

Capsule Collections Capture a Moment in Time

Brooke Erdos Singer, *Partner*, bsinger@dglaw.com

Claudia Cohen, *Associate*, ccohen@dglaw.com

Capsule collections and collaborations continue to explode in the marketplace, with brands launching newer and quirkier collaborations, like Dolce & Gabbana's collaboration with Smeg, Gucci's North Face collection and the Kentucky Fried Chicken line of Crocs shoes. These attention grabbing collections offer designers the opportunity to translate their vision to entirely new product lines and reach a new set of customers.

Collaborations can also provide brands the opportunity to work with designers they typically wouldn't (such as "Yeezy Gap Engineered By Balenciaga"), or celebrities or artists who may not have extensive prior fashion design experience (like Cardi B's collection for Reebok), to bring a fresh perspective to their lines and entice new customers. Some capsule collections offer designer pieces at a lower cost, while others are very high-end and may even sell out in minutes, fetching high prices as shoppers compete to own an exclusive piece. In addition, some celebrities have used capsule collections as a way to give back by pledging to donate proceeds to charity or using the collection to encourage civic participation.

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Here are five important topics to consider and cover in any written contract that governs a capsule collection or collaboration:

1. Include parameters for the licensed use of trademarks

The agreement should specify the permissible use of all specific trademarks that are licensed for use as part of the capsule collection or collaboration, including how long the license will last; which products can be manufactured, marketed and sold under the marks; the jurisdictions in which those products can be marketed and sold; and what the pricing of those products should be.

2. Determine who owns what

A new design or product may be created as part of the collaboration, so the parties should contractually agree in advance who owns those rights.

3. Include quality control provisions

The license agreement should include provisions that allow the owner to maintain the quality and integrity of their trademarks, granting the owner oversight and approval of the licensed use.

4. Consider whether to include exclusivity and/or restrictive covenants

It is important to consider whether the licensed use of a company's trademarks will be exclusive or non-exclusive in the relevant product category.

A non-exclusive license permits the owner and licensee to use the marks for the licensed use, and the owner can license the marks to others.

An exclusive license permits only the licensee to use the marks for the licensed use, and the owner is restricted from using, licensing or otherwise exploiting their marks in connection with the licensed use.

Relatedly, it can be valuable to include a restrictive covenant in the license agreement that limits the artist, celebrity, designer or brand to the specific capsule collection or collaboration, such that they cannot work on a similar collection or collaboration in the relevant product category with a competitor or other third party.

5. Specify the circumstances under which the contract can be terminated

The license agreement should include provisions that allow for its termination. For example, some licenses permit either party to terminate for any reason upon a certain amount of written notice or for an uncured material breach of the contract. Relatedly, some license agreements include a morals clause, that permits termination if a party engages in immoral, illegal or other conduct that may reflect poorly on the brand.