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RELEVANCE OF IPR IN FASHION INDUSTRY- Shubham Gehlot¹**ABSTRACT**

The link between fashion and intellectual property law, as well as the numerous legal issues that arise from it, is extensively established. Fashion, like trademark law, primarily comes under the penumbral region where Copyright and Design Law intersect. This raises a variety of issues, including registration under the appropriate legislation, rights sharing, protection against intellectual property theft, counterfeiting, and the problem of knock-offs. This article focuses on the contractual alternatives available to tiny or fledgling fashion houses, designers, and fashion start-ups in preserving the intellectual property hidden in their products, especially in light of relevant Indian and international regulations and precedents. From the standpoint of tiny designers and rising fashion agencies, this article discusses the numerous contracts related to the fashion business, licensing, non-disclosure, agency and distributorship, and lastly, what to bear in mind while creating any such contracts or agreements. Fashion design is a type of art that focuses on the development of garments and other lifestyle items. Fashion designers invest a lot of thought into the outfits they produce. In India, the fashion business has grown dramatically. Hard labor and creativity are required in the creation of clothing and luxury products in this line of business. At the same time, it should safeguard industries from global fashion promotion. Great economic growth and income created demonstrate that this business requires extensive protection of its procedures and designs, which will be completely secured once the designers get patents for their new concepts, which is their absolute right. While it is common knowledge that the fashion business, also known as the garment industry, earns trillions of dollars yearly and employs millions of people throughout the world, fashion's unspoken contribution to everyday life is frequently overlooked. Given the wide range of categories that belong under the umbrella of fashion, it has evolved into a worldwide phenomenon that is globally recognized. Initially,

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clothing and accessories were merely meant to be utilitarian, but in the age of 'beauty gurus' and 'influencers,' fashion has evolved into a representation of self-identity and an expression of aesthetics that goes beyond basic utility. Despite this, it remains a somewhat vulnerable business in terms of legal protection.

Keywords: fashion industry, patent, trademark, copyright, intellectual property rights, design.

INTRODUCTION

The legislation governing the preservation and enforcement of legal rights to inventions, designs, and other artistic works is known as intellectual property law. It's a broad term that refers to a wide range of innovative and creative ideas. India's fashion business is one of the country's most important industries. When anything new comes out, it's frequently followed by copies, prompting the necessity to preserve original work. The fashion sector is growing all around the world. Fashion is defined by its designs, inventiveness, and one-of-a-kind trends. Fashion is more than just clothes; it includes a diverse variety of high-end goods and services.

Each year, the fashion industry produces a new set of designs that require protection from intellectual property rights (IPR). By safeguarding manufacturers from plagiarism and duplication, IPR is critical in protecting their use of aesthetic elements, product characteristics, or prints. The safety of the fashion industry depends on IPR protection.

The fashion industry can only thrive in its true sense if inventors and artists are given protection for their work and are safeguarded from being copied. There are 3 different types of intellectual property rights that have shown to be incredibly valuable to the apparel business. Intellectual property rights include copyright, trademarks, and patents.

Fashion is an artistic expression. Art is a medium for self-expression. Fashion is a trend that affects everyone and defines many people. It is the only industry in which everyone is fully engaged. Fashion, as well as style, will never go out of style. Clothing is something that people will never stop buying. The global fashion industry is a recent concept. Clothing was primarily custom made before the mid-nineteenth century. Handcrafted by craftsmen, they were stunning. Fashion is a popular aesthetic expression in clothes, footwear, lifestyle, accessories, cosmetics, and hairstyles in a particular time and place and in a specific context. Fashion is a distinctive form of expression that is supported by the industry and has a long-

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standing association with fashion seasons and collections.

EVOLUTION OF FASHION LAW

Fashion law is a branch of law, which deals with various Intellectual Property rights, such as Trademarks, Copyright, Patents, and Trade Designs. Susan Scafidi, a law professor in the United States, was the first to offer a course in fashion law in 2008, and since then, the topic of fashion law has been recognised as a unique discipline of law. Despite being a highly specialised expertise, fashion law is a quickly increasing subject with the progress of modern technology.

Fashion was an important component of the French way of life in the 17th century. As part of the trend, less priced copies of the fabrics have been disseminated. Copying has been the most important problem in the fashion industry. The English and French Copyright regimes, which protect fashion designs, are the roots of copyright extensions.

IMPORTANCE OF IPR IN FASHION INDUSTRY

In this competitive industry, it is critical to be knowledgeable of the fashion sector and its standards, such as preserving intellectual property (IP). It is the consequence of using one's mind or intellect to develop something different, new or unique. The fashion industry is a high-IP-intensive business that generates and commercializes new ideas and innovation on a regular basis. To attain the competitive edge essential for success in the fashion business, creativity is not only restricted to the act of creating but also encompasses the running of advertisement campaign and marketing of items, whether high end fashion or ready to wear clothes or garments.

1. COPYRIGHT AND DESIGN IN THE FASHION INDUSTRY

Small-scale shops manufacture duplicate reproductions of famous designers' works and offer them to clients at low costs, resulting in copyright concerns. "The registered design of the owner must be entitled to secure a copyright for the corresponding design for a period of ten year from the date of registration, according to section 11 of The Designs Act 2000." However, from the date of the initial ten-year term, which has ended, a five-year extension might be granted. Because fashion is fluid, the designer has challenges in using the rights that he obtains after registering his

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creations. The copyright plays a major part in the creator's life in order to give value and respect to the creativity and uniqueness of the artwork or design. If any registered design is used without the prior permission of owner, is called infringement, and the person who commits the infringement is subject to penalties under the Copyright Act. Under the Copyright Act of 1952, any artistic creation can be protected for a term of 60 years.

2. TRADEMARK IN FASHION INDUSTRY

The logos, signs, colours, and patterns of well-known fashion labels such as Louis Vuitton, Burberry, Prada, and Gucci have unique logos that are registered under the Trademarks Act of 1999. Louis Vuitton monograms its items with the trademark "LV", while Burberry has the name "Burberry" inscribed together with a checkered pattern as the trademark, giving the product a unique look that distinguishes it from others. "The relevant case of *Burberry Limited vs Target Corporation*, which was brought in the Federal Court of New York, is an example that shows the significance of intellectual property rights protection and how they may be enforced in a way that benefits designers." In the fashion sector, the brand name is extremely essential, and many lawsuits of trademark infringement have been filed. The procedure of trademark registration is simple, and the fee is low, but it does not protect the full product or outfit; rather, it just protects the logo. "The duration of trademark protection and gaining trademark rights is for a period of 10 years from the date of submitting the application, according to section 25 of the Trademark Act 1999."²

3. PATENT IN THE FASHION INDUSTRY

A creator must have an innovation and scientific utility in order to secure patent rights. In the fashion sector, creative work can be protected through copyright, but patentable rights are accessible to people or corporations who come up with technological ideas in order to increase competition.

Individuals and businesses may come up with ideas that would protect their goods and set them apart from their competition in today's environment, thanks to technological advancements. "The tenure for protecting patents and securing patentable rights is for

² The Trademark Act , 1999

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a period of twenty years from the date of filing application, according to section 53 of the Patents Act, 1970."³

OBJECTIVES OF INDIA'S NEW INTELLECTUAL PROPERTY RIGHTS POLICY 2016

India's first national IPR policy appears to be an attempt to strengthen IP protection. On May 13, 2016, the Union Government adopted the New IPR Policy 2016. The government's goal with this strategy is to promote, raise knowledge of, and enforce intellectual property in India.

The New IPR Policy 2016 is well-thought-out, and it establishes the following IPR-related goals.

1. The primary goal of IPR is to raise public understanding about the value of intellectual property in all aspects of society.
2. To take appropriate measures to motivate the production and expansion of intellectual property.
3. To make strong and effective laws governing intellectual property rights that are in compliance with international responsibilities.
4. To modernize and enhance the management of intellectual property.
5. To motivate the commercialization of IP rights.
6. To improve enforcement mechanism and adjudication systems for IP infractions, and also to raise knowledge and respect for IP rights.
7. Capacity development in IP via the enhancement and expansion of human resources, training, research, and skill development institutes.

CHALLENGES POSED TO THE FASHION INDUSTRY IN TERMS OF PROTECTION OF IP

The fashion business lives on innovation, the formulation of new ideas, and the development of new trends. All of them are, without a doubt, the result of human ingenuity. It's a fast-paced industry that constantly reinvents previous trends to produce new ones, many of which go on to become fashion classics and work of art. As a result, protecting intellectual property

³ The Patent Act, 1970

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(IP) rights becomes a need. In the ever-changing fashion industry, intellectual property laws must preserve creative expression. The intellectual capital that enhances a company's position in the fashion business is the value of each industrial design asset and the brand that markets that asset. Face it or not, the fashion business is one of the most swiftly developing sectors, and it's here to stay!

The most major challenge in securing IP, such as many designs seasonally in the fashion industry, is widely noted. The enormous industry is not immune to widespread "imitating" and "counterfeiting" activities, terms having considerably more legal and moral ramifications than the typical individual can realize. As a result, to combat this evil, most legal systems have intellectual property rules in existence. The protection of human intellect's creative and imaginative works is aided by intellectual property law.

Copyright refers to the legal protection of creative literary or artistic work, and it only applies to the creative component of fashion design, not the physical functionality. While the clothing themselves cannot be duplicated, the product design, such as the print pattern, can.

Customers can identify the source of items by using intellectual property trademarks. People's eyes are drawn to the interlocking GG of Gucci and the apple emblem for two reasons: the quick identification of the goods with their source (well-known luxury companies) and the opulent price that a person in possession of such items may have paid. As a result, designers who employ trademark-protected symbols and insignia in their work get an extra layer of protection thanks to trademarks.

When a product becomes unique or takes on a secondary significance, it is protected by trade dress. Tiffany's packaging is robin blue, and Christian Louboutin's famous red sole shoes enable buyers connect directly to the source. In a nutshell, it's their mass-market brand identity.

Any three-dimensional or two-dimensional shape, such as a wallet or a hat, or two-dimensional, such as a textile pattern, is considered industrial design. It has distinct features that give it a distinct physiognomy. Its geometrical shape, aesthetic characteristics, or decoration set it apart from other comparable goods, and it may be used as a pattern to make additional items.

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Patent law and the challenges faced by the fashion industry

A work must have industrial applicability, be original, and be inventive in order to be patented. Patents are not accessible for creative inventions, and patents are rarely granted quickly in the fashion industry. Furthermore, change in fashion trends is so frequent that acquiring a patent is pointless, and patents can cost a fortune until a design can be replicated year after year. On the other side, technological developments may put a fashion house ahead of the competition.

Fashion patents allow creators of designs, products and procedures in the fashion sector different legal rights to their work. As a result, a corporation or inventor can protect their intellectual property rights by obtaining a patent over a new invention. Even while fashion designers have access to a wide range of intellectual property, it is still insufficient.

For instance, there was a recent case involving the fashion behemoth Shein. Shein, which was created in China in 2008, has surpassed Amazon as the most popular shopping app in the United States, while Canada is the fourth most visited country on Shein's website. Shein draws quick fashion shoppers with a wide range of options and low pricing. They also never run out of inventory. Shein adds 500 to 2,000 new goods on their website every day. It's unfortunate, but maybe predictable, that products allegedly pirated and copied from smaller, independent creatives can be found among the constant flood of new trends. Mariama Diallo, the creator of the luxury women's apparel company 'Sincerely Ria,' has made the latest charge that Shein is copying ideas.

Diallo launched a series of tweets on June 11 denouncing the fast-fashion firm for plagiarising her designs and style. She added in a tweet that included a snapshot of her brand's attire next to Shein's, "I'm sick of major companies taking off black designers." " They couldn't alter a thing, and it's now one of their best-selling items." Shein debuted the garment on their website earlier this month, after beginning work on it in early 2020 and releasing it in November.⁴

Similarly, in China, the New Balance brand was embroiled in a legal battle with three shoe makers who had used the same letter "N" from New Balance, the trademark's trademark, on

⁴ [https://en.wikipedia.org/wiki/South_Side_\(TV_series\)](https://en.wikipedia.org/wiki/South_Side_(TV_series)) accessed february 15 , 2023

their athletic goods in violation of their rights. The Chinese manufacturers were penalised around 1.5 million dollars, a significant number given that the punishment was imposed by a Chinese court, reflecting China's greater commitment to improve intellectual property protection in the nation.

As can be seen, intellectual property rights apply well to the fashion industry and must be secured as soon as feasible. It is the only method to provide designers the assurance that their ideas would be properly preserved in a safe and healthy environment.

Although preventing imitation might be difficult, with strong legislation to safeguard intellectual property rights in different countries, risks and losses can be minimized, assisting the sector's and economy's overall growth. The numerous dimensions of IP in the fashion business, as well as any other industry, include copyright, trademarks, and patents. However, there are several obstacles in the way of its execution.

Several Indian fashion designers, notably JJ Valya, Ritu Kumar, and Rahul Bal, have protected their designs.

Trademark law and the challenges faced by the fashion industry

It is safe to say that trademark law has a significant influence on the fashion sector. A trademark is a combination of a logo and a brand. The logo and brand, on the other hand, might be more than just a name. Ralph Lauren, Tiffany & Co., Gucci, LOUIS VITTON, H&M, Calvin Klein, Kate Spade and Chanel, to name a few, are all well-known names that have been registered. The primary goal of registering a trademark is to avoid customer misunderstanding in the marketplace.

The lack to provide intellectual property protection for distinctive designs is the primary reason for the fashion industry's vulnerability to intellectual property law violations. As a result of this, a number of cases has surfaced in which a number of designers have sued for infringement of their fashion designs. In the next section of the article, the same has been described in the form of case laws.

The Trademark Act of 1999, Section 2(zb)⁵– According to this section, a trademark is anything that may be visually represented while also being distinguishable from the services

⁵ The Trademark Act of 1999

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and goods of one person from those of others. This can also encompass the items' various forms, colour combinations, and even their packaging. Furthermore, the trademark law protects even the trade dress, which includes the product packaging. However, the courts have drawn public attention to the fact that product packaging is an essential part of design in fashion garments in a number of cases. The same has been mentioned in the article's last section. The importance of trade dress was also emphasised, since it includes shape, colour combination, graphics, texture, size, and even specific sales approaches, among other things, and so it is protected under trademark law. A trademark is anything else than a brand or a logo. This topic will be covered in the next section, which will include references to numerous case laws:

1. Registration of the Three Stripes by Adidas — Adidas, a well-known sports company, filed to register the Three Stripes. However, the European court had to reject the company's request to trademark its goods even more. The court's ruling was made against the background of growing patent worries in the athletic sector. In its ultimate decision, the court ruled that the distinctive stripes could not be turned sideways.
2. Bettina Liano has obtained a trademark registration for the particular stitching design on its clothing pockets, while Burberry, a well-known British fashion company, already holds trademarks for its iconic Burberry check pattern and the use of the word "Burberry".
3. Is it possible to make a trademark relevant to colour as well?— The case of Christian Louboutin v. Yves Saint Laurent⁶ can be used to better grasp this notion. This is a precedent-setting case that sheds light on the topic of colour trademarking. Christian Louboutin is a French designer whose name has been trademarked in the United States and a number of countries. The court agreed that the colour may be legally branded. As a result, the red colour connected with the shoe has been patented, and the red colour of the shoe can be distinguished from that of Christian Louboutin. This is more of a high-level definition of a trademark. Many other corporations have secured trademark rights for coloured items as well. Ferrari's red, Tiffany & Co.'s blue, and so on are examples of these firms.

From the foregoing study, it may be inferred that a trademark is more than simply a brand

⁶ Christian Louboutin v. Yves Saint Lurent 696 F.3D 206

and a logo; it encompasses a wide range of additional elements, including designs, components, and aspects of fashion clothes.

The Fashion Industry's Challenges with Designs and Copyright

Copyright's main goal is to promote artistic production and expression. This is accomplished by granting creative authority to the work's owner. Once an invention, drawing, music composition, or any other design, creation, or other work has been created, the creator of that work can claim copyright over it. Dramatic, literary, artistic, original, and musical works can all be given copyright. When it comes to the Indian Copyrights Act, 1957, it may be said that fashion designs are protected when they are integrated in artistic works.

Artistic work, according to the Copyrights Act of 1957, can include a drawing, painting, or sculpture. It might even incorporate an engraving or an image.

Section 15 of the Copyright Act of 1954 specifies that copyright does not apply to any design that has previously been registered or has the potential to be registered under the Designs Act of 2000. A key point to remember here is that while the concept cannot be protected, the design of the clothes or outfit can be protected under copyright. In the case of Diane Von Furstenberg's wrap dress, for example, the dress itself is not protectable, but the design of the dress is. The next section will look at some notable fashion industry case laws:

- *Rajesh Masrani v. Tahliani Designs*⁷– In this case, the plaintiffs claimed that the designs created in the course of developing accessories and clothes were creative works under Section 2(i)(c) of the Copyright Act of 1957. Furthermore, the plaintiff claimed that the needlework and printed designs on the cloth were likewise creative work. A single bench judge granted an injunction ruling in favour of the plaintiffs in response to the plaintiffs' arguments.
- *Star Athletica v. Varsity Brand*⁸– The cheerleaders' outfits were manufactured by a corporate employee in this example. Furthermore, he travelled to another nation and designed cheerleading costumes there, which were comparable to those embroidered by the previous firm. This case addressed the fundamental topic of whether a variety

⁷FAO (OS) No.393/2008

⁸ 137 S.Ct. 1002 (2017)

of garment forms and designs may be protected. In this instance, the court held that copyright will not protect the cut of the outfit, it will only protect the design of the garment.

Piracy and its Pervasiveness in the Design and Copyright Industries- It is an understatement to say that piracy is a common occurrence in the design sector. Piracy is defined as the unlawful copying of original designs in simple words.

The following categories of IP are used to give strong protection for fashion designers' designs:

- Designs in classes 03, 05, 02, 10, and 11 of the third schedule are protected by the Designs Act of 2000.
- The colour combination is protected under the Copyright Act of 1957.
- Logo designs are protected by the Trademark Act of 1999.
- Material or fabric used in a design or art is protected under the Patents Act of 1970 and the Designs Act of 2000.

HOW IP ISSUES ARE AFFECTING FASHION INDUSTRY IN INDIA?

The growth of fashion has been aided by intellectual property laws. The intangible innovations of the human mind are governed by intellectual property rights. It is a significant corpus of legislation in the fashion industry because of its potential to protect mental creations. It is a truth that intellectual property rights and the fashion business are inextricably linked. The most important aspects of the fashion industry are a good visual imagination and creativity.

The runway is a platform for designers to exhibit their creativity, generate media attention and promote their designs, despite showcasing only a limited number of designs that may not be readily available in stores. However, acts of piracy and malicious art aimed at defaming The Prophets can have a negative impact on the original designer's work. Therefore, governments should invest in enhancing intellectual property rights to safeguard the intellectual creations of inventors.

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*Micolube India LTD. V. Rakesh Kumar trading as Saurabh Industries &Ors.*⁹

As a trademark, the Plaintiff employed a registered design. According to the Delhi High Court, given the definition of a design under section 2(d) of the Designs Act, it might not be practicable to register the same substance as a trademark and a design at the same time. However, once a design is registered under section 11 of The Designs Act, 2000, the registrants of the design have no restrictions on using it as a trademark. The reason for this is that under Section 19 of the Designs Act, the use of a registered design as a trademark does not qualify as a ground for cancellation. As a consequence of this decision, the scope of protection from trademark in India has been expanded, and fashion designs registered under the designs act are now protected not only by the design act but also by the Trademark Act.

The runway is a significant platform for designers to demonstrate their creative talents, increase media exposure, and build brand recognition. It also enables companies to sell affordable items such as perfumes, cosmetics, and T-shirts with their logo prominently displayed, making IP licensing crucial in the fashion industry. Intellectual property is the most valuable asset in the fashion industry, and while copyright law is often discussed in relation to fashion, trademarks are the most widely utilized form of protection.

*Star Athletica, LLC v Varsity Brands, Inc.*¹⁰, a recent landmark case, is expected to have a significant impact on the fashion industry in the United States. It centers around whether the designs on cheerleading uniforms can be copyrighted and the concept of "separability," which is a prerequisite for a usable product, such as clothing, to be protected under US copyright law. As copyright law does not aim to monopolize useful objects like clothing, only design elements that can be separated from the garment or functional item are eligible for protection in the United States. This has been a point of frustration for American designers since only specific components of their clothing, not the whole garment, are protected under current laws.

With it as a starting point, fashion companies in the United States are experimenting with IP in new and inventive ways. For example, design patent protection is becoming increasingly popular, despite the fact that it is more expensive and time-consuming to obtain than

⁹ I.A. No.11874/2012 in CS(OS)

¹⁰ 137 S.Ct. 1002 (2017)

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copyright protection. In order to protect their trademarks and trade dress, more firms are turning to trademark protection (i.e. the appearance and packaging of their products).

WAYS OF RESOLVING THE ISSUE

Considering the challenges at hand, it's easy to see that, despite the existence of legislative safeguards, most of the time it's the designers who are to blame. Although the legal protection afforded to the fashion business is somewhat limited, designers must be cautious about their products and plan properly. The following are a few strategies for dealing with the problem:

- Under the Copyright Act,¹¹ increasing the threshold limit for commodities produced by industrial application from 50 to a higher number – a number that is commensurate with the increasing population and the fact that production by machine is in trend.
- Amending the laws to hold the customer, as well as the vendor of the counterfeits, responsible. The laws must be created in accordance with international norms, such as those set out by France.
- Making a specific proportion of the infringer's earnings payable as compensation or penalty, similar to the EU GDPR penalties.
- Enforcing IPR rules more strictly, potentially by putting criminal penalties on counterfeiters in addition to the current compensation scheme, so that design theft is mostly, if not entirely, avoided.
- Educating designers on the need of properly preserving their intellectual property in order to avoid future problems.
- Sensitizing and informing the public about the prevalence of counterfeit goods on the market and the negative consequences of utilizing them.¹²

CASE LAWS

- *RITIKA PRIVATE LIMITED vs. BIBA APPARELS PRIVATE LIMITED*¹³

There may be some debate about whether a fashion design, whether applied to cloth or jewellery, is protected by the Copyright Act or the Designs Act. Furthermore, fashion designers prefer to employ the Copyright Act since it offers a 60-year monopoly on a creative

¹¹ The Copyright Act 1957

¹² <https://www.vogue.in/content/making-machines-that-power-india>

¹³ CS(OS) No.182/2011

work, whereas the Designs Act only grants a 10-year monopoly. The Delhi High Court settled the case of Ritika Private Limited vs. BIBA Apparels Private Limited.

In this famous fashion case, the business RITU KUMAR argued that several of its former employees had joined the well-known company BIBA, and thus sought to use copyright to protect its designs under the brand name. The defendant argued that, in accordance with Section 15 (2) of The Copyright Act, 1957, a design that has been registered under The Designs Act is not subject to copyright, and that, in the case of a design that has not been registered under The Designs Act but is "competent of being registered," ownership of the copyright in the design ends once it has been applied to an item through an industrial process more than 50 times.

As a consequence, the Court had to determine whether a design covered by the Copyright Act is likely to be covered by it or if, in accordance with S.15 (2) of the Act, it is not protected by the Act if it is "capable of being licenced" under the Designs Act following 50 applications. Because the Act uses the phrase "capable of being registered," the claim was rejected on the basis that the designs were protected by the appropriate section of the Copyright Act.

Better and more original concepts and works of art have been flooding the Indian fashion industry, and the Indian legal system's IP eco-system is becoming more organised and widespread in terms of its knowledge of current intellectual property protection issues. The fashion industry's enormous breadth, which involves everything from international trade, business and finance, modeling, textiles, cosmetics, apparel, and even footwear, requires careful attention in order to survive.

- *CHRISTIAN LOUBOUTIN V MR PAWAN KUMAR & ORS*¹⁴

The Christian Louboutin case is important because it includes a well-known company known for its exquisite designer shoes dealing with the sale of knockoff goods at a lower price, resulting in a loss of the brand name and the company's financial resources. The Christian Louboutin Red Sole shoes are well-known among celebrities, and customers who want to copy the fashion sense and style of their favourite star are very drawn to the red-colored high-heeled shoes.

¹⁴ 714/2016

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However, as was already mentioned, the original pieces are quite pricey, making them unaffordable for most buyers. Louboutin's brand has positioned itself as a well-known and worldwide leader through the use of media and television. All of Louboutin's designs feature his signature red soles, which set them apart. They are offered through specialised channels and locations. (Louboutin has 120 such stores all across the world and two such stores are there in India, one in Mumbai and other being in Delhi).

The products of Louboutin are covered by trademark rules, and the brand was well-known and well-respected in India before it was formally introduced there. The defendants started selling replicas of the popular red-soled shoe in a variety of colour combinations, some of which featured red soles but different colour schemes for the remainder of the shoe.

The plaintiff, Christian Louboutin, filed a lawsuit in court demanding a permanent injunction and compensation from the two retailers selling counterfeit Red Sole Shoes (Kamal Footwear and Adara Steps). The defendants were ordered to pay a total of Rs. 10.72 lakhs in damages and were permanently barred from selling counterfeits, according to the court's ruling. In his ruling, the judge determined Christian Louboutin to be a well-known mark, a prized badge for any company owner. The successful prosecution of the defendant shoe store owners for infringement of Louboutin's trademark is the finest illustration of how a designer or brand owner has to protect his or her trademark.

- *PEOPLE TREE V DIOR*¹⁵

Recent years have seen a lot of controversy surrounding the People Tree case. Dior, a well-known French fashion house, copied a few designs from the People Tree line, clearly infringing upon People Tree's exclusive ownership rights to its intellectual property. I will analyse the situation in this paragraph and make an effort to highlight the controversial issues as well as any IP rights that could have shielded the aforementioned work from Dior's alleged violations.

When it first started out as a way for creative people to express themselves, Individuals Tree was a socioeconomic group that worked with Self Help Groups in different locations to conduct business. A percentage of the sale proceeds now go to the people who work with them. The issue at hand relates to specific block designs produced by People Tree in

¹⁵ <https://spicyip.com/2018/02/people-tree-v-dior-ip-infringement-cultural-appropriation-or-both.html>
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collaboration with artisans from a specific area of Rajasthan. (the artists at People Tree made the design, who were helped by those artisans who are highly specialised in making such blocks which ultimately were used in the clothes manufactured under the brand of People Tree)

The Geographical Indication of Goods Act may be one such piece of law that can help safeguard such work. The Government of India has issued GI tags to block prints created by craftsmen in several villages in Rajasthan. A GI tag indicates that items from a given geographical area have the right to protect IP from that region. Other firms, such as Fab India, have successfully sold similar items using different skills (which are protected by the GI Act) from craftsmen in other districts of Rajasthan. However, the People Tree's 'dabu' process has no GI protection, a shortcoming that Dior may have exploited to effectively copy the same block prints from People Tree's designs.

The Designs Act, 2000, is a very powerful weapon that might have been used to safeguard People Tree's work if the identical design had been protected by the Authority under the Designs Act. However, if the designs are not registered with the design authority and are used to a product that is replicated more than 50 times, a situation similar to *Ritika Apparels v Biba* would arise, and such a circumstance will not be beneficial to People Tree.

The Plaintiff utilised a registered design as a trademark in *MICOLUBE INDIA LTD. VS. RAKESH KUMAR* business as Saurabh Industries &ors. According to the Delhi High Court:

"Given the definition of a design in section 2(d) of the Designs Act, it may not be feasible to register the same substance as a design and a trademark at the same time."¹⁶ However, once a design is registered under Section 11 of the Design Act, 2000, the registrant of the design has no restrictions on using it as a trademark. The reason for this is because under Section 19 of the Design Act, the use of a registered design as a trademark does not constitute a foundation for its cancellation."

This ruling has increased the scope of copyright protection in India. Fashion designs filed under the Designs Act are therefore covered by both the Trademark Act and the Act.

- *STAR ATHLETICA VS. VARSITY BRANDS*¹⁷

¹⁶ The Designs Act 2000

¹⁷580 U.S. ____ (2017)

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The case that stands out is The Athletica case which deals with a basic question: Is it legal to have a number of sizes and shapes on a piece of clothing? An employee of this firm, which designed nearly all of the cheerleading uniforms in the nation, went to another country and plagiarised parts of his old employer's designs. Copyright infringement was filed against his new firm. Two features of the designs were investigated by the Court. Their design is more utilitarian, such as the uniform cut, as opposed to the patterns and graphics on the uniforms. The Copyright would not protect the cut of the clothes, but would protect the design, according to the Court.

The Division Bench of the Delhi High Court was given the chance to react to some of the issues raised above in *Rajesh Masrani v Tahliani Design*. The Plaintiff claimed in the lawsuit that the designs it generated while producing clothing and accessories were creative works under Section 2(i)(c) of the Copyright Act of 1957. The designs printed and stitched on the cloth, as well as the completed outfits, were said to be creative masterpieces. The plaintiff also claimed copyright infringement in these diverse artistic works, and a Single Judge granted it an interim injunction.

CONCLUSION

A growing sector that boosts a nation's economic prosperity is the fashion business. In the fashion industry, however, the protection of original designs must come first. Various countries have various policies in place to maintain the stability of their fashion industries. These regulations are ultimately intended to stop other fashion competitors from copying unique and cutting-edge fashion designs and products.

The fashion industry has continued to flourish as a result of globalisation and liberalisation, and it is expected to become a key contributor to the global economy. Fashion designers may use registration to protect their original ideas or characteristics from being misappropriated or exploited. Designs and trends receive a significant amount of financial investment before being made public in an effort to boost public interest and business activity. Even though the registration procedure is expensive and time-consuming, it must be followed in order to safeguard future security and stop dishonest rivals from stealing some of the most creative ideas. As a result, when an idea first appears, it introduces a distinctive quality that needs to be secured by intellectual property to prevent plagiarism. In the next years, India is projected to acquire more outsourced and brand-owned stores with Indian partners. Strong economic

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growth, a growing industrial sector, and a rapidly growing IT population are expected to make the country the next great global fashion and textile opportunity. To put it another way, the next big item could be the market in India. As a consequence, the government and laws now call for even more protections and guarantees. Although challenging to eradicate, plagiarism can still be done. If IPR is properly secured, breaking it will be almost impossible.



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