

**Abstract**

## Discussion on United States Judicial Precedents Regarding Substantial Similarity of Fabric Design

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This study examined the judicial attitude of US courts towards substantial similarities in dealing with copyright infringement in fabric design. Substantial similarity is a requirement for judging whether a design infringes on another design or not. The objective requirement for infringement is *similarity*, while the criterion for determining similarity is *substantiality*. Similarity of fabric design has been judged through an overall comparison that involves an analysis of objective details and subjective elements such as aesthetic; here, the focus is on the protection elements under copyright law, objective details include the theme of appearance, form, color, material, and arrangement of representation, but are not limited to such things. U.S. courts have considered a design as an infringement if a similar aesthetic is expressed in a situation where it is used for its intended purpose, even if there are slight physical differences in the expression of the fabric design. However, the reason why the physical difference is insignificant and the aesthetic is different should not be regarded as a defensive cause for infringement and substantial similarity. The method of determining substantial similarity, focusing on the physical difference and aesthetics of expression, not only has the possibility of allowing legitimate rights to easy creation, but also is more likely to overlook the protection of characteristic expressions that contribute to the originality of a design. These limitations can be supplemented by emphasizing the expert's perspective in the existing similarity judgment that adopts the perspective of the ordinary observer. This study is expected to contribute to the accumulation of discussions surrounding the judgment of the similarity of fabric designs.

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**Keywords**

Aesthetics, Substantial Similarity, Fabric Design, Copyright Infringement, Creativity, Ordinary Observer, Expert's Perspective, Total Concept and Feel.