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INTELLECTUAL PROPERTY AND THE FIGHT AGAINST CULTURAL APPROPRIATION IN THE FASHION INDUSTRY - THE LAW AND RULES AGAINST CULTURAL APPROPRIATION UNDER IPR IN THE AREA OF THE FASHION INDUSTRY

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ABSTRACT

In order to address the exploitation of traditional designs and show the shortcomings of the current legal frameworks for safeguarding cultural heritage, this article explores the relationship between the protection of intellectual property (IP) law and the appropriation of culture in the fashion industry. Widespread cultural appropriation has resulted from the lack of sufficient legal protections for marginalized and Indigenous people, as fashion increasingly takes inspiration from many traditional practices. Protecting individual creative works is the main goal of current intellectual property laws, such as intellectual property rights, trademarks, and patents. However, they do not take communal ownership or the social importance of traditional designs into consideration. The study examines how the fashion industry contributes to cultural commercialization by analyzing significant court decisions, including the Navajo Nation vs. Urban Outfitters case and disputes over the usage of traditional symbols in fashion. The paper advocates for legal reforms incorporating cultural sensitivity into intellectual property laws, emphasizing the need for collective IP registration and consultation with cultural representatives to ensure fair compensation and prevent the unauthorized use of culturally significant elements. These cases demonstrate how the fashion industry frequently exploits traditional designs without recognizing their cultural value or compensating the communities from which they originate. This approach aims to create a more **inclusive** and **ethical**industry, ensuring that the voices and cultures of indigenous and marginalized communities are valued and protected within the global fashion landscape.

KEYWORDS

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Intellectual property (IP) law, Cultural appropriation, Fashion industry, Cultural heritage, Indigenous communities, Marginalized communities, Cultural commodification, Creative expression, Inclusive, Ethical industry[2].

INTRODUCTION

Intellectual property is one topic I regularly teach as a business professor and attorney in order to promote sensible business management. Even more valuable than the actual material assets that a firm possesses is its intellectual property. However, first, what are intellectual property and intellectual property law, and why are they important?[3]

1.1 INTELLECTUAL PROPERTY: WHAT IS IT?

Intellectual property (IP) is the umbrella term for the intangible creations of human mind. The legal systems of many countries recognise and protect intellectual property in different ways, and it can take many different forms. For the sake of simplicity, this article will only discuss American legislation that deal with this topic; that is, trade secrets, copyrights, and trademarks, which are all considered forms of intellectual property under US law.

1.2 INTELLECTUAL PROPERTY RIGHTS' SIGNIFICANCE

A closer look at the concept of intellectual property shows that its influence goes beyond concept defence. Essentially, producers or inventors are granted exclusive rights by intellectual property laws, allowing them to make money off of their ideas. Intellectual property rights create an environment that encourages innovation and creativity.

Our analysis of US laws revealed that they protect four primary forms of intellectual property: patents, copyrights, and trademarks.

Patents

An original creation, whether it be a technique or a physical product, can be protected by a patent, which grants its owner the legal authority to bar others from using it for a set amount of time. Patents are a crucial source of competitive advantage in some industries, but they might not have much of an impact on others. Not every concept is worth pursuing because patents can be costly to acquire and maintain. To

[2] Brittaney Kiefer, 'Cultural Appropriation: Don't be an invader', (Campaign, 19 February 2020) accessed 27 November, 2021
[3] Jon Pareles, 'Chuck Berry, Rock 'n' Roll Pioneer, dies at 90', (The New York Times, 18 March 2017) accessed 05 December 2021.

inform the rest of society about what is being claimed and protected, the inventor or owner must file and publish a complete disclosure of the invention and all of its details when filing for a patent.

Trademarks

A trademark protects a term, phrase, sign, or design that marks and distinguishes a single individual's or entity's products or services from another. The two main types of trademarks are service marks and trademarks. While trademarks are used to identify things, service mark designations are used to identify services, as their names imply. In contrast to the Nike "Swoosh," which is a trademark, the McDonald's "Golden Arches" are considered a service mark. But They are all covered by the same legal protections.

Copyright

The exclusive right to reproduce, distribute, alter, display, or perform an original work of art is granted by copyrights. The creative endeavour may take the shape of literature, art, music, or instruction. Examples include songs, books, essays, pictures, paintings, sculptures, play and movie screenplays, and other artistic creations. You can be secured through copyright laws in the US without registering your creative works before the US Copyright Office, as opposed to patent protection, which is automatic.

2. CULTURAL APPROPRIATION

The use of elements of a culture by those who are not part of that community, usually for financial gain, without understanding or respecting its significance is known as cultural appropriation. "Historical appropriation" is a vague term. The following definition describes the act of a member of a relatively dominant culture reusing a traditional cultural expression in an entirely novel setting without consent, acknowledgement, or compensation in a way that is detrimental to the holder or holders of the traditional cultural expression.

In the context of fashion, cultural appropriation is the term used to describe the adoption or usage of aspects of one culture by people from another, frequently without due respect, understanding, or acknowledgement. This becomes an issue when prevailing cultures turn marginalized groups' symbols, customs, or fashions into commodities, frequently turning them into passing fads.

The following are some instances of cultural appropriation in fashion:

- African or Non-Native American designers' usage of traditional indigenous patterns or clothing (such as African prints or Native American headdresses).
- Using religious or symbolic objects as accessories, such as turbans or bindis, frequently without realizing their cultural or religious significance.
- Commercialization of handicrafts or traditional apparel, which are thereafter offered for sale without giving the original culture a fair price.

2.1 THE FREQUENCY OF CULTURAL APPROPRIATION WORLDWIDE

The phrase "cultural appropriation" was initially used in discussions and disputes about multiculturalism and globalism in the twentieth century. However, the problem had been acknowledged in the United States decades earlier, when Harlem Renaissance writers condemned the satirisation of African American voices, customs, and culture in entertainment such as minstrel shows. American singer and songwriter Chuck Berry, the father of "Rock and Roll," was declared the King of Rock in 1977 by the African American newspaper "Chicago Defender," challenging the title of the famous cultural appropriation case study Elvis Presley, who is also known as "The King of Rock and Roll." The journal adamantly thought that Elvis Presley and a number of his peers had stolen black music, passed it off as its own, and profited from it in a racist, segregated society. In 2019, the British a global company retailer marked & Spencer faced criticism and accusations of cultural theft for referring to their vegan wrap as "biryani" despite completely ignoring the key ingredients of the common Indian cooking and even spelt it horribly wrong as "biriyani." The popular phrase "Hakuna Matata," believed to be a regionally adapted Swahili idiom, is often quoted in Disney's Timon and Pumba. Numerous online users in 2018 started an online petition accusing Walt Disney Company of "colonial rule and robbery" and condemning its acquisition as an act of cultural appropriation, years after the company was granted a trademark application for this phrase.

Despite the fact that Disney was not held legally responsible for this incident, many campaigners thought the trademark was "an attack on the Swahili language and African as a whole.".

In this case, the behavior was viewed as a kind of stealing and making money, regardless of whether the trademark was legitimate under trademark law and didn't effectively prevent anybody else beyond using the term (except from selling t-shirts). But these folktales and cultural manifestations haven't gotten the attention they deserve. They merit, as demonstrated by the many examples of international businesses, brands, and Indian culture is being misappropriated by people. The source community is not only

deprived of their legitimate advantages, but it also creates the conditions for harmful preconceptions to persist. As an example, in the world saw Christian Dior, one of the most prominent fashion designers, in the 2018 People Tree v. Dior lawsuit.

Companies all over the world, copying the layout and artwork of a tiny Indian art collective business called An Indian actress wore a block print design called "People Tree" in the Indian edition of Elle magazine. "People Tree" would need to prove that their creative work is a representation of an idea in order to pursue IP remedies for this egregious plagiarism and to prove infringement. They would then need to demonstrate that there had been a significant instance of that original work of art being copied, which would ultimately constitute a violation of their exclusive economic rights guaranteed by copyright law.[4]

3. MAIN LINKAGE WITH IP AND CULTURAL EXPRESSION PROTECTION

Designating cultural expressions and iconography as Traditional Cultural Expressions (TCEs) is the most effective strategy to preserve them. "Tangible and intangible ways in which traditional understanding and cultures have been expressed, communicated, or manifested" is one definition of TCEs. TCEs can be any kind of creative or cultural expression, including choreography, songs, designs, handicrafts, stories, ceremonies, and more.

The typical method Knowledge and Folklore, the WIPO's Interdisciplinary Council on Intellectual Investments and Genomic Resources, developed this idea and added two additional forms of protection for TCEs. Second, "Defensive Protection," which provides a set of tactics to help prevent third parties from acquiring illegal intellectual property rights over cultural expressions, and "Positive Protection," which aids in preventing others from acquiring illegitimate rights to psychological property over cultural expressions. It is evident what kind of protection is acknowledged and offered under the purview of TCEs, and according to WIPO, TCEs have exclusive jurisdiction over legal and policy-related issues within the field of intellectual property law. separate from the purpose of the invention) and trademarks (as long as they are unique and do not expire), give creative fields the to safeguard their works and creations

In addition to what is offered by general IP legislation, a number of countries are currently making the transition to create a protected realm and framework for TCEs. It is commonly known that traditional techniques, acts, and depictions cannot be adequately protected by the exclusive licenses provided by IP

[4] Harshita Murarka, 'Dior and People Tree reach settlement after plagiarism row', (The Quint, 29 May 2018) accessed 11 December 2021.

laws. Creative sectors have the right to protect their works and creations thanks to existing intellectual property laws like patents (if they are unique, imaginative, and distinct from the the earth's function) and trademarks (if they are dormant and distinctive). However, TCEs' features have often been shown to defy the traditional definitions and scope of other forms of creativity, which begs the question of whether the existing IP regulations are adequate to safeguard TCEs. "The taking of ideas, intellectual property, cultural artefacts, facial expressions, history, and methodologies for knowing," typically from indigenous or minority communities, without their permission, input, credit, or payment, is known as cultural appropriation. Researchers in the fields of law, culture, and academia have defined cultural appropriation as the act of someone from one culture "taking" cultural products—whether material or immaterial—from another without giving credit, permission, or payment. The takers or appropriators may face legal repercussions and sanctions for engaging in unlawful appropriation. In essence, cultural appropriation is "permissible inspiration," which has been a recurring theme for big fashion businesses in recent years. In the Star of Athletica, LLC v. Varsity Brands, Inc. case, the US Supreme Court ruled that fashion designs are copyright protected provided they are distinct and "worthy of existing independently" of the practical product in which they are incorporated. Though the overall impact of the verdict is still being assessed, the Supreme Court's recognition of some type of design protection will open the door for Aboriginal creations to be maintained as well, providing they meet the other standards for getting IPR protection.

CONTEXTUALIZING THE ISSUE

As fashion designers and corporations take inspiration from a diverse array of cultural symbols, customs, and practices, the topic of cultural appropriation has grown more contentious. High-profile instances of cultural appropriation in fashion have provoked criticism in recent years, with many accusing businesses of undervaluing the cultural significance of traditional clothing, indigenous art, and religious symbols. Concerns regarding the morality of using cultural elements without permission, understanding, or acknowledgment have been raised by, for instance, the commodification of African patterns, the use of Native American headdresses in fashion shows, or the representation of religious symbols like the hijab or bindi as fashionable accessories. The lack of acknowledgment of the cultural significance ingrained in these patterns is sometimes the source of controversy. For the communities from which they come, cultural symbols and customs—which were frequently handed down through the generations—have profound spiritual, historical, or social meaning. However, when global fashion brands commercialize these cultural elements, they often lose their context, which can result in accusations of exploitation.

Additionally, the communities from which these cultural components borrowed hardly ever profit financially or in terms of their reputation, which adds to the sense of injustice that is rising. [5]

The insufficiency of the intellectual property (IP) rules, which have historically placed more emphasis on preserving individual inventiveness and originality than on community cultural ownership, exacerbates this problem. Because of this, communities are left open to exploitation as traditional cultural expressions—like indigenous textile develops, rituals, and holy symbols—frequently lack protection under current legal systems. Both socioeconomic and cultural harm can emerge from fashion brands' unrestricted use of these cultural components without acknowledging or compensating the backgrounds from which they originate.

3.1 WHY IT'S RELEVANT: THE NEED FOR ADDRESSING CULTURAL APPROPRIATION IN FASHION THROUGH IP LAWS

For a number of reasons, including moral considerations as well as the wider effects on ethnicity and the fashion industry, it is imperative that appropriation of culture in fashion be addressed by IP laws.

1. **Ethical Concerns**: At the core of the issue is a fundamental ethical question about respect and fairness. Cultural appropriation in fashion is often rooted in a power imbalance, where dominant cultures take from marginalized cultures without permission, context, or acknowledgment. This leads to the exploitation of cultural heritage for financial gain, while the original creators or communities are left out of the conversation and the profit. By adapting IP laws to protect cultural heritage and traditional designs, it would create a more just framework where these communities are respected and compensated for their contributions.[6]
2. **The Globalization of Fashion**: Fashion has become an increasingly globalized industry, with trends and designs circulating rapidly across borders. 1. Cultural appropriation is now a worldwide phenomena rather than a local problem due to the ease of access to international marketplaces. The lack of safeguarding legislative measures exacerbates the issue of fashion

[5] Sari Sharoni, 'The Mark of Culture: The Efficiency and Propriety of Using Trademark Law to deter Cultural Appropriation', (2016) IP Award-winning paper, Stanford Law School, 4 accessed 13 November 2021.
[6] https://www.wipo.int/en/web/wipo-magazine/articles/curbing-cultural-appropriation-in-the-fashion-industry-with-intellectual-property-40880

designers from around the world appropriating traditional emblems from marginalised and indigenous populations. To prevent the exploitation of cultural heritage in a globalised economy, IP law reform is required to guarantee that cultural aspects are acknowledged and safeguarded internationally.

3. **The Commodification of Culture:** Although fashion has historically served as a platform for artistic expression, the growing commercialization of culture raises questions regarding the morality of exploiting cultural icons for financial gain. When traditional cultural aspects commodified outside permission or understanding, we lose their fundamental value. Cultural identities may become diluted as a result, and the background and context of these creations may be lost. By addressing the appropriation of culture through intellectual property rules, cultural expression are protected from becoming commodities. Additionally, it would give underprivileged groups the resources they need to protect their cultural legacy and stop illegal usage for profit.
4. **Economic Justice and Fair Compensation:** Traditional cultural patterns were frequently exploited in fashion without providing the people from whom these elements originate with any monetary or social compensation. While Indigenous or marginalized populations receive little financial benefit, fashion corporations that copy ethnic designs can make enormous profits. To ensure that these communities receive credit for their cultural and intellectual contributions, IP rights for cultural aspects could grant them the authority to license or regulate the use of their symbols.
5. **Fostering Inclusive and Respectful Fashion**: Finally, enforcing IP rules to combat cultural appropriation would foster more inclusive and respectful fashion practices. By ensuring that consumers respect the cultural value of the items they use, designers would be forced to interact with civilizations in a meaningful way. Additionally, it would offer a chance for cultural exchange as opposed to exploitation, encouraging equitable and respectful cooperation with cultural communities.

Thesis statements

Despite being a vibrant arena for invention and creativity, the fashion industry has come under increasing fire for cultural appropriation, which is the practice of designers and corporations using aspects of indigenous or marginalized cultures without their consent or proper recognition.

This paper delves into the limitations of current intellectual property (IP) laws in preventing cultural appropriation and protecting traditional cultural expressions within the fashion industry. Existing IP

frameworks, including copyrights, trademarks, and patents, primarily safeguard individual creators' designs, yet they often fail to address the collective nature of cultural heritage, and the deep cultural significance embedded in traditional designs. As a result, marginalized communities and indigenous groups are left vulnerable to exploitation by global fashion brands who profit from their cultural elements without any recognition or compensation.

Focus of this research

Explore how current IP laws do not adequately prevent the use of culturally significant symbols, textiles, or designs by fashion brands, which often leads to commodification and misrepresentation of these cultural elements. This study attempts to show how the lack of legal protections permits the exploitation of traditional cultural manifestations by an examination of court cases, such as the Navajo Nation's lawsuit against Urban Outfitters and the debate surrounding the usage of holy symbols in fashion. The study will evaluate the weaknesses in the existing intellectual property rules and investigate how these inadequacies fuel a larger cultural injustice. Additionally, this paper will suggest changes to IP law that can better protect cultural heritage, especially by acknowledging that artistic designs and symbols are collectively owned. These changes would guarantee that marginalized and indigenous groups are fairly compensated and give them a voice in the use of their cultural manifestations. The study will also look at how cultural sensitivity may be incorporated into intellectual property frameworks, recommending that before using cultural components in their designs, fashion brands interact with communities and obtain fair use agreements.

In addition to pointing out the shortcomings of the current IP framework, this study aims to offer workable changes that will guarantee a more moral and inclusive fashion sector. This study attempts to strike a balance between the necessity of respecting and preserving the cultural identities and intellectual property of marginalized groups and the need for creative expression in fashion by suggesting legal reforms. The article argues for a more equitable fashion industry that acknowledges cultural history, encourages equitable remuneration for cultural contributions, and fosters a deeper sense of cultural responsibility and awareness through these suggested reforms.

4. PROTECTING INTELLECTUAL PROPERTY TO PREVENT CULTURAL APPROPRIATION IN THE FASHION SECTOR.

The public outrage after multiple accusations of cultural appropriation is predicted to cause a major shift in the fashion industry. Fashion designers are being asked all around the world to make products that respect the traditions of other cultures and to be careful when stealing from them. Intellectual property (IP), despite the vagueness surrounding the term "cultural appropriation," undoubtedly contributes to the prevention of this harmful practice.

"Cultural misappropriation" is a vague term. It is the act of an affiliate of a relatively dominant culture repurposing a traditional expression of culture in a different setting without acknowledgement, payment, or permission.[7].

4.1 A FASHION CULTURE OF COPYING

Many instances of cultural appropriation can be explained by the extensive usage of copying in the global fashion industry. Despite fashion design's extraordinary level of invention, imitation remains a crucial component of the conceptualisation process. Customers' desire for constantly changing designs was sustained by rapid copying, a condition that many detractors call the "piracy paradox." In order to maintain a steady stream of fresh and inventive looks, designers are inclined to embrace a global perspective and try out a greater range of cultural influences because high fashion is quickly yielding way to fast fashion.This is not a novel situation. For generations, designers in clothing have been incorporating parts of different cultures into their designs. Beginning in the late Middle Ages, foreign styles began to influence European dress. Rich merchants throughout the Old Continent were introduced to new fashions and high-quality textiles by the growth of trade with North America and Asia, particularly through the Silk Road. By adding patterns and themes from cultural traditions into their designs, designers are stoking a desire for anything that is traditional, ethnic, or folkloric in the early 1990s. Traditional designs still have a lot of charm nowadays. Fashion magazines are filled with articles of apparel and accessories that have a distinctly "ethnic" feel.[8]

5. WHEN THE ACT OF OBTAINING INSPIRATION IS HARMFUL

Fashion designers around the world are obliged to respect other cultures' customs when they draw inspiration from them. Unfortunately, some traditional cultural expressions—such as the pe'a, an outdated

[7] https://www.wipo.int/en/web/wipo-magazine/articles/curbing-cultural-appropriation-in-the-fashion-industry-with-intellectual-property-40880

[8] Chavie Lieber, 'Dior pulls 'Sauvage' Campaign after facing Appropriation backlash', (Business of Fashion, 31 August 2019) accessed 09 December 2021.

Samoan male tattoo—are appropriated by designers and used in ways that disregard or misinterpret their cultural importance, which is extremely detrimental to the people who possess them. Unfortunately, there are times when designers take old cultural expressions and reinterpret them in ways that disregard or misinterpret their cultural significance, which is extremely detrimental to the people who own them. Even unintentional injury can have significant financial, social, and cultural effects.

Instead of only being fashionable or functional, many traditional garments have deeper meanings and are an essential component of the identities of the Indigenous communities that wear them. Because of this, an organization's sense of identity may be weakened if designs are copied without taking into account their underlying cultural significance. Furthermore, colonisation typically leads to cultural appropriation, which maintains historical exploitative and dispossessed systems and widens already existing rifts. Additionally, many Indigenous people and local communities rely on the production of traditional clothes as a source of income; as a result, cultural appropriation can inflict a severe economic blow, damaging communities' ability to earn a living by dislodging the sale of authentic goods. For example, in 2015, the UK fashion brand KTZ created a men's jumper that cost more than USD 700 and included an ancient Inuit parka pattern. KTZ apologized for the unintentional offence and took the sweater off the market after complaint, but they made no financial offer to the Inuit group who created the traditional jacket design.

6. A COMPLICATED LEGAL AND POLICY FRAMEWORK

Much traditional clothing, such as the clothing worn by the Guna people of Panama (above), has value and is an essential component of the identity of those from indigenous communities that wear it. Many of these people earn a living by producing traditional attire, therefore cultural appropriation can reduce their ability to earn a living by displacing the sale of authentic goods. Cultural appropriation causes a great deal of controversy since it is tied in a complicated web of the legal and policy issues. To begin with, not all forms of cultural borrowing are harmful. In a multicultural society, defending the freedom to free expression and refraining from interfering with normal cross-cultural encounters and exchanges are essential. The situation is made more difficult by the reality that artistic theft is not usually defined by law and exists in an area of uncertainty where legitimate inspiration could be transformed into harmful appropriation. In WIPO's program of work on intellectual properties and regular cultural expressions, which includes the WIPO Intergovernmental Council (IGC) agreements on maintaining the rights of conventional that cultural expressions, the definition of "that cultural appropriation of something" may or may not overlap with the concepts of misuse or misuse at its core. The degree of confidentiality that

WIPO's member nations choose to enact will determine this. Much more has to be done in the interim to demystify the concept and inform fashion designers and the general public about the risks associated with cultural appropriation.

7. IP PROTECTION FOR CULTURAL EXPRESSIONS THAT ARE TRADITIONAL

Cultural appropriation is undoubtedly linked to the shocking interactions that traditional cultural representations still have with the global intellectual property system. Ancient cultural expressions are generally left in the public domain and unprotected by contemporary intellectual property rules, making them vulnerable to appropriation and jeopardising the customary norms and regulations that control their use and access within their customary setting. The WIPO report The Defence of Intellectual Property Rights provides a comprehensive examination of the shortcomings of IP law, particularly copyright, in effectively stopping the unauthorised use of traditional cultural forms. The traditional approach The updated Draft Gap Analysis for Cultural Expressions. Therefore, to stop cultural misappropriation in the fashion sector, a thorough examination of how IP laws might be improved to better serve the goals of the owners of conventional creative works in terms of how fashion designers portray their culture is required. In light of the UN Declaration of the Rights of all Indigenous Nations (Article 31), the worldwide intellectual property landscape might have to altered to provide Indigenous cultures with the legal tools to successfully control their traditional artistic manifestations.

[9]In order to give traditional cultural expressions fair and efficient intellectual property protection, the WIPO IGC is presently negotiating a worldwide legal instrument. Considering how cultural appropriation distorts cultural meaning and shows a lack of respect along with acknowledgement.

7.1 FOUR GUIDELINES FOR NON-APPROPRIATE BEHAVIORS

By following these rules, fashion designers can engage with individuals from diverse cultural backgrounds and use traditional cultural manifestations without engaging in cultural appropriation within the current legal system:

- Respecting and understanding the people who own them;
- Respectfully transforming and reinterpreting them;

[9] 'How to avoid cultural appropriation & promote cultural awareness instead', (COMMISCEO GLOBAL) accessed 09 December 2021.

- Acknowledging and recognizing the people who own them;
- And interacting with them through cooperative partnerships and authorization requests.

7.2 APPRECIATION OF CULTURE IN FASHION AND APPAREL

The fashion industry is dealing with a serious challenge of cultural appropriation in the twenty-first century. The industry is expected to undergo a significant makeover as a result of social media outcry, public demonstrations, and legal actions aimed at making designers and corporations more considerate and sensitive when appropriating cultural components and inspiration. IPR laws invariably find a place for therapy, protection, and protection in this contemporary predicament, as cultural appropriation in the fashion sector typically signifies obvious and widespread imitation. The obvious question that arises when trying to understand the nuances of cultural appropriation is whether or not designers and brands can ever properly take from cultures. Examining previous cases and examples reveals that the issue arises when the appropriation affects the targeted group in the same way that theft would. This insight aids in deconstructing and streamlining the conundrum and prompts additional research into what, in the end, separates inspiration from theft. And the answer is as straightforward as giving credit where credit is due, acknowledging responsibility, granting permission, and providing money. The issue arises from the habit of businesses appropriating important cultural expressions and traditions, particularly associated with minority and native populations, in the sake of establishing an aesthetic. Recognizing that culture is not an aesthetic, being aware of the cultural meaning of their borrowings, and exercising accountability are all requirements for borrowers. Native Americans are seen as historical artefacts and as "fueling racism" by nature. Gucci received criticism for charging over $800 per "Indy turban" head wrap at Nordstrom. The violation of the turban, a religious element of faith that millions of Sikhs around the world hold sacred, by the premium company amounted to cultural appropriation because individuals who wear them as fashion accessories won't really understand or acknowledge "their deep religious significance."

8. INDIA'S PIRACY PARADOX IN FASHION

In contrast to the constantly thriving innovation and investment, copying is fairly common in the fashion sector, where a vast array of creative goods are produced without sufficient IP protection.

Unauthorized replication or appropriation of indigenous designs and expressions has been observed to cause conflict over time between source communities and mainstream designers, which is fostered by

mistrust. Despite the enormous potential for appropriation and duplication, the fashion industry is very passive in protecting its creations, in contrast to other sectors. The peculiar thing about this is that, rather than discouraging innovation, the widespread copying actually seems to encourage it. The "Piracy Paradox" of the fashion business is the name given to this somewhat peculiar equation. Fast fashion and low-cost businesses like H&M and Zara have greatly benefited from the industry's ability to copy designs from high-end names and brands and make them accessible in the nation's mass market. Newly published designs that are shown on runways are photographed and sketched, then transported to Chinese factories to create facsimiles of these luxury goods at a portion of the original price.

Nevertheless, recent research has demonstrated that, rather than acting as a barrier, lax intellectual property laws have actually contributed to the fashion industry's development.

The Paradox appears to only apply to indigenous fashion as long as the local population is receptive to commercialization. The Piracy Paradox's central tenet—tolerance for unapproved copying—does not seem to apply to revered or restricted indigenous fashion. Because of the spiritual character, customs, and usages of the cultural facial expressions, symbols, and designs, indigenous fashion is prohibited from being commercialized. The inappropriate and offensive usage of native fashion by foreigners in this specialized field can lead to boycotts, blocklisting's, and public outrage, with support from the source group. The application of the Piracy Paradox to ethnic fashion that is susceptible to commercialization is relatively simpler. However, even in a setting of indigenous fashion that is susceptible to commercialization, the element of succeeding can only be a relatable possibility for well-known and fast fashion brands if mainstream fashion brands permit indigenous populations to be more than just a source of inspiration with advantages in both the artistic and financial senses.

CONCLUSION AND ADVICE

Cultural expressions and their preservation have become an increasingly important issue in the globalized world, especially in the realm of fashion. While traditional cultural expressions (TCEs) appear to be an ideal medium for the preservation and protection of cultural heritage, the reality of doing so through legal frameworks is incredibly complex. [10]One of the primary challenges in preserving TCEs is that they are highly influenced by a wide range of variables, including public opinion, historical contexts, and cultural sentiments, all of which are in a constant state of flux.

[10] 'Māori IP', (New Zealand Intellectual Property Office) accessed 30 November 2021.

It is challenging to precisely define and establish boundaries for what qualifies as a cultural expression deserving of legal protection because of this complexity. The grey legal area, where unlawful appropriation and legal inspiration often coexist, and where the idea of cultural appropriation—the copying of cultural symbols and practices from marginalized groups by dominant cultures—exists, further engenders ambiguity.

The main point is that most of the time, appropriating cultural components is not always illegal, especially when there is acknowledgment, consent, and payment involved. However, these components frequently fall under the heading of cultural appropriation when they are employed without consent, deference, or payment. Regretfully, there is no precise legal framework that outlines what, in terms of intellectual property (IP), qualifies as cultural appropriation. Because of this, the situation continues to be complicated, with cultural components being utilized or exploited without giving their full cultural importance. The impacted communities frequently have limited legal options, even in cases of deliberate or harmful exploitation, leaving them to negotiate a society where their cultural identity is viewed as a commodity.

Notwithstanding these obstacles, there is a discernible change taking place as marginalized and indigenous groups start to claim their rights to intellectual property and cultural expression. An increasing number of indigenous tribes are speaking out against the way that outside parties, such as fashion corporations, exploit their traditional heritage. One significant step in acknowledging the importance of traditional cultural knowledge and making sure it is safeguarded against abuse is New Zealand's recent addition of provisions for the protection of Māori cultural expressions to its trademark and patent laws. This change demonstrates the growing consciousness and significance of safeguarding TCEs, particularly as cultural appropriation in fashion is increasingly acknowledged as a moral issue. The nature of TCEs themselves makes it difficult to control cultural appropriation under conventional IP legislation. TCEs are shared throughout communities and are passed down through the generations rather than being the product of individual creations. IP legislation, on the other hand, is ill-suited to safeguarding communal cultural knowledge since it is intended to preserve individual ownership and uniqueness. Because of this, safeguarding cultural expressions frequently necessitates a framework that can acknowledge the collective character of cultural assets while simultaneously tackling the problem of abuse and exploitation.

Establishing voluntary rules or moral principles that could direct how businesses and designers handle the incorporation of cultural components into their work is one possible way to resolve this conundrum.

These rules will emphasize the values of respect, consultation, and just recompense rather than requiring businesses to get legal protection for their ideas or practices. To ensure that they comprehend the cultural significance of the features they are including in their designs, these regulations would encourage businesses to have conversations with the populations whose cultures they draw from. Thus, a voluntary compliance system might be used in place of more conventional IP protection while still encouraging moral and considerate business conduct.

These rules will emphasize the values of respect, consultation, and just recompense rather than requiring businesses to get legal protection for their ideas or practices. To ensure that they comprehend the cultural significance of the features they are including in their designs, these regulations would encourage businesses to have conversations with the populations whose cultures they draw from. Thus, a voluntary compliance system might be used in place of more conventional IP protection while still encouraging moral and considerate business conduct.. Indigenous communities now have a chance to make use of consumer power and increase their control over how their cultural heritage is used thanks to this change in priorities. But there is also an increasing awareness that companies need to do more than just steer clear of bad headlines. A more comprehensive and consistent strategy for cultural preservation is required to effectively address the problem of cultural appropriation and establish a more moral fashion business. Establishing a transparent and practical legislative framework for the protection of TCEs that strikes a balance between the rights of cultural communities and the artistic liberties of designers and businesses would be a crucial component of this. Rules for how fashion businesses interact with indigenous populations might be part of such a regulatory framework. Guidelines for fashion firms' interactions with indigenous groups, such as the requirement for prior consultation and receiving consent before employing culturally significant symbols, could be part of such a regulatory framework. Additionally, in order to ensure that cultural heritage is recognized and cherished, these policies may mandate businesses to pay communities whose cultural aspects they use fairly.

It would be necessary to carry out in-depth study into the cultural background and background of the components being utilized in order to integrate cultural sensitivity into fashion firms' design and production processes. In order to avoid disrespectfully copying sacred or significant aspects, fashion firms would need to gain a deeper awareness of the cultural connotations of the symbols they want to use. This approach would require designers to go beyond surface-level aesthetics and truly engage with the communities they are borrowing from. Assuring that Indigenous communities maintain ownership over their cultural assets and preventing the privatization of cultural property are two other benefits.

By creating professional ethical guidelines that would apply to all businesses and designers dealing with cultural expressions, this process can be facilitated. By following these guidelines, the fashion industry would be more inclined to recognize and uphold the intellectual property rights of marginalized and

indigenous groups. Cultural appropriation might be prevented and cultural groups could be encouraged to safeguard their legacy if the industry mandated that all businesses adhere to specific Corporate Social Responsibility (CSR) prerequisites. Furthermore, these communities could be given enforceable rights, guaranteeing them legal channels to contest cases of cultural appropriation as needed.

The fashion industry's appropriation problem can be solved through cooperation. The fashion industry may start to build more respectful and cooperative relationships with Indigenous and minority populations by enforcing professional ethical standards, guaranteeing the acknowledgment of enforceable rights, and making companies responsible for their conduct. This strategy would promote a more diverse, morally upright, and socially conscious fashion business in addition to aiding in the preservation of cultural heritage [11].

[11] Jenny Avins, Quartz, 'The Dos and Don'ts of Cultural Appropriation', (The Atlantic, 20 October 2015) accessed 12 December 2021.