion Council is the industry body which aims to promote the growth of the textile and fashion industry in Australia.

I have been a director of the AFC for around 6 years, and last year was appointed Co-Chair. My day job is as a partner at Marque Lawyers – I’m a commercial lawyer with a specialisation in the fashion industry.

EJ: Could you give us a bit of detail into who and what the AFC is? Who are the AFC’s members?

JC: Anyone involved in the value chain of the fashion and apparel industries. Therefore not just designers, but also apparel businesses, retailers, manufacturers, fibre growers, tech companies and education providers.

EJ: What does the AFC do specifically for members?

JC: The AFC’s aims fall into five broad categories – strengthening supply chains; growing Australian exports; nurturing business; developing industry practices in ethical and sustainable product; and fostering design and innovation. Our activities are therefore focused on achieving those, and include programs to give emerging brands retail experience through pop-up stores (with an associated mentorship program); showrooms and events at overseas fashion weeks and trade events including Paris, New York, London and Hong Kong; lobbying on behalf of the industry with state and federal government, educating members on sustainable practices; and hosting industry round tables to discuss issues such as diversity and Indigenous representation, rethinking the fashion timetable and the industry’s response to COVID.

EJ: What are some recent items you’ve been lobbying for?

JC: We have been working with IP Australia for a number of years on reforms to IP laws, particularly the Designs Act. Many Australian fashion designers are not aware of the requirement to register a garment design if they want to have rights to prevent knock-offs. There are also financial and administrative hurdles to registering designs. As a result, very few designs are registered in Australia, and therefore copying is rife and generally occurs without consequence. The AFC lobbied for unregistered design rights. Recently IP Australia has released its recommendations for change, which include a grace period of 6 months which would at least allow designers to register designs for styles they believe will be particularly successful. The consultation on this issue continues.

I believe it is time that the intellectual property rights of fashion designers (and designers generally) are more robustly protected. The original idea for the loss of copyright in industrially produced designs was that usable things (a teapot, a dress) should be democratised and open to all. This simply doesn’t matter anymore – the array of choice for most goods is almost infinite. A particular design is all that a designer has to sell, and the fruits of their creativity should be properly (and automatically) protected.

Particularly as a consequence of COVID and the interruption to overseas based supply chains, there is a strong move towards bringing manufacturing back to Australia. Over the last few decades we have lost a great amount of expertise and capacity in this area as the cost of manufacturing in the developing world lowered. The AFC is working with the federal government on how that trend can be reversed.

Another strong focus of the AFC is promoting exports. While in the past a large amount of this work has involved being on the ground at fashion weeks and trade shows, in COVID times fashion weeks have been cancelled or gone virtual. In response to this, we partnered with Ordre, an online showrooming platform via which international buyers can view and order collections.

EJ: What is the current state of the fashion industry, namely during COVID. Can you speak to the “re-wiring” of the fashion industry?

JC: Many fashion businesses operate on a financial knife’s edge even in normal times, so unfortunately the industry has been hit very hard by COVID. Sales have dropped significantly, discounting is savage and out of ‘normal’ timing, and there have been issues with supply and orders being cancelled by major retailers.

However, with the supply chain effectively broken comes an opportunity to re-think how the industry operates. Recently, an initiative called #rewiringfashion has emerged (instigated by several significant designers, CEOs, retailers and the Business of Fashion publication). It focuses on two aims – to reduce the fashion calendar to two collections a year (many designers are currently releasing up to 6 collections a year); and reimagine fashion shows as consumer-focused events which promote clothing in-season (rather than a preview of what will be in stores in 6 months’ time). The industry (even at the high end, let alone fast fashion) was in a race to release more styles as often as possible – this was resulting in significant discounting to allow for new stock, and more wasted dead stock ultimately being destroyed. Hopefully this initiative will disrupt that cycle, and encourage customers to buy better quality, less product (at full price).

EJ: At Marque, what issues do you help clients with?

JC: We assist fashion clients with all of the issues any other business might face. This includes contract negotiation (particularly regarding supply chain and distribution channels, agreements with manufacturers, retailers and selling agents), disputes, regulatory, privacy, competition, etc.

However, there is definitely an IP focus for them. That is both at the front and back end. We provide strategic IP advice about what trade marks and designs to register and in which countries, and then assist with or manage enforcement by deciding which IP breaches are worth challenging and the ways in which that is done. We have provided a lot of assistance to clients regarding the registration of trade marks in China particularly. It is renowned for trade mark squatting, but fortunately with recent changes to their laws, we've had some success in having trade marks which were registered in bad faith deregistered.



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