

# Gucci bags and spare parts for download – 3D printing and IP rights seen from Europe

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**PANEL 13 | Enforcement of Design Protection in view of the Popularization of 3D printing**  
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**SP 2016**

AGO. AUG  
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# Overview

- **Does IP law provide sufficient protection against illegal 3D printing?**
- **What exceptions, if any, to infringement caused by 3D printing exist?**
- **What are the consequences for your IP strategy due to the threat of illegal 3D printing?**
- **What IP rights grants best protection against illegal 3D printing? What are the gaps in IP protection against illegal 3D printing?**

# Does IP law provide sufficient protection against illegal 3D printing?

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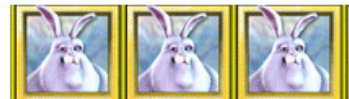


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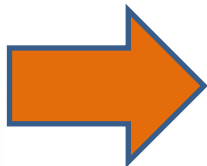
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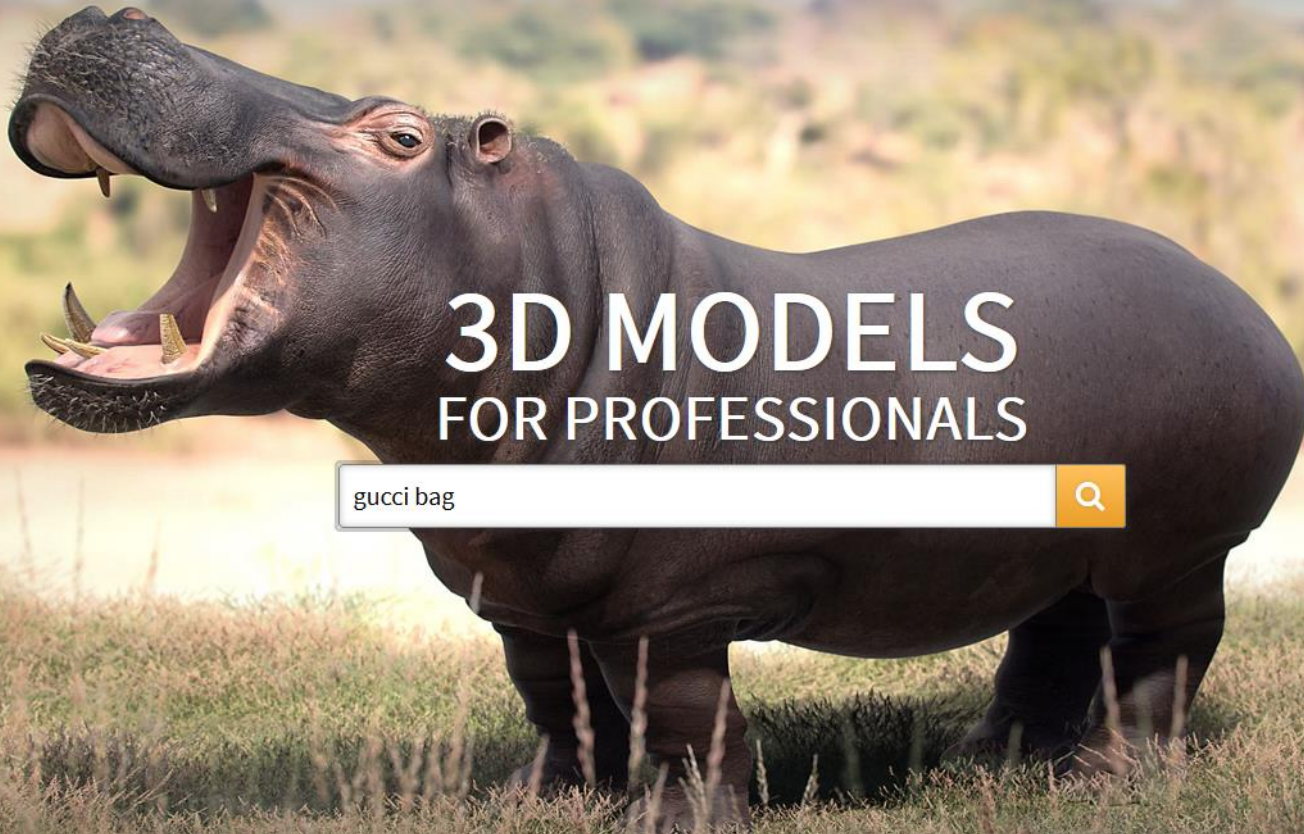
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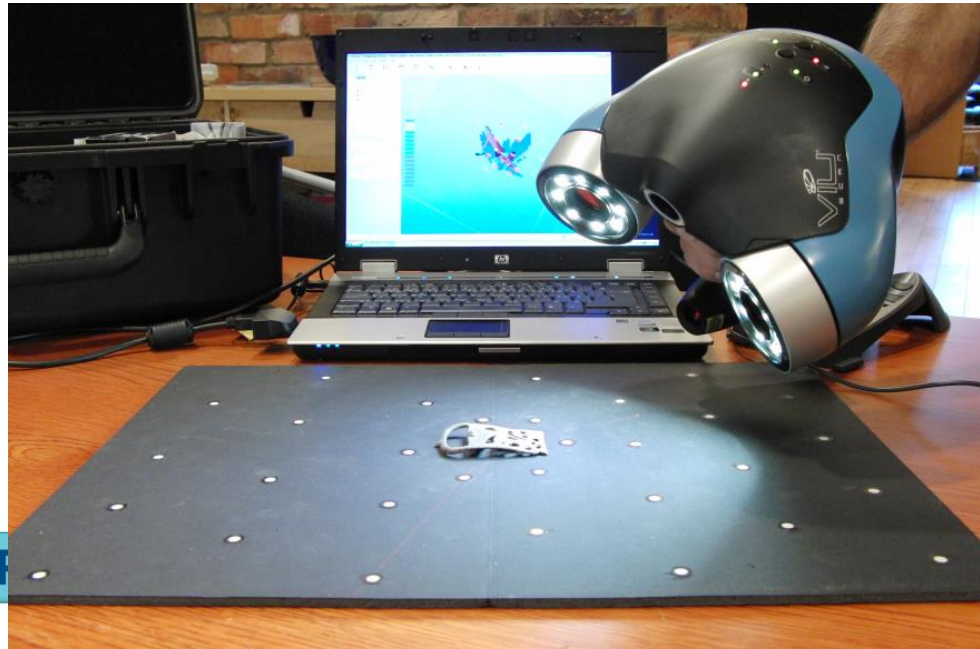
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## IP rights engaged:

- Copyright
- Designs
- Trademarks
- (Unfair Competition = passing off)
- (Patents)

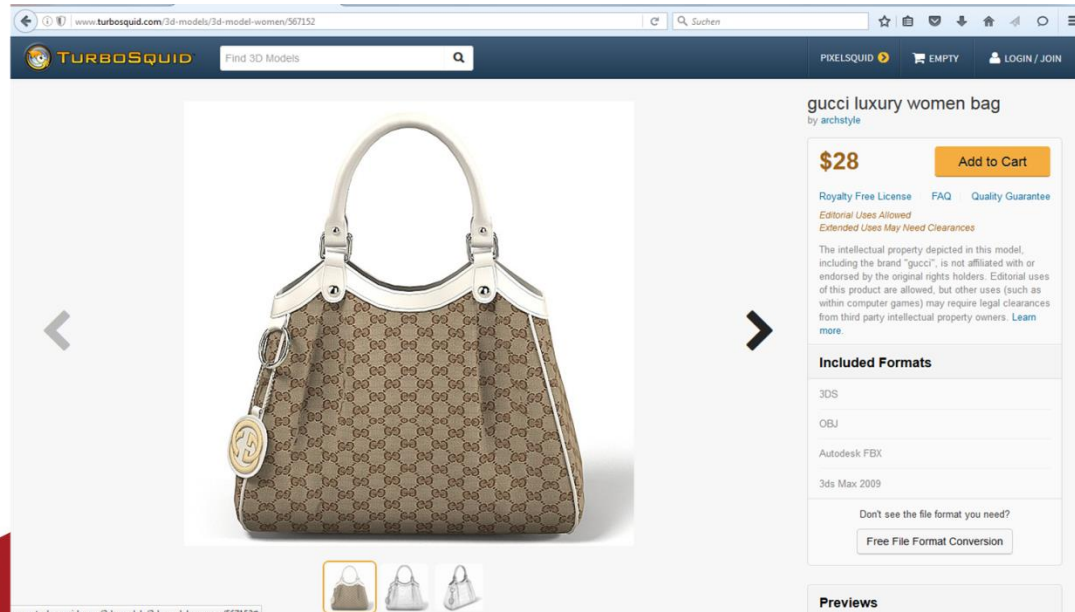
# Possible infringement scenarios

- **Differentiate:**
  - (1) Making of the (electronic) 3D CAD file – “3D scanning”



# Possible infringement scenarios

- Differentiate:
  - (1) Making of the (electronic) 3D CAD file – “3D scanning”
  - (2) Offering and disseminating the 3D CAD file



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# Possible infringement scenarios

- **Differentiate:**
  - (1) **Making of the (electronic) 3D CAD file** – “3D scanning”
  - (2) **Offering and disseminating the 3D CAD file**
  - (3) **Making of the 3D replica** – “3D printing”

<http://www.pcmag.com/media/images/464636-how-to-buy-a-3d-printer.jpg?thumb=y&width=740&height=426>



# Possible infringement scenarios

- **Differentiate:**
  - (1) **Making of the (electronic) 3D CAD file** – “3D scanning”
  - (2) **Offering and disseminating the 3D CAD file**
  - (3) **Making of the 3D replica** – “3D printing”
  - (4) **Offering and disseminating of the 3D replica**

# Copyright

- **Copyright**
  - Copyright **protection** as applied art?
    - **Standards vary** around the world,  
see comparative studies by AIPPI “Q 231” (AIPPI Congress Seoul)





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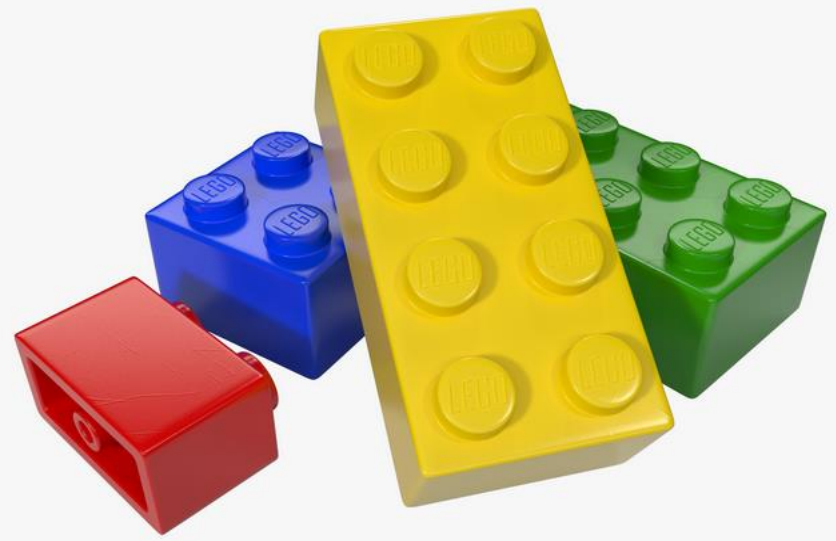
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# Copyright

- **Copyright**

- **Making the 3D CAD file:**

- Private (or other) copying exemption?

- **Offering and disseminating the 3D CAD file:**

- Infringement of right to make available to the public:

- Sharing in P2P networks (+)

- Sharing within family or with close friends (-)

# Copyright

- **Copyright**

- **Making of the 3D replica – “3D printing”:**

- Private (or other) copying exemption?

- **Offering and disseminating of the 3D replica:**

- Infringement of distribution right, if to the public

- Offering on eBay (+)

- Present to close friend (-)(?)

# Design rights

- **Designs**
  - Design **protection**
    - **Registration**
    - Unregistered designs?

# Design rights

- **Designs**

- **Infringement by**

- Making the 3D CAD file (+) (no computer program?)
    - Offering and disseminating the 3D CAD file (+)

# Design rights

- **Designs**

- **Infringement by**

- Making the 3D CAD file (+) (no computer program?)
    - Offering and disseminating the 3D CAD file (+)
    - Making of the 3D replica – “3D printing” (+)
    - Offering and disseminating of the 3D replica to the public (+)

# Trademarks

- **Trademarks**

- Trademark **protection**

- **Registration of 3D trademarks advisable (if possible)**
    - Also other trademarks may grant some protection
      - E.g. wordmark “GUCCI”?





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Previews

# Trademarks

- **Trademarks**

- Infringement by

- Offering and disseminating the 3D CAD file

- Problem: **use as a trademark by 3D CAD file (CAD file)?**

- **No editorial use privilege** for internet offer *of CAD file*

- European and German law: infringement, **even if claim that unauthorized**

# Trademarks

- Trademarks

- Infringement by

- Offering and disseminating the 3D CAD file

- Problem: infringement

- Risk of confusion: Sufficient similarity of handbags with 3D CAD file?

- Gucci etc. can also rely on protection of well-known marks

# What exceptions, if any, to infringement caused by 3D printing exist?

# In the Course of Trade?

- **Designs, trademarks (and unfair competition)**
  - Protection limited to uses “in the course of trade”
  - Private use will not infringe
  - Examples:



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# In the Course of Trade?

- **Designs, trademarks (and unfair competition)**
  - Private use will not infringe
  - Examples:
    - Private sharing on P2P networks will not infringe

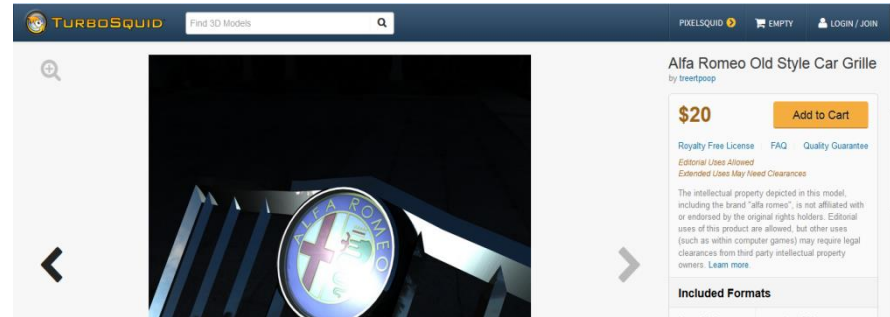
# In the Course of Trade?

- **Designs, trademarks (and unfair competition)**
  - **Private use will not infringe**
  - **Examples:**
    - **Selling on eBay (German case law)?**
      - Private use possible, even if offered to the public
      - Use „in the course of trade“ if repeatedly offering the same and new products (history of the user’s activities)



# Design rights: Spare Parts Exception?

- Can 3D printing of **spare parts** profit from repair privilege (“must match”)?



- **Europe: no harmonization**
  - EU design: no design protection for spare parts
  - Same situation i.a. in Belgium, Spain, United Kingdom
  - German design: design protection for spare parts
  - Same situation i.a. in Austria, Denmark, France, Poland, Sweden

# What are the consequences for your IP strategy due to the threat of illegal 3D printing?

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# Consequences for IP strategy

- In **copyright**, **chain of title** needs to be documented (as usually no registration)
- **Designs** and **3D trademarks** should be **registered**, where possible
- Trademark protection extended to **international class 9** (downloadable electronic files)?

- **What IP rights grants best protection against illegal 3D printing?**
- **What are the gaps in IP protection against illegal 3D printing?**

# Best protection and gaps

- **Copyright** grants **best** protection **(if available)**
- **Designs, Trademarks (and unfair competition)** also work, but only if infringement “**in the course of trade**”. i.e. not for private sharing in P2P networks, not for private offers on eBay
- **Should IP law allow this distinction between commercial and private 3D printing? Or is there a need to legislate?**

# Best protection and gaps

- And last but not least: **Learn from the music and film industry**
- Difficult fight against online infringements if no legal alternative
- Put a **legal offer** of 3D files on the market (if the business model permits it)

# Thank you for your attention.

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