

---

**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

---

**FASHION AND INTELLECTUAL PROPERTY LAWS**- Vansh Dua<sup>1</sup>**INTRODUCTION**

*"Fashion is only the attempt to realize art in living forms and social intercourse." —Francis Bacon*

The very definition of "Fashion" captivates our attention. It plays a significant role in our daily lives, and consumers tend to choose well-known brands. We can describe fashion as an art and the most important thing for an artist is that his/her art gets protected. Speaking in Indian context India is a country with many different cultures, and one's clothing says a lot about that culture. The Indian clothing market produces billions of dollars and employs a large number of people. Clothes have crossed borders to become artistic expressions rather than being restricted to practical use. So what makes present fashion different from past, it is the aesthetic and the inventive element which has come into the picture. IPR protection is particularly significant in the fashion business due to the predominance of "artistic elements" over "utility reasons." Certain of the regulations that provide protection in some pertinent aspects of the fashion business is the Copyright Act of 1957<sup>2</sup> and the Designs Act of 2000<sup>3</sup>.

**LEGAL MEASURES SAFEGUARDING FASHION REGULATIONS:**

After a design is brought into life from nothing more than a person's idea, and once its uniqueness is obvious, it falls within the umbrella of "artistic work" for the purposes of Section 13 of the Copyright Act, 1957. "When it comes to designs that have been registered or are eligible for registration under the Designs Act, 2000, Section 15 of the Copyright Act

---

<sup>1</sup> Student at O.P. Jindal Global University

<sup>2</sup><https://copyright.gov.in/documents/copyrightrules1957.pdf>

<sup>3</sup><https://ipindia.gov.in/writereaddata/images/pdf/act-of-2000.pdf>

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

plays a crucial measure in protecting creators' rights. In it, it says that the Copyright Act does not apply to a design if it has been registered under the Designs Act of 2000 and if a design is eligible for registration under the Designs Act but has not been registered, the owner of the copyright or anyone else with license permission may replicate the design after more than 50 identical articles are completed using an industrial method, and the design will no longer be protected.”The case of *Microfiber v Girdhar* is a significant case in this scenario. In *Microfiber v Girdhar*<sup>4</sup>both parties worked in the upholstery-fabrics industry. Despite the fact that Girdhar had largely copied Microfibre's creative work, copyright protection had expired due to the application of Section 15(2) of the Copyright Act. They had been industrially replicated by microfibre more than fifty times. Microfibres did not seek registration for the designs under the Designs Act, hence they were not shielded by intellectual property laws. According to the Copyright Act of 1957, it is illegal to simultaneously register a design for an item and hold copyright over that item.

The next thing which comes is, what is design? A definition of "design" is provided in Section 2(d) of the Design Act, of 2000. The term "design" “as used in this section refers exclusively to the outwardly visible characteristics of an object, such as its shape, configuration, pattern, ornament, or composition of lines or colours, that are added to a product during the manufacturing phase using any industrial process or means, whether manual, mechanical, chemical or a combination thereof. Further the Designs Act 2000 provides a breakdown and explanation of what a” "design" is. The clause states that "a design is anything applied to an object." So, if clothing is created with a unique pattern, it may be considered both a design and an object. On the other hand, if a garment is sewn straight from thought, just the need of a product is met, and not the condition of the design. In such instance, the Copyright Act may recognize it as an "original artistic work," albeit it would not be protected as a design. Due to its nebulous nature, the design idea may be interpreted in several ways.

## CHALLENGES

Only a few segments of the fashion business are eligible for protection. Keeping up with the most recent styles is crucial if you want to succeed in the fashion world. The time investment

---

<sup>4</sup>Microfibres Inc. and Ors. vs. Girdhar and Co. and Ors. (28.05.2009 - DELHC) : MANU/DE/0647/2009

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

is high due to the difficulty of the design registration procedure. Until the developer registers the product, he or she will be unable to make full use of it. If a product's design is duplicated but the fabric and materials used are changed, it may seem that the product has not been copied or infringed upon, making it difficult to pursue legal recourse for piracy. Legal action against infringers becomes impractical when a huge number of illegal copies are mass-produced and sold in a variety of underground marketplaces.

### **SOLUTIONS TO THE CHALLENGES**

Taking into account the problems at hand, it may be possible to comprehend why, despite the availability of legal safeguards, designers are usually to blame. While it's true that legal protection for the fashion industry is lacking, designers still need to exercise caution when releasing new collections and should plan ahead. The following are a few of the solutions to the challenges:

Increasing the Copyright Act's threshold limit for industrially produced goods from 50 to more than that amount, taking into account the growing global population and the widespread use of automated factory methods. Legal reform extends responsibility for the sale of counterfeit goods to those who buy them. The laws should reflect universal norms, such as those established in France. Increasing the severity of the punishment for those who violate intellectual property rights, potentially by including criminal charges in addition to the compensation that is standard practice today, can help to reduce the incidence of design theft and perhaps eliminate it altogether. Educating the public about the risks associated with buying and utilising counterfeit products. The Designers must be made aware of the need to properly safeguard their Intellectual Property in order to forestall any problems.

### **ANOTHER POINT OF VIEW**

According to "The Piracy Paradox: Innovation and Intellectual Property in Fashion Design" a book written by Kal Raustiala and Christopher Sprigman<sup>5</sup> the authors said that within the Indian fashion landscape, the traditional framework of intellectual property rights does not effectively align with the fast-paced and ever-evolving nature of the industry. What makes it

---

<sup>5</sup><https://deliverypdf.ssrn.com/delivery.php?ID=528094093074031107089013068095075027051081060000028091094066065023097064009065067087049101030035000120107085014007122073078070020058046015033066090007021095113065006000035124120002100072075003011097124022075001114100102108097004102087127085074074085&EXT=pdf&INDEX=TRUE>

For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

<https://www.ijalr.in/>

interesting is that they were of the view that on a certain level copying and imitation, commonly referred to as "piracy," can, paradoxically, stimulate innovation and foster healthy competition within the Indian fashion market. They used a meticulous analysis of Indian legal perspectives, economic theories, and pertinent case studies, and emphasized how the presence of copying and imitation in the Indian fashion industry can yield positive outcomes. These outcomes included accelerated cycles of innovation, heightened consumer demand, and a flourishing marketplace.

According to me, it is an in-depth exploration of the unique challenges faced by Indian designers in safeguarding their designs, the limitations of existing legal frameworks, and alternative mechanisms that can be harnessed to protect intellectual property within the Indian fashion sector. The role of branding and reputation can become viable means of safeguarding creative output, but legal reforms hold a very important aspect when dealing with the infringement of Intellectual Property Law.

## CONCLUSION

The fashion business has grown tremendously in recent years, fuelled by liberalisation and aided by good implementation and administration of rules. However, it has been observed that most designers fail to safeguard their intellectual property via legal means and therefore lose a lot of what is at stake. A similar tendency was seen in the Ritika Apparels and People Tree case<sup>6</sup> when the offenders walked free because of a lack of effective security. Despite various laws against unauthorised imitations, piracy and other activities violate intellectual property. Piracy is inextricably linked to the essence of this sector. Those that produce designs and join the market to gain money by creating creative representations suffer much, since their ideas are stolen shortly after they debut.

As a result, it is critical that IP creators be vigilant and work hard to get adequate protection for their work. In addition, the government must analyse the current trend of counterfeiting and establish unique legislation especially relevant to the fashion sector in order to preserve the country's intellectual property and, generally, to enhance the country's economy.

---

<sup>6</sup>Ritika Private Limited vs. Biba Apparels Private Limited (23.03.2016 - DELHC) : MANU/DE/0784/2016