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## LEGO MY JACKET! *Fashion Designer Sues Toy Maker Over Mini-Fig Jacket Resembling Artist's Design*

By [Annie Allison](#)

Danish toy maker LEGO received a rather harsh critique from New York-based fashion designer James Concannon, who is suing the world's largest toy company over its wardrobe selection for one of the plastic characters in the "Fab 5 Loft" LEGO set which is based on Netflix's *Queer Eye* series.

The jacket in question was worn on the Netflix show by cast member [Antonio Porowski](#). When LEGO released a *Queer Eye* themed LEGO set called the "Fab 5 Loft" in September 2021 as part of a collaboration with the Netflix series, Porowski's mini-fig (a miniature LEGO character) was depicted wearing a jacket that, according to the complaint, is a "virtually identical copy" of Concannon's jacket design, which is stylized with graffiti-style lettering, and provocative, tongue-in-cheek phrases which are a hallmark of Concannon's design aesthetic:



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According to Concannon, he never granted Netflix a license to display his jacket on the *Queer Eye* series and never granted LEGO the right to exploit his artwork for series-related merchandise. Concannon says that he contacted LEGO about the infringement and was initially offered a free Fab 5 Loft set for his son, but when the set did not arrive LEGO told Concannon that the toy had been mistakenly offered and that LEGO did not give its toys away for free. According to Concannon, LEGO lawyers told the artist that by gifting the jacket to Poworski, knowing it would be worn on the television series, Concannon had given Netflix an implied license to use the jacket, including sub-licensing the jacket to LEGO for the Fab 5 Loft.

In an amended complaint, Concannon alleges that LEGO has infringed the artist's copyrights in the jacket, as well as his unique graffiti-style trade dress rights which Concannon alleges he has been known for since 2013.

Concannon's claims will require the Court to determine precisely what elements of his jacket are actually protectable and what rights, if any, are actually enforceable, under the following theories of recovery:

**Copyright.** Under U.S. copyright law, and as further laid out by the Supreme Court in [Star Athletica, LLC v. Varsity Brands, Inc.](#), copyright only extends to pictorial, graphical, or sculptural elements that are separable from a useful article. Since the jacket itself would be considered a "useful article," Concannon's copyright claim is most likely limited to the artwork on the jacket. In comparing the artist's designs to LEGO's mini-fig from the Fab 5 Loft set, the most obvious similarities are the peace sign and the safety pins which, as familiar symbols and designs, are generally not copyrightable. Further limiting Concannon's leverage is his inability to recover statutory damages given that LEGO's Fab 5 Loft was released in September 2021, prior to Concannon's copyright registration date of November 26, 2021.

**Trade Dress.** A subset of trademarks, trade dress covers the look and feel of a product or its packaging that identifies the source of the product to consumers. In order to succeed in a claim for trade dress infringement, a plaintiff must, as a threshold matter, show that the trade dress design is either inherently distinctive, or has acquired distinctiveness through secondary meaning. In cases where trade dress is unregistered (e.g., common law trade dress), the Supreme Court held in [Wal-Mart Stores, Inc. vs. Samara Brothers, Inc.](#), the trade dress is only protectable upon a showing of secondary meaning. In support of his trade dress infringement claims, Concannon alleges that since 2013 he has been known for using a "unique combination of provocative, tongue-in-cheek phrases with hand-painted, graffiti-style lettering" in connection with his products. Certainly,

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Concannon cannot be credited with single-handedly creating this arguably common punk aesthetic, and is not the only designer to incorporate graffiti and ironic phrases on clothing. Still, the artist argues that numerous celebrities, including Lady Gaga, Lil Wayne, and Suki Waterhouse have been photographed in his clothing, crediting him as the designer, which could be probative evidence of at least some measure of acquired distinctiveness through secondary meaning:



**Implied License.** According to Concannon, LEGO argued that the artist had given Netflix an implied license to use his jacket artwork, including a right to sub-license the jacket design to LEGO. A license for copyright and trademark use can sometimes be implied based on the conduct of the parties involved, but the parameters of the implied license are generally determined by the intent of the parties at the time of the agreement. It could be challenging for LEGO to show that, by impliedly consenting to the display of the jacket on the *Queer Eye* series, Concannon also intended for the jacket to be used in connection with merchandise related to the show.

For his own part, Concannon appears to be no stranger to leveraging the notoriety of others in connection with [his own work](#). Much of his clothing relies on the marks of other artists including Iggy Pop, River Phoenix, James Dean, Pablo Picasso, Lil Nas X, Yoko Ono, Alexander McQueen, and other music bands and consumer brands. It is unclear whether he obtained authorization from these third parties (or their estates) in connection with his work or has relied on other legal theories (e.g., fair use, implied license, etc.) in support of his rights.

While the results of Concannon's infringement claims against LEGO await to be seen, this case is an important reminder for media and entertainment companies to keep a close eye on third-party designs that could constitute trademarks, trade dress, copyrights (or other valuable IP rights) in order to either clear those rights or further strategize on ways to avoid infringement.

The case is *Concannon v. Lego Systems Inc*, 3:21-cv-01678 (D. Conn)