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**UNRAVELING THE COUTURE OF FASHION AND IP LAW:
PROTECTING CREATIVITY IN THE RUNWAY OF INNOVATION**

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ABSTRACT

The fashion industry, a powerhouse influencing culture, the economy, and individual identity, grapples with a pressing challenge: the imperative for robust intellectual property (IP) protection. Despite its immense financial impact and reflection of societal shifts, the fashion world's swift pace presents distinctive intellectual property law challenges. This study explores the significance of intellectual property law in safeguarding creativity within the fashion realm, accounting for its unique dynamics and cultural implications. Fashion law, a burgeoning discipline, tackles pressing issues, including rapid fashion, counterfeiting, sustainability, and ethical concerns. Trademark law, a pivotal facet of intellectual property, assumes a central role in preserving the integrity of fashion brands. Additionally, it encompasses copyright protection for fabric designs and design patents for exclusive apparel. The research paper scrutinises the importance of copyright protection within the Indian fashion industry, specifically focusing on original fabric patterns, intricate designs, and garment sketches. On a global scale, the fashion industry grapples with complex intellectual property issues like counterfeiting and infringement. The paper underscores the necessity for adaptable legal frameworks as the fashion landscape evolves. The interplay between fashion and intellectual property law adapts to the ever-changing context of the industry, with intellectual property rights serving as a vital safeguard for creativity worldwide. In a dynamic world where fashion influences culture and economics daily, the symbiotic relationship between fashion and intellectual property law guards originality, cultural significance, and economic prosperity. This research underscores the importance of a nuanced, flexible, and harmonised intellectual property framework in nurturing fashion creativity and preserving its enduring impact.

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The fashion industry wields substantial influence, serving as a potent cultural and economic powerhouse that extends beyond mere clothing to shape societies and resonate with individuals at personal and societal levels. Beyond its evident financial might, fashion shapes the cultural terrain, mirroring the ever-evolving facets of identities, values, and aesthetics. Yet, beneath its alluring façade lies a critical concern—the imperative for comprehensive intellectual property (IP) protection. The fashion sector's economic significance, global reach, and cultural impact emphasise safeguarding its creative output. At the core of this paper lies a central issue: the urgent need for adequate IP protection within the fashion industry. The transient nature of fashion, characterised by the rapid emergence of trends and collections, presents unique challenges to IP law. This research paper addresses a fundamental inquiry: How can intellectual property law adeptly shield and nurture creativity within the fashion industry while adapting to its distinct dynamics and cultural influences? The thesis of this paper posits that a nuanced, flexible, and harmonised IP framework is indispensable in securing fashion creativity and recognising its multifaceted role as an art form, cultural phenomenon, and thriving industry.

This field has become more well-known as the fashion industry struggles to deal with the difficulties of rapid fashion, counterfeiting, sustainability, and ethical issues². Professionals in fashion law seek to protect designers' artistic endeavours, guarantee fair labour practices, and defend the integrity of companies. To date, Trademark Law has the most significant impact on Fashion. It's the logo or the brand. Additionally, it might not just be a name. Like Kate Spade, Calvin Kevin, Ralph Lauren, Chanel, Gucci, Louis Vuitton, H&M, Tiffany & Co., etc., every excellent brand has a trademark. These brands are all well-known and have registered trademarks.

For example, the United States Court of Appeals for the Second Circuit, in *Christian Louboutin v Yves Saint Laurent*³, held that a single colour can also be used as a trademark in the fashion industry. The highly anticipated ruling is a significant victory for the fashion industry. It

²*The Ethics of Counterfeiting in the Fashion Industry: Quality, Credence ...*, www.researchgate.net/profile/Brian-Hilton-4/publication/227234694_The_Ethics_of_Counterfeiting_in_the_Fashion_Industry_Quality_Credence_and_Profit_Issues/links/0046353ab364b473f9000000/The-Ethics-of-Counterfeiting-in-the-Fashion-Industry-Quality-Credence-and-Profit-Issues.pdf?origin=publication_detail Accessed 25 Sept. 2023.

³ *Christian Louboutin S.A. v. Yves Saint Laurent Am. Holding, Inc.*, No. 11-3303 (2d Cir. 2012)

ensures French designer Christian Louboutin has a valid and enforceable trademark on his contrasting red-soled shoes.⁴

Fashion Law encompasses a fusion of diverse legal domains, including Contract Law, Employment Law, Consumer Protection Law, and most notably, Intellectual Property Law, which stands as its primary pillar⁵. It is a developing area of law that deals with the unique issues and complexities that the fashion industry presents. It covers a wide range of legal problems, including labour regulations that control how employees are treated in the fashion supply chain and intellectual property protection for designers and companies. In a world that is increasingly globalised and where fashion trends and styles disseminate quickly, it is more important than ever to preserve original works and brands; hence, the role of intellectual property rights emerges as pivotal in protecting the inventive assets that define this ever-evolving sector. Traditional management paradigms and approaches must transform as the new knowledge economy appears. Over recent years, India has been actively amending its intellectual property laws to provide sufficient protection for intellectual property owners⁶.

In the fashion sector, intellectual property is crucial because it protects the original and inventive elements of designs, trademarks, and branding. Applying intellectual property law to the fashion sector in India includes copyrights for original fabric designs, trademarks for brand names and logos, and design patents for distinctive apparel designs. Protecting these intellectual property rights becomes increasingly crucial as the Indian fashion industry develops and gains respect on a worldwide scale. A robust IP framework is required because of the issues that the growth of e-commerce and online marketplaces has brought about with trademark infringement and counterfeiting.

In the case of *Rajesh Masrani v. Tahliani Design Pvt*: According to the plaintiff, the sketches created while designing clothing and accessories qualified as artistic works under Section 2(i)(c)

⁴Halperin, Benjamin. "Louboutin v. Yves Saint Laurent: The High Stakes High Heels." *Cowan, DeBaets, Abrahams & Sheppard LLP*, 27 June 2022, cdas.com/louboutin-v-yves-saint-laurent-the-high-stakes-high-heels/.

⁵Trehan, Vidushi. "Demystifying Fashion Law in India - Trademark - India." *Demystifying Fashion Law In India - Trademark - India*, Khurana and Khurana, 1 Nov. 2021, www.mondaq.com/india/trademark/1126284/demystifying-fashion-law-in-india.

⁶Ahmad, Tabrez, and Jaya Godhwani. "Current Trends of Intellectual Property Law in India." *SSRN*, 16 May 2011, papers.ssrn.com/sol3/papers.cfm?abstract_id=1835622.

of the Copyright Act of 1957. The finished garment designs and patterns printed and sewn on the fabric were both claimed to be creative works. Furthermore, the plaintiff contended that the copyrights of these various artistic works had been breached, and a single judge granted the plaintiff's request for an interim injunction. With the courts placing a greater emphasis on the provisions of the Designs Act, 2000⁸, it is said that "design by the designers is protected against exploitation and copying by Section 2(c) of the Copyright Act, 1957"⁹ and the legal requirement of registration, fashion designers should register their designs under the Designs Act to combat unauthorised copying.

Copyright protection is critical in India's fashion sector, preserving original fabric patterns, intricate designs, and meticulously crafted garment sketches. When these elements demonstrate adequate originality and are tangibly expressed, they become subject to copyright law, a robust shield against unauthorised replication and imitation.

One significant case highlighting the importance of the design act in intellectual property rights (IPR) was revealed in the unusual case of Ritika Pvt. Ltd. v. BIBA Apparels Pvt. Ltd.⁹, allowing the defendant, BIBA, to steer clear of responsibility. The dispute arose from the defendant's unauthorised use of the plaintiff, Ritika Apparels', designed to build a design they sold under their label. Ritika Apparels claimed that BIBA had violated its copyright. However, Ritika Apparels didn't register its strategy under the Design Act; therefore, according to BIBA, who invoked Section 15(2) of the Copyright Act, 1957, it didn't constitute an infringement. Additionally, they claimed that Ritika Apparels had forfeited its copyright because the design had been used more than 50 times.¹⁰

The development of fashion law and its symbiotic relationship with IP law in India is slowly catching up to international standards. Indian fashion businesses and designers are increasingly conscious of the need to safeguard their intellectual property. As a result, the number of applications for copyright, design patents, and trademark registrations has increased in the

⁷The Copyright Act, 1957 Arrangement of Sections, www.indiacode.nic.in/bitstream/123456789/1367/1/A1957-14.pdf.

⁸The Designs Act, 2000 Arrangement of Sections - India Code, www.indiacode.nic.in/bitstream/123456789/1917/1/200016.pdf.

⁹Ritika Pvt. Ltd. v. BIBA Apparels Pvt. Ltd., 2016 SCC OnLine Del 1979 : (2016) 230 DLT 109

¹⁰Supra Note, 11

fashion industry. Additionally, Indian courts have begun to resolve conflicts involving fashion with more knowledge, aiding in the growth of jurisprudence unique to this industry.

Fashion law has developed dramatically in economies like the United States and Europe. Fashion-related issues are governed by established legal frameworks in these regions with a wealth of case law. The industry's inventiveness and invention have improved due to fashion designers' more vital trust in their intellectual property rights in these economies. Furthermore, fashion businesses are more adamant about preserving their intellectual property rights, which has resulted in a tighter stance against forgeries and knockoff designs. However, it is nowhere stated that this is unavoidable. – As we can see in *Puma v. Forever 21*, Puma filed a lawsuit against Forever 21, alleging that the retailer stole the limited-edition sneakers that the well-known artist Rihanna created for Puma. In this case, the court ruled that a product does not immediately fall under the purview of copyright production simply because a specific celebrity is involved with or supports it. Copyright is granted based on a design's uniqueness, novelty, and personality. Rihanna was almost unknown since her name was not mentioned in the complaint.

In conclusion, the intricate connection between the fashion industry and intellectual property (IP) law epitomises the remarkable fusion of creativity, commerce, and culture within the fashion world. Throughout this legal paper, we have discovered that fashion transcends mere clothing, wielding its influence to shape societies, mould individual identities, and fuel substantial economic activity. However, beneath the surface of this dynamic and innovative industry lies a pressing imperative—the imperative need for comprehensive IP protection.

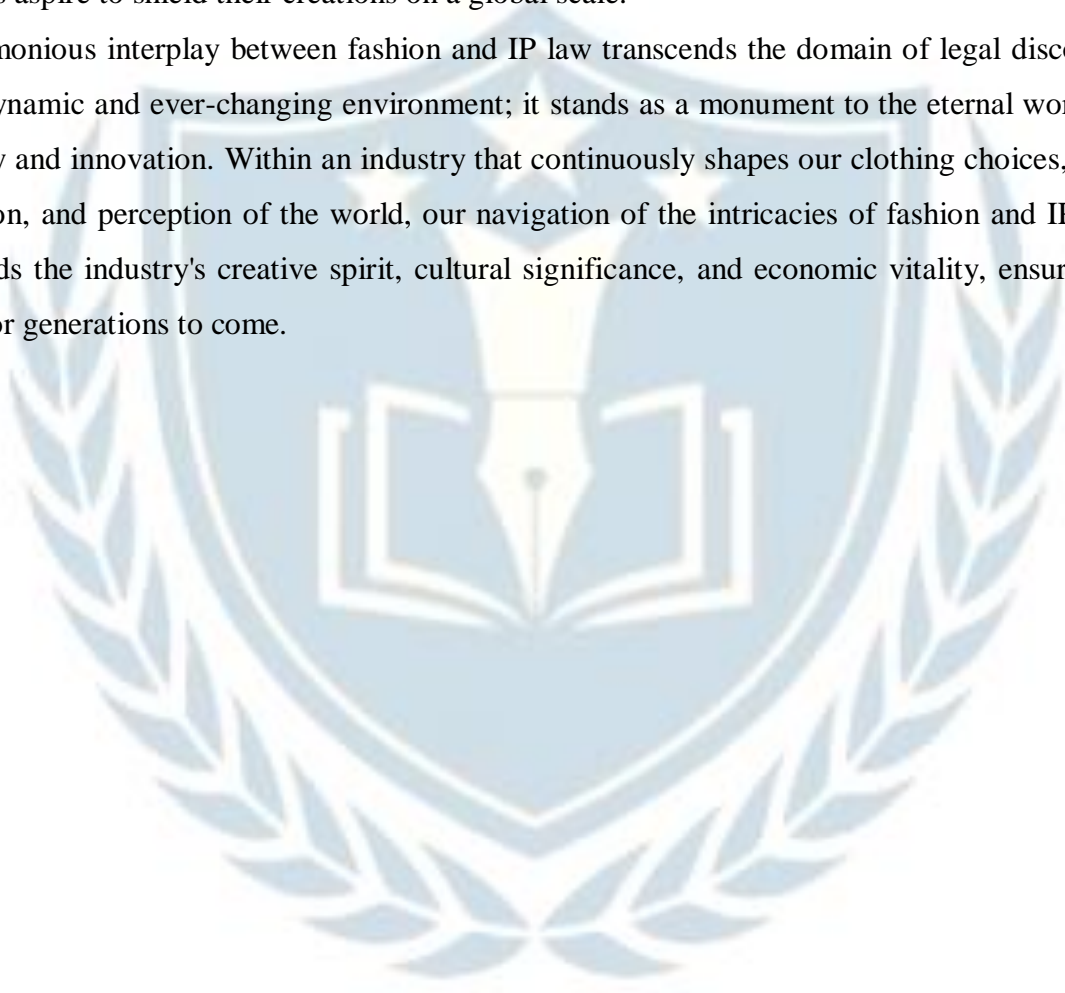
The core argument of this paper has underscored the critical significance of a nuanced, adaptable, and harmonised IP framework. Such a framework is indispensable for nurturing the creativity inherent in fashion while effectively addressing the industry's ever-evolving nature and diverse cultural influences. We have explored this multifaceted relationship through the lenses of copyright, trademark, and design patents, revealing the various strategies employed to safeguard original fabric patterns, intricate designs, and distinctive brand identities and the preservation of non-functional, ornamental elements inherent to fashion.

In today's globalised landscape marked by swift trends and the ascendance of e-commerce, the challenges facing IP protection in fashion have become increasingly complex. Counterfeiting and infringement loom as pervasive threats. Nonetheless, the fashion industry's tenacity and drive to

innovation remain unwavering, with a rising appreciation of the critical role played by intellectual property rights.

As the fashion industry continues evolving, the legal frameworks underpinning it must adapt in tandem. The ongoing development of fashion law and its intersection with IP law mirrors the ever-changing terrain of an industry in constant flux. The role of intellectual property rights within the fashion sector will remain a critical issue, particularly as fashion enterprises and designers aspire to shield their creations on a global scale.

The harmonious interplay between fashion and IP law transcends the domain of legal discourse in this dynamic and ever-changing environment; it stands as a monument to the eternal worth of creativity and innovation. Within an industry that continuously shapes our clothing choices, self-expression, and perception of the world, our navigation of the intricacies of fashion and IP law safeguards the industry's creative spirit, cultural significance, and economic vitality, ensuring a legacy for generations to come.



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