

Balenciaga vs Little Trees: when anti-fashion leans toward anti-legal

By Olfa B'Chir

The anti-fashion movement, born in the 90s in reaction to the long-lasting reign of the glamorous and visually saturating runways and magazines, has never been trendier. Ironically, anti-fashion is now becoming the mainstream of our decade

This prominent movement characterized by a fascination and a reclamation of the ugly and the practical is represented by brands like Vête-



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ments, Martin Margiela, but also Off-White and of course, Balenciaga. Those brands are leading the way, using the notoriety of ugly or utilitarian products and turning them into high fashion pieces. The "hideous sneakers" craze is the most notable expression of the normalization of this originally rebellious wave.

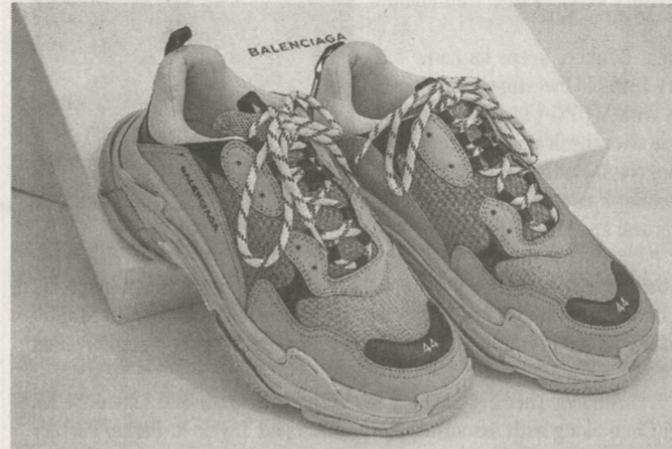
On a practical level, the preferred way for those luxury brands to reach their anti-fashion goals is the collaboration. A successful model of collaboration is the ones made with IKEA who fully embraced the movement and regularly collaborates with fashion brands for "capsule collections" (Stampd x IKEA, IKEA x Off White). Unfortunately not all stories are that exemplary and our present case is, on the contrary, an illustration of anti-fashion going anti-legal.

Balenciaga, for the second time under Demna Gvasalia's creative direction, is facing a legal battle for the alleged appropriation of a trademark. The first case relates to the appropriation of the design of an arguably kitsch NY souvenir bag. Today, Balenciaga is being accused by Car-Freshner Corporation and Julius

Samann Ltd of appropriating the notorious trade dress protected shape of a tree for Balenciaga key chains.

The plaintiff claims that the contours of the Balenciaga keychains "track exactly the shape and dimensions of a genuine Little Tree Air Freshener" and that Balenciaga made the conscious creative choice of appropriating the protected trademark and therefore "betrays reckless disregard for the plaintiff's trademark rights". The similarity extends to the color choices of the tree keychains.

A trademark protects its owner against the unauthorized use of its mark. The protection covers the category of products the trademark has been registered and used for. In this case, one could argue that keychains and car air fresheners are two different categories of products, and it is correct. However, the plaintiff shows that the trademark not only is notorious but also has been used in connection with a vast range of items including luggage tags, keyrings, shirts, stickers, clocks, magnet, and more recently the brand granted a license to use the tree design Marks



New York Times News Service

Balenciaga sneakers, April 24, 2018.

for high end handbags to the designer Anya Hindmarch.

Additionally, despite the fact that the Spanish brand has, in the past, collaborated with non-fashion brands (Ex: Crocs, World Food Program), obtained their authorization and used their intellectual property, here, no license or authorization has been given. Therefore, Car-Freshener claims that a confusion or mistake can be easily made on the origin of the products by a consumer and

consequently, Balenciaga must be barred from manufacturing, selling or distributing the keychains.

In defense, Balenciaga would likely claim that while the design and colors are slightly identical, a consumer is unlikely to be confused or to mistake the source of the product as the car freshener costs \$3 and can be found in any supermarkets, gas stations, liquor stores, etc. whereas the Balenciaga keychains can only be found in Balenciaga boutiques

and in a handful of high-fashion specialized shops for the cheerful price of \$275...

This argument would have had more weight if Balenciaga didn't have few capsule collaborations on his hands with non-fashion brands as mentioned above. Indeed, the plaintiffs uses these past collaborations to insist on the idea that a consumer might confuse the source of the products and could easily think that Balenciaga has obtained Little Tree's blessing to use the design.

Considering the large use of the tree design, authorized by the plaintiffs, it is likely that Car-Freshener would have accepted such a collaboration if Balenciaga offered and the legal battle would have been avoided. As of now, the Parisian based brand hasn't made any declaration on the pending suit and it will be interesting to keep an eye on this.

Just another case reminding us that developing a contract at the beginning of a process is the best way to prevent legal aftermaths.

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