



Jacket by Mercy,
Spring 2008. Ryerson
FRC2015.06.001. Donated
by Nathalie Atkinson.

A BED JACKET BY MERCY: A TALE OF COPYRIGHT INFRINGEMENT

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February 29, 2016

The bed jacket, a lightweight coat made to be worn while sitting or reclining in bed, originated in the nineteenth century and was especially popular during the early to mid-20th century (note 1). This type of garment served as a source of inspiration for Canadian designers Richard Lyle and Jennifer Halchuk of the label [Mercy](#) (note 2). Their rendition of the bed jacket for spring 2008 –produced in a delicate floral print – was not meant to be worn for warmth in bed, but rather to be worn as a garment of fashion. This jacket is now part of the Toronto Metropolitan University Fashion Research Collection (FRC2015.06.001) and what is especially notable about it is that it became the subject of an international case of copyright infringement.



Elle Magazine March 2009 cover featuring Jessica Alba wearing Diane von Furstenberg's version of the bed jacket.

The infamous Mercy jacket is tea-stained beige cotton voile featuring a vintage red rose print. Lyle and Halchuk sourced the fabric from textile design company Ascher Studio (note 3); the fabric was tea-dyed and custom quilted for the jacket. The lightweight, loose-fitting jacket is waist length with rounded edges at the bottom front, an elastic hem, and an interior drawstring in the back. The $\frac{3}{4}$ balloon sleeves have elbow dart detailing. An asymmetrical frayed beige silk sash hangs along the front of the jacket and creates a set bow on the right side. Halchuk developed the pattern from scratch and came up with the idea while working on a MAC Cosmetics campaign *Danse*. Mercy's Spring 2008 collection featured other garments in the same fabric including dresses and tops. Halchuk reported that the entire collection did well, but the jacket was especially popular. At the time, the Mercy jacket retailed for about \$300.

Canadian journalist [Nathalie Atkinson](#) noticed a similar jacket in the March 2009 issue of *Teen Vogue*, where the jacket had been credited to Diane von Furstenberg's Spring 2009 collection. The jacket also was worn by Jessica Alba on the March 2009 cover of *Elle*.

Although Atkinson recognized that issues of copyright in fashion were systemic, she thought this case was particularly problematic since von Furstenberg was president of the Council of Fashion Designers of America at the time, as well as an active spokesperson on fashion design copyright protection.

In a personal interview with [Atkinson](#) in November 2015 (note 4), she revealed to me that a key factor in her decision to pursue this story was because of von Furstenberg's status: "She was at the time canvassing for this, so it was like caught with the hand in the cookie jar and so it was more the idea - it wasn't like, I'm going to be the mouth piece for Richard and Jennifer at Mercy to pursue this. It was very much - this is an interesting test to case, to sort of look at these issues...".

Atkinson observed the small details and design gestures of the Mercy jacket and noticed the similarities in the von Furstenberg copy. "There's a finger print that a designer has," Atkinson explained: "[Mercy is] not only a brand that I had covered, but they're something that I wore, so that sleeve shape in particular, and the way there were like three - I think there were like three stitches to bring the elbow in to give it a balloon [...] it was something that I recognized."

Atkinson became convinced the von Furstenberg jacket was a virtual copy of Mercy's Spring 2008 rendition. "In this case, they were like stitch for stitch - like there was almost nothing different. The way the satin had been shredded, the way the bow sat on one side [...]" However, von Furstenberg's version was retailing for substantially more at \$1000.

Atkinson detailed the notable similarities between the von Furstenberg and the Mercy jacket in a blog post for *The Ampersand* (a *National Post* blog) published on April 23, 2009 (note 5). In doing so, she hoped that fashion critics would also weigh in on the issue. However, none of the leading fashion journalists took notice: not Cathy Horyn at *The New York Times*; not Suzy Menkes at *The International Herald Tribune*, not Hilary Alexander at *The Daily Telegraph*; not Teri Agins at *The Wall Street Journal*; and not even Robin Givhan, the Pulitzer-winning fashion critic at *The Washington Post* (note 6). However, the story was picked up by *Womens Wear Daily* as well as the blog [Counterfit Chic](#) written by the Fordham University law professor Susan Scafidi. Negotiations for a settlement with Mercy were initiated by von Furtsenburg and within a month the case was officially settled out of court with Halchuk and Lyle receiving an undisclosed sum of money from von Furstenberg (note 7).



Jacket by Mercy,
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detail. Donated by
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The issue of copyright in fashion continues to be a thorny subject. In 2012, Chanel paid about 200,000 Euros after a court found the design house guilty of copying the crocheted designs of World Tricot, one of its former suppliers (note 8). Other cases do not even make it to court.

Atkinson donated the Mercy jacket to the Toronto Metropolitan University Fashion Research Collection in 2015. She frequently shops and wears Canadian brands like Mercy. Though she loved to wear this garment- she bought it, after all - she says she couldn't wear it anymore after the case: "I just, I couldn't wear it anymore. It made me, not that it made me ill, like that's an exaggeration, but it just, ça me laissais comme, it's like a bad taste."

Mercy continues to use some of the detailing featured on this jacket in their collections. In early 2013, a blue silk quilted jacket posted on Lyle and Halchuk's Mercy studio website sported the same balloon sleeve and back drawstring detailing. Though the infamous Mercy jacket that now resides in the FRC may be considered tainted to some, Mercy's design gestures live on.

Jennifer Braun is a fashion journalist and an MA Fashion student at Toronto Metropolitan University in Toronto. She conducted an oral history interview with Nathalie Atkinson as part of her coursework for a graduate seminar in Oral History and Ethnography under my supervision. Nathalie Atkinson has reviewed this essay and given her permission for publication.

Notes

Note 1: "Bed jacket." The Berg Fashion Library, Accessed January 12, 2016. <http://www.bergfashionlibrary.com>

Note 2: Lyle and Halchuk met at Toronto's Fashion Incubator and founded the label Mercy in 1994. They are known within the Toronto fashion scene for their vintage inspired designs.

Note 3: Email correspondence with Richard Halchuk February 23, 2016. According to Halchuk, the company was started by Lida and Zika Ascher in 1942 and operated until December 2015.

Note 4: Oral history interview conducted by author with Nathalie Atkinson in Toronto on November 25, 2015.

Note 5: Nathalie Atkinson, "Copycats: A Tale of Two Jackets". *National Post Ampersand Blog*, April 23, 2009. Link no longer active.

Note 6: Nathalie Atkinson, "How this jacket got jacked; In which our fashion editor plays the role of Erin Frockovitch," *National Post*, June 6, 2009 WP6.

Note 7: Ibid.

Note 8: "Chanel Accused of Copying Looks in Métiers d'Art Collection." Thefashionlaw.com, December 6, 2015. <http://www.thefashionlaw.com/home/chanel-accused-of-copying-looks-in-metiers-dart-collection>

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