

Apparelinsurance.com
Kulchin Ross Insurance

18757 Burbank Blvd., Suite 104
Tarzana, CA 91356

Bill Kulchin, CPCU, ARM
CEO

Tel: 818-996-0900
Fax: 818-479-9779
Cell: 818-968-1354
Bkulchin@apparelinsurance.com

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www.KulchinRoss.com

Kulchin Ross Insurance Services is a Multi Line commercial insurance agency, that remains close to their clients to deliver a highly personalized service experience. Kulchin Ross is an affiliate of the ISU network of insurance agencies, and provides access to more than 350 insurance carriers and markets.

For Apparel companies, this means the convenience of placing every type of garment related insurance coverage with one office and the satisfaction of having a dedicated Account Manager who personally oversees your entire insurance program. The apparel practice division of Kulchin Ross was created in 1992 by Bill Kulchin, and has served over 200 apparel manufacturers and distributors.

Fabric Print Knock Offs **(Copyright / Trademark Infringement)** **Can you “Risk Manage” this exposure?**

By: Bill Kulchin, CPCU, ARM
Kulchin Ross Insurance Services, Inc.

Fabric Suppliers to the apparel industry know the value of a copyrighted or “registered” fabric print. The registration typically confers ownership rights to the print, and confers the right to sell or license the print to others for profit.

Unfortunately, some fabric suppliers are not as vigilant about ownership rights as manufacturers, and may be unknowingly (or knowingly) selling knock offs of original prints which are registered to others. Even if you are an innocent purchaser of such prints, you can still be sued for copyright infringement. With attorneys that charge \$300-\$400 per hour, these claims can quickly drain your corporate legal budget, and may end up costing you a large settlement, simply to avoid an even more costly and time consuming lawsuit.

The standard Commercial General Liability policy has a common exclusion, relating to Trademark, Copyright, and Patent infringement. The exclusion is subject to a few very limited exceptions related to “your advertising.” In 95% of cases, the general liability policy cannot defend you from these fabric infringement lawsuits, due to the exclusions which are part of the policy. Apparel manufacturers have a greater than average loss exposure, which deserves attentive risk management.

The **insurance solution** involves simply buying an Intellectual Property Liability insurance policy. This insurance policy is available, but tends to be costly, with high deductibles making it seem like “trading dollars” with your insurance carrier. For many businesses, it’s just too expensive.

Another possibility which costs nothing, but may be effective, is to consider “risk managing” the exposure:

How can a commercial fabric buyer protect their organization from infringement lawsuits when purchasing fabrics?

One frequently used tool is a **“hold harmless and indemnity agreement.”**

The agreement may be part of the purchase order documents themselves, or contained in a separate addendum.

Ideally, the agreement should provide specific assurances that the seller owns any fabric, designs, prints or other artwork, and therefore these materials do not infringe on the intellectual rights of others. Further it needs to clearly state that the seller agrees to indemnify, defend, and hold you “harmless” from any and all claims arising out of an infringement related to the fabric, designs, prints, artwork or material.

You also want to carefully select your fabric vendor, as obviously the agreement to indemnify is only as strong as the **financial resources of the vendor**. If that vendor drops out of sight, or files for bankruptcy, the fact that you were an innocent purchaser of the copyrighted print will not necessarily help you in an Infringement lawsuit.

For more information, or a sample Hold Harmless / Indemnity letter please contact Bill Kulchin, at 818-968-1354.