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**SYNTHESIS OF FASHION AND LAW: AN INTERDISCIPLINARY
PERSPECTIVE**- Siddhi P. Joshi¹**Abstract**

The field of 'fashion law' is a post-modern concept, and the globalization of the artistic endeavour has become an indisputable necessity. Though this field is in the early stages of surging into the market, fashion law is not foreign to the Indian jurisprudence. The lack of an exclusive statute analysing the in-depth implications of 'fashion law' has not rendered the field neglected. In fact, it can be interpreted as an opportunity to amalgamate various laws, including but not limited to, Intellectual Property Laws, Competition Law, Contract Law, Labour Law and International Law and Trade into an interdisciplinary curriculum. The confluence of law and fashion is a movement not much anticipated, yet emerging at a significant speed. With a revolution in the cross-border trade, associated with an accessibility of the internet, the field of fashion law is limitless. While analysing the synthesis of fashion and law through a lens of positive introspection, it is also pertinent to evaluate its mischievous consequences. This article analyses the same by evaluating various factors involved. The scope of this article extends from identification of legal elements in the fashion industry to the evaluation of the statutory framework of these elements. The article also encompasses the issues pertaining to the stability of the market while providing a sound legal protection, thus attracting a perception of the competition law. The focus of this interdisciplinary article to draw a nexus between fashion and law, is limited to the designers and their attorneys, within the fashion industry.

I) Introduction

The synthesis of fashion and law is an interplay between two distinctive disciplines. More often than not, relevance of the fashion industry is associated with various intellectual

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property rights. Trademarks, Copyrights and Designs are the most-common intellectual property rights that are correlated with the fashion industry. The statutory protection that is offered by these IP rights are neither sufficient, nor meagre. Therefore, in order to achieve an affinity of these two specialized fields, it would be essential to go beyond the stereotypical coalition of fashion and IP laws.

The layout of this article is built on the foundation of the identification of certain legal components that are woven into the fabric of the fashion industry. Obligation on the part of lawyers predominantly specializing in this industry (of fashion and law), is to ensure a hefty legal protection to all the participating intermediaries, against harm from other parties or persons².

This article, therefore, examines various legal factors that *can* be relevant to facilitate the synthesis of fashion and law

II) Legal elements in the fashion industry

As an emerging specialized field of law, the fashion law industry is subjected to a multitude of legal complexities. Protection of the intellectual property rights being one among them, does not enjoy the exclusivity in this synthesis anymore. The expansion of fashion industry and its accessibility to every person has surely invited a dire need to provide a thorough legal protection to all the intermediaries involved.

At the inception of this alliance, a strong foundation of contractual obligations can prove to be significant. Keeping aside the statutory protection provided by the IP laws and international conventions thereupon, a plethora of agreements flow between all the persons involved in the fashion industry.

Apart from exclusive outlets of the said designer, amode of sale for the products designed and manufactured by these designers, generally occur through the channels of mercantile agents. Franchises of multi-brand outlets by retail entrepreneurs have played a significant role in accelerating the sale and profits associated with them. Moving ahead in association with various retail agents, the designers must ensure all necessary obligations to protect their product and the peculiarity that is allied with it.

²RetnoWulandari, 'Legal Protection of Franchisee in Franchise Contract Which Franchisor Unilaterally Terminates' (2021)18 NORMA.

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Furthermore, the lifecycle of any given product in the industry such as the fashion, needs to be accompanied with an extensive set of agreements – from the designers and/or creators to the vendors, as well as other related intermediaries. This article identifies the legal complexities involving the abovementioned participants, and suggests a way forward towards a well-preserved fashion industry.

The significant growth in the profit ratios of such designers is often backed by certain interrelated factors. To name a few, marketing, outsourcing, presence on e-commerce platforms, are some of them. The common denominator is the legal relation that is established between all the participating intermediaries.

Additionally, the traditional mode of dispute resolution by way of court proceedings is seen to be diminishing due to the increased time intervals in the case disposal. Therefore, the intermediaries in the fashion industry have started using alternative dispute redressal mechanisms such as arbitration, mediation and negotiations. However, to achieve a faster dispute redressal system, what is essential is an agreement providing the same³.

III) Necessity of contractual relations

A legitimate relationship between intermediaries of the fashion industry is established by a compelling contract. A contract of sale of goods, in this case – products designed and effectuated by way of sale, is the most commonly used type of a legally binding agreement. In order to grease the wheels of an effective mechanism of the *fashion law*, establishing contractual relations is required.

An approach towards protection of the rights of designers – whether the intellectual property rights or otherwise, is based on the principle that mere intellectual property laws are inadequate to provide legal protection to all the parties involved⁴.

Thus, identification and implementation of contracts that determine mutually agreed upon obligations can be considered to be a way to overcome the legal issues in fashion industry, that too, effectively. While establishing contractual relations, it is pertinent to identify *which* contractual relations are to be formed.

³ Section 7 of the Arbitration and Conciliation Act of 1996 (26 of 1996).

⁴ Guido Noto La Diega, 'Can the Law fix the problems of Fashion? An empirical article on Social Norms and Power Imbalance in the Fashion Industry' (2018) Journal of Intellectual Property Law & Practice 1.

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Therefore, this synthesis of fashion and law demands lawyers to identify all legal issues involved in smooth operation of the fashion industry.

IV) **Mercantile agents / Franchise Agreements**

The franchise business has helped the economy take a big leap⁵. With that perspective, franchising has helped the fashion industry to a great extent. Under a franchise agreement, rights to sell the products of the franchisor, in this case, the designer, are provided to the franchisee, i.e., the mercantile agent⁶.

This type of business outsourcing has not only helped the designer's network grow, but also secured benefits to the franchisee. This has resulted into a growing trend in the drafting of franchise agreement which is to include a non-compete clause. This provides an assurance to the franchisors in diminishing the competition inside the increased network channels to a great extent.

Having multiple positive as well as adverse outcomes, has called for the fashion lawyers to devise a strong set of rights, duties and liabilities.

V) **Influencer Agreements**

In the earlier times, marketing through channels of advertising agencies or endorsements by persons, was considered to be a credible form thereof. Nowadays, there is a high rise in effective marketing of any products by '*influencers*' who are most prominently active on social media. Such an effective marketing in return has proved to be beneficial for the designers too.

There are two factors that are responsible to this growth. Firstly, accessibility of internet by masses of people; and secondly, the human tendency of desiring the ownership of a particular product upon knowing its popularity. Both these factors are seen fulfilled via social media.

In consequence of that, ironclad legal protection can be sought by procuring various types of agreements. One of such types is an influencer agreement. Since the social media influencers are playing an important role in marketing the products of the designers, it is essential to jot

⁵SiscaFerawati Burhanuddin, 'Franchise Agreement in Civil Law Perspective' (2021) 12(1) Enrichment: Journal of Management 39.

⁶ Finance Act, 1999.

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down the rights, duties and liabilities of all the parties involved⁷. As a matter of fact, the scope of this form of marketing by an influencer can be restricted by an exclusivity clause, to prevent the same influencer from marketing the products of any competitors in the same market, provided it is within the legal framework. This kind of practice is done keeping in mind the interest of the customer. In addition to that, this practice can ensure two-fold protection to the property of the designer- one as an intellectual property right, while other as a contractual obligation.

While justifying the use of 'non-compete' clause or 'exclusivity' clause, a lawyer cannot overlook competition or anti-trust laws. This article has thus interpreted various provisions of competition law that might be relevant to the matter at hand.

VI) **Competition law perspective**

This article has also incorporated a competition law perspective to analyse the involvement of legal stipulations into the functioning of fashion industry. It is not unusual to find the traces of intellectual property laws woven deeply into the fabric of fashion elements; what is unusual is tracing other laws within the synthesis of fashion and intellectual property rights.

However, while including the idea of a fashion and law synthesis, one cannot overlook the impacts that it *may* have upon the healthy competition in the market. The concluding leg of this interdisciplinary article has therefore, investigated the significance of fashion and law through the lens of competition law.

Even though the Competition Act of 2002 has excluded the intellectual property rights from its purview, other elements of the fashion-law industry have the capacity to affect the competition in the market. This article, therefore, briefly enumerates the provisions of the Competition Act that may affect the functionalities of the fashion-law industry.

The protection towards intellectual property rights is sought to protect the innovative capability and the works thereupon, of the inventors⁸. The extra-IP elements, such as contractual relations as identified above, fall within the scope of application of the Competition Law. Therefore, the fashion lawyers, while providing a legal protection of their

⁷ Apoorva Mehta, '5 Reasons you need Celebrity/Influencer Agreements', (*Fashion Law Journal*, 2022) <<https://fashionlawjournal.com/5-reasons-you-need-celebrity-influencer-agreements/>> accessed 13 June 2023.

⁸ Edmund W. Kitch, 'The Nature and the Function of the Patent System' (1977) 20(2) *Journal of Law and Economics* 265, 290.

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clients' rights in every way possible, must also ensure legitimate application of Competition Law.

The Competition Law in India has stated that any agreement directly or indirectly affecting the competition within a specified market, restricted to the Indian jurisdiction, shall be void⁹. In that sense, the drafting of agreements for franchising as well as the influencer agreements that is done by the fashion attorneys, should be done with extreme precaution to not be in violation of Section 3 of the Competition Act.

On that account, protection can be sought under the provisions of Intellectual Property Laws to safeguard the designers from violation by any franchisee or agent. Similarly, while the parties enter into what can be termed as 'influencer agreement', with regards to the craftsmanship of the true owner, inclusion of an exclusivity / non-compete clause cannot be held to be a violation of Section 3 of the Competition Act, provided that such craftsmanship is protected as an intellectual property right.

Another endeavour within the fashion industry that *might* attract the scope of Competition Law is mergers, acquisitions, or as the Act would say, 'Combination'¹⁰. Such combinations are governed by Section 6 of the Competition Act 2002. A combination is said to be affecting a healthy competition in the market, when it is capable of operating independently of the competitive forces in the market¹¹. That being stated, the fashion attorneys should also watch over the application of Section 6¹² of the Competition Act for an effective use of all the necessary legal elements.

VII) Conclusion

This synthesis was articulated by keeping into focus the designers as one of the intermediaries in the fashion industry, and their interaction with the legal elements involved. The 'synthesis' of fashion and law has been advocated by identifying various unusual legal factors within the fashion industry, other than the conventional intellectual property rights.

Throughout this article, while discussing the elements that are involved in the synthesis of fashion and law, various legal elements have been identified. From the Indian legal

⁹ Section 3 of The Competition Act of 2002 (12 of 2003).

¹⁰ Section 5 of The Competition Act of 2002 (12 of 2003).

¹¹ Section 4, Explanation 2(a) of The Competition Act of 2002 (12 of 2003).

¹² 'Regulation of Combination'.

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perspective, effective application of the law of Contract, the law of Arbitration and Mediation, Intellectual Property Laws, have been located.

The upcoming fashion attorneys can rely upon these factors for fulfilling an effective coexistence of the two fields. The article has also laid great emphasis on the provisions of the Competition Act of 2002 to endorse a non-violative way to achieve the said synergy.

In conclusion, this article has provided various options such as creation of contractual relations, alternative dispute redressal mechanism and competition law perspective, that can be integrated with the conventional intellectual property laws, to achieve a better protection of rights to all the intermediaries involved within the fashion industry.



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