



Lululemon's lawsuit against Costco highlights the rise of fashion 'dupes'

Less expensive versions of high-end clothing and other accessories are just about everywhere these days By

Wyatte Grantham-Philips and Anne D'Innocenzio | AP

NEW YORK — Fashion “dupes,” or less expensive versions of high-end clothing and other accessories, are just about everywhere these days. They're also drawing some businesses into legal battles.

In the latest example, Lululemon slapped a lawsuit against Costco on Friday, accusing the wholesale club operator of selling lower-priced duplicates of some of its popular athleisure apparel.

Across the retail industry, it's far from a new phenomenon. But social media is pushing the culture of online dupe shopping to new heights as influencers direct their followers to where they can buy the knockoffs. Want a taste of Hermès' \$1,000 fuzzy slippers? Target has a version for \$15. Looking for a \$2,800 price Bottega Veneta hobo bag? There's a version for \$99 on online clothing and accessories upstart Quince, which has become a go-to for fashionistas.

It's not even the first time Lululemon has encountered what it says are knockoffs of its clothing, which often carry steep price tags of over \$100 each for leggings and sporty zip-ups. Without specifying additional sellers beyond Costco in Friday's complaint, Lululemon noted that a handful of companies have “replicated or copied” its apparel to sell cheaper offerings — including those popularized online through hashtags like “LululemonDupes” on TikTok and other social media platforms.

Dupes aren't new

For years, companies have rolled out a range of cheaper options for consumers to buy instead of pricey name-brands or designer labels — often through retailers' house or generic brands. Unlike more direct copies of the product with an unauthorized trademark or logo of a patented brand, “pure” dupes that just resemble certain features are generally legitimate. They can even spark awareness of the original items.

But the rising frenzy for dupes, particularly in the fashion space, signals that many shoppers want a taste of luxury, but no longer want to pay for (or care about) getting the real thing.

Late last year, for example, discount chain Walmart created a buzz when it started selling a leather bag online that resembled Hermès' coveted Birkin bag. The \$78 item — sold by Kamugo, which doesn't appear to have its own website — was a fraction of the price of the original, which goes from \$9,000 to hundreds of thousands of dollars on resale and auction sites. Influencers labeled the leather bag a “wirkin.” Other suppliers including BESTSPR, YMTQ and Judy were listed on Walmart's site selling similar totes.

While popular among shoppers, these kind of look-alikes can frustrate the targeted companies. Following the viral fame of the “wirkin,” Hermès Executive Chairman Axel Dumas shared his annoyance, for example.

“Making a copy like this is quite detestable,” Dumas said in a corporate earnings call in February. Still, he acknowledged that it was “quite touching” to see so many consumers want a bag with the Birkin style — and that “difference in quality” was still evident, noting that nobody bought the dupe thinking it was from Hermès.



When dupes venture into uncertain legal territory

Alexandra Roberts, a professor of law and media at Northeastern University, said that “the term ‘dupe’ itself doesn’t tell us much about legality,” noting the word has also been used to describe more traditional counterfeits.

But overall, dupes can move into shaky legal territory, including copyright and trademark infringement, particularly if a dupe marketer makes false claims about the duplicate or the original.

“With fashion, in particular, we’re going to get into some thorny questions,” Roberts said. That includes what intellectual property rights exist and how enforceable they are, she explained, and whether there is actual infringement or if a product is just “positioning itself as a less expensive alternative.”

Often such disputes boil down trademark questions around consumer confusion or patented product designs. Several businesses have already put this to the test, but not always successfully.

In December, for example, Benefit lost a lawsuit in California over E.l.f.’s \$6 Lash ‘N Roll mascara, which is similar to Benefit’s \$29 Roller Lash mascara. The judge’s decision was “a resounding win for us,” E.l.f. CEO Tarang Amin previously told The Associated Press.

“The basic reality is we always put our E.l.f. twist on it,” he said. “It’s an E.l.f. product that’s a much better value.”

Lululemon sues Costco

In its lawsuit, Lululemon argued that Costco had “unlawfully traded” on Lululemon’s reputation and that it was suing as part of wider intellectual property enforcement “directed to retailers who have chosen to copy rather than compete.”

Lululemon accuses Costco of making duplicates of several products, including its popular Scuba hoodies, Define jackets and ABC pants. Lululemon says one of the duplicates that Costco sells is the Hi-Tec Men’s Scuba Full Zip, with the lawsuit showing a screenshot image of Costco’s website showing the item priced at \$19.97.

Roberts said she was “a little skeptical” of some of Lululemon’s claims, noting that the design patents in particular could be hard to challenge. And she pointed to Lululemon’s asserting common law trade dress over a “triangle kind of shape in the crotch region” of the ABC pants.

“My first reaction as a trademark expert is that looks pretty functional,” she said, and functional matter is not protected under trademark law. “I was just cracking up because that particular claim seemed really far-fetched to me. Those pants look really basic.”

Still, Roberts noted that Lululemon had some plausible claims.

Lululemon alleges that Costco is known to use manufacturers of popular branded products for its private label Kirkland brand, although the companies involved don’t clearly reveal that information to customers. Due to this, Lululemon claims some shoppers may believe that Kirkland-branded products are made by the authentic supplier of the “original” products.

Roberts said this could rule in Lululemon’s favor as something that “weighs toward consumer confusion.” Still, she noted that most of the products Lululemon mentioned in its complaint weren’t sold under the Kirkland brand, which could undermine the argument.

A message was left Tuesday seeking comment from Costco on the lawsuit.

Lululemon found itself in a similar dispute with Peloton in 2021, when it sued the



exercise bike company over alleged “copycat products” in its then-new clothing lines. Two years later, the companies announced a five-year partnership that included Lululemon becoming the primary athletic apparel partner to Peloton.

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AP Business Writer Michelle Chapman contributed to this report.

