



The Intersection of Intellectual Property Rights and Apparel Law in India: Combating Piracy to Protect Market Innovation.

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The Emergence of Fashion Law in India

Fashion law has been in practice both in-house and in law firms for decades, particularly in France, which is a no-brainer being the fashion capital, where protection of designs has been in place for over a century. We have heard of new terms like Fashion-specific copyrights and trademarks which is a very recent establishment in the field of design industry

. Laws in fashion industry is an emerging field and is developing with time to meet the needs of the creators and developers. While fashion law comprises a variety of legal fields, such as labour laws and advertising laws, it is most commonly studied and administered within the sphere of intellectual property laws, categorically the production of knockoff goods with and without the original brand logo, as well as outright copying of design elements by one manufacturer of another. Without legal recognition and protection of their own on their designs and trademarks, the brands and designers that lead creative and technical innovation in the fashion industry would have a difficult time staying afloat and creativity would be a big issue for them because without good measures and protection of these designs and creations they would be worthless

. A major sign of the augmenting interest in fashion law from across the legal, industrial, and academic spectrum came in 2011 when the New York Bar Association established the Fashion Law Committee to study and comment on a wide range of legal issues associated with the fashion industry. Over the years, organizations like the FLC have promoted the discussion and education of Fashion Laws among law firms as well as fashion businesses and Apparel Industry and have organized panel discussions on subjects as varied as licensing issues, trademark and copyright laws, emerging markets, and the impact of Covid on the fashion industry, among other causes too.

These days, many law schools offer courses and programs in the area of fashion law, and the legal aspect of the industry has become a central part of the curricula of fashion and design schools worldwide.

This is because it is becoming increasingly clear that understanding one's legal rights is essential for success in this field. In India, the field of fashion law is relatively new and has not yet covered all the aspects it needs to. There is still a long way to go. As we all aware the Indian textile Industry has been developing since many years ago and it is continue developing by creating the new innovation, Now day's people attract more towards the trending item and buying unique product that they are not bought before.

In the film industry the actors are using or promote the more attractive product and unique both off and on screen and their fan try to follow their favorite actor which result in the increase of economy. In addition to being a rich source of intellectual property, the fashion industry is continually inventing and pushing fresh concepts and developments. The creative process goes beyond the design phase and include product marketing and advertising campaigns, regardless of whether it is for ready-to-wear or haute fashion. This is necessary in order to achieve the requisite competitive distinction that is necessary for success in the fashion business. It is only very recently that society has accepted fashion as a valid creative activity, despite the fact that it has been around for a very long time and has had a significant impact on significant historical events

. An area of study within the realm of art that focuses on the production of garments and other accessories that are meant for everyday use is known as fashion design. The one who exhibits a creative and artistic tendency is referred to as a designer. The rich visual imagination that fashion designers possess enables them to manifest their ideas and thoughts into clothing, which is a significant feature of their work. The creation of intellectual property (IP) takes place when an individual makes use of their intelligence and creativity to generate a work that is unique, distinctive, or innovative which is a result of their determination and hard work and should be protected at all costs. Intellectual capital is the most important asset that the fashion business possesses, and it is the most valuable asset when it is merged with a distinctive brand identity. IP in fashion industry is very important so that fair opportunities and real competition for creativity can be seen in the market.

A fair and true competition spirit can take the Apparel Industry in India to greater height and better platforms. As fashion is derived from the person intellect and by his creativity thus it is come under the ambit of Intellectual property law. However, a result of counterfeiting, the company that originally owned the item suffers both financial loss and damage to their recognition as well as place in the fashion market. In order to aid in putting an end to such

piracy and counterfeiting, it is now necessary to use or manage intellectual property in an efficient manner which will Enable the creators to enjoy 100% credit and benefits of their original work and hard work. Intellectual property rights are not intended to prohibit copying; rather, they are designed to identify the person who created the work and to provide approbation to the person who is legally the owner of the work.

It is imperious that these stratagem have be implemented and managed in a manner that is more adaptable and in keeping with the "virtual era," which is characterized by widespread counterfeiting that may be difficult to eradicate in the future if the pace remains the same and no action is taken. From the very beginning, fashion designers have a responsibility to make certain that their intellectual property rights are protected and handled in an acceptable manner where there would be less issues and problems for the particular collection. Everyone has the right to have their intellectual property protected, regardless of the size or nature of their creation, as stated in Article 27 of the Universal Declaration of Human Rights.

This protection encompasses the valuable benefits derived from creating artistic, scientific, or creative works. The importance of laws safeguarding intellectual property, overseen by the World Intellectual Property Organization (WIPO), was initially recognized by the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). In India, various acts address different forms of intellectual property. These are as follows: 1. 2. 3. 4. 5. 6. 7. 8. The Trademarks Act, 1999. The Copyright Act, 1957. The Patents Act, 1970. The Designs Act, 2000. The Geographical Indications of Goods (Registration & Protection) Act, 1999. The Semiconductor Integrated Circuits Layout Design Act, 2000. The Biological Diversity Act, 2002. The Protection of Plant Varieties and Farmers' Rights Act, 2001. Intellectual property rights protection in Smell mark: The framework of intellectual property law allows for the implementation of various strategies to protect smell marks.

Trade secrets, trademarks, and copyrights are among the tactics falling under these categories. For a product to qualify as a trade secret under the terms defined by law and corresponding regulations, it must have commercial value, be relatively secretive, and be subject to reasonable measures aimed at preserving its confidentiality.

Trade secrets are rarely protected by federal law in the United States of America on the other hand, the Trade Secrets Directive that was recently proposed by the European Union suggests that trade secrets, which are considered to be intellectual "assets," should be protected "as a supplement" or "alternative" to traditional intellectual property rights (such as patents and kindred mechanisms), rather than being protected as "formal" intellectual property rights in the market. The Cosco tennis ball is one of the landmark case i.e., registered scent brands that is acknowledged the most widely all over the world and is also a landmark case to study too in the field of Apparel law and industry.

In the year 1999, the Community Trademark Office was presented with a proposal that went completely against their expectations of the officers. The office was given the responsibility of evaluating and replying to the query that was made questioning whether or not a tennis ball maker may register the aroma of freshly cut grass as a trademark and whether aroma of the ball can be the basis of granting or considering the IPR.

This was due to the fact that by that point in time, the distinctiveness of the organization's goods had already been established to a significant degree. In the well-known Sieckmann case a trademark application was submitted to the German Patent Registration office in order to obtain protection for a scent that was offered in the form of a chemical formula for the particular matter. The court concluded in the matter that it would be impossible to use a graphical depiction of the chemical formula as a direct identification due to the fact that it lacked clarity, impartiality, and correctness in the scenario. This conclusion was reached after the court conducted an exhaustive review of these criteria given above. As a point of interest, the court came to the conclusion that verbal description was Not admissible throughout the proceedings in the court. There is a degree of equivocal around the inclusion of the phrases "aroma" or "smell" in the definitions of trademark 70 or mark 6 in India. In India, the situation is exactly the same as it is elsewhere. On the other hand, the constraints do not completely exclude the possibility of concealing smell or perfume through the use of disguise in these products.

In spite of this, in order for the scent or fragrance to be eligible for registration under the Trademark Act, it is absolutely necessary for it to be described in writing and graphically depicted as it is unique and discretionary for them. To give you an example, the aroma that is released by washing powder that has a strawberry flavor may be defined as the "strawberry scent emanating from clothing after each wash and it is recognized like that to distinguish it. There are various landmark case laws which show how Fashion Law and IPR are relied upon each other and dependent too on each other in the legal system.

The cases are as follows: 1. PUMA VS FOREVER 21 In March 2017, Puma filed a lawsuit against Forever 21 in a California District Court particularly alleging infringement of Puma's design patent and copyright as per the law. Puma's claims stemmed from Forever 21's alleged replication of Puma's Fenty shoe collection, which includes the Creeper Sneaker, Fur Slide, and Bow Slide, which are famously associated with Rihanna Fenty. Puma claims that certain design elements violate copyright. The Creeper shoe features ridged vertical tooling and grainy texture on the thick rubber outer sole of the shoe and the Fur Slide has a the broad plush fur strap that goes down to the sandal base and the Bow Slide has informally tied fabric bow with pointed ends on a lined side strap that extends to the sandal base are the detailing of the shoe.

2. Louis Vuitton Malletier v. Haute Diggity Dog: This case involves a number of intellectual property infringements between Luis Vuitton Malletier S.A. (LVM), a luxury consumer goods manufacturer known for its Monogram Canvas Pattern Design mark, and Haute Diggity Dog, LLC (HDD), a company that produces parody pet products. Louis Vuitton sued HDD for trademark and copyright infringement for marketing pet toys with names like "Chewy Vuiton" that parodied LVM's luxury products. To prove trademark infringement, Louis Vuitton had to show that it owned a protectable mark and that HDD's use of similar marks in commerce was likely to confuse customers.

To determine the likelihood of confusion, the court considered factors such as mark strength, similarity between marks, and degree of recognition. The court in the end repudiated Louis Vuitton's motion for summary judgment and granted HDD's cross-motion and court found no trademark infringement or dilution in HDD's parody of pet products. This case underscores the complexities of trademark law and the considerations involved in balancing

imitation and trademark protection in the apparel industry as well as the IPR laws. *Rajesh Masrani vs Tahiliani Design Pvt. Ltd.*: This is one of the most important landmark cases of fashion law and IPR in India where the creators actively took the litigation route to safeguard their creativity. As it is an Indian case and a matter of our concern so we would briefly present it here. Facts of the particular case: This case is an appeal against an injunction imposed for prohibiting the distribution and sale of the respondent's print designs in the market and further distribution of the goods. The plaintiff in this lawsuit was Tahiliani Design Ltd., a famous luxury fashion firm in India led by Mr. Tarun Tahiliani, one of India's most well-known fashion designers. Mr. Tahiliani has also received some of the most important prizes in the fashion industry for his notable contribution in the field, and he was the first Indian designer to present his works at Milan Fashion Week too. The appellant ordered sample textiles from the respondent's printing shop and received a CD/DVD with prints that still needed to be completed. The plaintiff believed that the defendant's reproduction of his fabrics, drawings, and prints infringed on his copyright and his rights for the same. The plaintiff argued that the defendant could not have replicated the prints so precisely without having access to his company's work, except for a few elements in a small number of photos. The plaintiff described the replication as "colorable imitation" and comparable to his own artistic craftsmanship" or "artistic works and a close copy of the same too. The one-judge bench confirmed an ex parte ad interim injunction through an appealed verdict in the particular matter. There was a request to revoke According to paragraph 5 of the same complaint, Mr. Tarun Tahiliani and his team meticulously crafted the "print-worthy design" before it was printed. These preliminary prints underwent evaluation to ensure their quality and were adjusted as needed to create marketable garments. These are the few contentions presented by them in the case. Subsequently, samples were sent to potential buyers, and orders were collected based on the designs¹. When assessing design infringement, courts consider various factors, including the overall visual effect of the designs and whether certain features are determined primarily by technical functions or materials. The focus is on artistic works rather than functional aspects². In this case, the court examined the plaintiff's fabric print designs and their alleged imitation by the defendant. COURT OBSERVATION IN THIS CASE: The court examined whether the plaintiff's drawings and patterns were artistic works under the Copyright Act. The plaintiff argued that their designs were artistic craftsmanship. o The defendant claimed that these designs were unregistered and therefore not protected. o The court examined the similarities between the plaintiff's and defendant's designs. The court held that in the case of *Rajesh Masrani v. Tahiliani Design Pvt. Ltd.*, the Delhi High Court held the following: 1. The plaintiff's work was entitled to protection under the Section 2 of the Copyright Act as it was considered an artistic work and creative production. 2. Since the work was an original creation and solely made by the producer, it was not covered under Section 2 (d) of the Designs Act, 2000³. The court clarified any doubts regarding the registration of copyright¹. This ruling is essential to draw attention to the importance of safeguarding artistic creations and their rightful protection under copyright law so that fair and good work can be done, so that our fashion industry can reach new height and cross its legal limitations due to piracy and copying of work. It is essential to safeguard the field of fashion design through intellectual property rights (IPR) as it originated from the human brain and imagination and also our own creativity. Although there is ongoing debate among the public regarding the necessity of IPR protection for fashion designers, there have been calls from academics and individuals in the apparel industry for appropriate IPR laws. Fashion designs are particularly susceptible to piracy, and there are instances where the copies are so exact that they are indistinguishable from the original designs. Alternatively, they assert that the absence of IPR protection motivates fashion designers to introduce novel designs, ultimately driving the growth of the fashion industry. The advocates of IPR security for fashion design recognize that fashion industry is one of the world's most significant inventive businesses. As per them, designs, which are at the core of fashion, are troublesome and costly to make, however moderately simple and reasonable to duplicate. Without IPR, they contend, copyists will complementarily lift on the endeavours of makers, debilitating future interests in new developments, designs and manifestations. They guarantee that IPR for fashion designs would encourage more remarkable development by strategizing that the benefits from a design went to the designer/ original creator and not to the individuals who only replicated the work just for the mere business and replicating the work for their own selfishness and commercial uses. There is a very famous market in Chandni Chowk where all the first copies and exactly same replica of designer stuff can be found and people do purchase from there. It might be a big business for these shops and boutiques but is a serious concern for the designers who spent there day and night to launch the collection in the market. This replication of work ends the line between luxury and reasonable goods and it might be a very amazing concept for the common public but is really a concern for the designer houses as the moment they launch a collection it comes in the market threatening the IPR Rights of these houses and also the replication is done by professionals and if we closely watch and compare the both then there is hardly any difference in the two. Fashion design protection advocates argue that it is becoming increasingly difficult to prevent imitation of creations, especially with the easy sharing of images from runway shows online. They claim that such imitation causes significant harm, which can be addressed through intellectual property rights (IPR). They believe that copying hinders the efforts of emerging designers and companies to establish themselves, making IPR protection especially crucial for them.