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PRESENTS



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# INTELLECTUALIS

RUNWAYS, GALLERIES AND COURTROOMS: IP IN FASHION AND ART

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# EDITORIAL NOTE

From a truly humble beginning to now having successfully begun our seventh edition of Intellectualis, our e-newsletter has braved through challenging times with grace and persistence. Through this edition in collaboration with Fashion Law Journal, we'd like to showcase the goodwill (pun intended) our e-newsletter has gathered over the years. We are immensely grateful to have published our first Intellectualis as the committee's convenors, given that it is this very newsletter that has stuck with us since before our time as core committee members.

We thus welcome you to a captivating issue of our newsletter, where we venture into the enchanting realms of "Runways, Galleries, and Courtrooms: IP in Fashion and Art." This edition showcases the multifaceted interplay between the worlds of intellectual property, fashion, and art, underscoring the significant legal and creative implications within.

The fusion of fashion and art represents a cultural crossroads where innovation, style, and expression harmoniously converge. Fashion is not merely about clothing; it is a form of artistic expression, a medium that reflects and shapes culture. Similarly, art transcends mere aesthetics; it captures human imagination, challenges societal norms, and provokes thought.

As these two domains entwine, intellectual property becomes the guardian of creativity, responsible for fostering innovation while protecting the integrity of these two extraordinary worlds. Throughout these pages, you will find thought-provoking articles, insightful case studies, and practical insights that illuminate the dynamic relationship between IP and creative industries.

We hope that you take the time to read what our e-newsletter has to offer. We would like to extend our gratitude to the student body of School of Law, CHRIST (Deemed to be University) for their overwhelming response to the previous editions of the newsletter. This edition would not be possible without all our committee members, especially those in the Research and/or Editorial sub-team. We would also like to thank our Faculty Coordinators, Dr. Avishek Chakraborty and Dr. Aradhana Satish Nair for constantly supporting us and guiding us through the drafting of this newsletter.

Abhisvara Kandalam & Shreya Sampathkumar  
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## AUTHENTICITY IN QUESTION: CHANEL'S LEGAL BATTLE AGAINST THE REALREAL

Aaliya Aleem

### BACKGROUND

Chanel is a premium French fashion company that creates designer apparel, perfumes, and accessories.[1] Since the company's inception in 1909, the business has developed into a well-known brand with a reputation for luxury and flair. There are numerous trademarks and patents that cover the "double C" logo and other recognizable Chanel products. The RealReal is an online premium retail shop based in the US that sells pre-owned luxurious products.[2] The business was established in 2011 and has rapidly grown its activities to encompass a variety of high-end brands, including Chanel. The RealReal takes pride in its verification procedures, which makes sure that every item offered on its marketplace is authentic. One of the most well-known brands purchased and sold through its consignment was Chanel. The RealReal is not a channel through which Chanel sells to customers, authorizes sales of its goods, or authenticates the stock of goods bearing the Chanel name.

### FACTS OF THE CASE

According to Chanel, at least seven imitation Chanel handbags were purportedly found and posted on The RealReal in 2018.[3] After learning that The RealReal was not authenticating Chanel products as claimed, Chanel filed a lawsuit in the U.S. District Court for the Southern District of New York, alleging trademark infringement and counterfeiting, false advertising, and unfair competition under New York common law. [4] Chanel stated that this was detrimental to the brand's reputation and that it was Chanel's responsibility to defend its trademark and intellectual property rights. The RealReal denied selling fake Chanel products and said it has strict systems in place to validate all the products offered on its platform, in response to Chanel's accusations. The RealReal claimed that every item sold on its platform had been verified by at least two experts, and that it had a team of experts trained to spot fake goods. The RealReal also contended that by reselling Chanel goods, it had a legitimate commercial interest and was not tarnishing the brand's reputation. By enabling customers to acquire genuine luxury goods at a reduced price point, the company said it was performing a crucial service for customers.

### LAWS INVOLVED

Under the Lanham Act, Section 1114 states that anyone who uses "any reproduction, counterfeit, copy, or colorable imitation of a registered mark" in the course of business without the registrant's agreement could face civil responsibility." [5] This is so that the

consumers get authentic products and are not cheated. For the purpose of determining whether a counterfeit trademark offers a probability of confusion for trademark infringement, courts typically employ an eight-factor test called the "Polaroid factors." These considerations include: (1) mark strength; (2) proximity of goods; (3) mark similarity; (4) any proof of disorientation. (5) channels of advertising used; (6) type of merchandise and the level of caution likely to be displayed by the purchaser; (7) defendant's motive in picking mark; and (8) The prospect of broadening the choices that are available. [6]

Even if the sale is not permitted by the owner, authentic items showing legitimate marks are normally exempt from trademark infringement laws. [7] According to the first sale doctrine, the registrant no longer has any influence over how the real registered product is distributed or resold after it has been sold. Nevertheless, in order to use this as a defense, the defendant must show that the trademark registrant approved the first sale of the trademarked good because a trademarked good is only legitimate if the registrant approved the initial sale.[8] Furthermore, the defendant is not allowed to utilize the brand owner's trademark or brand in a way that could lead customers to believe the reseller is affiliated with the brand owner.

## JUDGMENT

The Court established that Chanel reasonably contended that The RealReal's portrayals were actually misleading by referring to only seven examples of counterfeits that The RealReal had sold. The Court based its decision on the Second Circuit opinion in *Tiffany v. eBay*, which specified that "the law prohibits an advertisement that implies that all of the goods offered on a defendant's website are genuine when in fact...a sizable proportion of them are not". [9] Additionally, the judge allowed The RealReal's counterclaims against Chanel and partially dismissed Chanel's action. The parties started talking about mediation in April 2021, putting a stop to the more than two-year legal dispute.

## CONCLUSION

The current legal dispute exemplified the current battle between an established fashion brand's reluctance to adopt changes in the modern fashion industry for sustainability and their commitment to safeguard the interests of their consumers and maintain the standards of their goods. Clearer criteria's are required so that fashion behemoths and online consignment retailers may manage the reputation of their brands while adjusting to an evolving marketplace. All in all, the court's ruling in the *Chanel v. The RealReal* case emphasizes the value of having strict systems in place for verifying luxurious goods sold online. It also demonstrated how important it

is for businesses to safeguard their intellectual property rights and trademarks while balancing their interests with those of customers wanting to buy genuine goods.

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- [2] "The RealReal: Buy & Sell Designer Clothes, Bags, Shoes & More."  
<https://www.therealreal.com/>. Accessed 7 Sep. 2023.
- [3] Chanel, 449 F.Supp.3d at 433.
- [4] Id. at 429.
- [5] 5 U.S.C. § 1114; see Julie Tamerler, *The Ship of Theseus: the Lanham Act, Chanel, and the Secondhand Luxury Goods Market*, 32 *Fordham Intell. Prop. Media & Ent. L.J.* 425 (2022).
- [6] *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492, 495 (2d Cir.1961).
- [7] *Liz Claiborne, Inc. v. Mademoiselle Knitwear, Inc.*, 979 F. Supp. 224, 230 (S.D.N.Y. 1997)
- [8] See id
- [9] *Tiffany (NJ) Inc. v. eBay Inc.*, 600 F.3d 93, 114 (2d Cir. 2010).

## TRADEMARKS IN FASHION: THE IMPORTANCE OF BRAND PROTECTION

**Abraham Vinoj Daniel & Harthik Roy**

### INTRODUCTION

"In the fast-paced world of fashion, a strong trademark is your anchor, keeping you steady in the storm of trends and fads."

Brands are more than simply labels in the dynamic and constantly changing world of fashion; they are also representations of identity, style, and quality. An ecosystem that is growing thanks to innovation and creativity in the global fashion industry. However, it is fundamentally a company. Protecting one's assets and keeping a competitive edge are crucial in any industry. Trademarks serve as this protection in the fashion industry.

In the fashion sector, trademarks are crucial because they protect the distinctive and recognisable characteristics that make a brand. These marks—which can range from recognizable brand names and logos to distinctive patterns and designs—are the physical representations of a fashion house' identity. Understanding the significance of brand protection through trademarks is crucial for designers, producers, and merchants in this constantly shifting environment.

## **ESSENCE OF BRAND IDENTITY**

In the context of fashion trademarks, the essence of brand identification essentially entails condensing the core of a fashion label into a recognisable symbol or mark. Fashion brands are cultural touchstones that represent lifestyle, taste, and ideals in addition to the clothes they manufacture. Trademarks represent this identification in a visual and symbolic way by succinctly summarising the brand's distinctive character, ethos, and narrative.

The distinguishing design components, name, or logo of a fashion brand become more than just labels -- they become claims. Customers connect with a universe of feelings, associations, and expectations when they encounter these trademarks. The interlocking Cs of Chanel, the three stripes of Adidas, and the swoosh of Nike are examples of fashion culture icons rather than merely symbols.

In this regard, trademarks in the fashion industry are essential for establishing a brand's identity. They serve as a brand's symbol, rapidly establishing its identity in a sea of rivalry. This awareness is crucial in a sector where consumer loyalty must be earned and where fashion trends come and go.

## **REGISTRATION AND PROTECTION**

The Trade Marks Act, 1999 governs the registration and protection of trademarks in India. To avoid unauthorised use of their distinctive brand aspects by others and to ensure that their works are legally protected against imitation, fashion designers and houses can register these elements.

This establishes their sole right to use these marks in connection with their fashion products in addition to protecting their intellectual property.

Once a trademark is registered, a certificate of registration is produced, and the trademark rights are then secured for an initial ten-year period that is then renewable indefinitely. A registered trademark grants the owner the sole right to use the mark in connection with the specified products and services. In the fashion industry, one must actively monitor and assert their rights to safeguard their trademarks. To stop the entry of fake goods onto the market, this may entail sending cease-and-desist letters, taking legal actions, and working with customs officials.

## **THE ROLE OF BRAND REPUTATION**

In the world of fashion, the relationship between brand reputation and brand protection via trademarks is nuanced. Brand reputation is essentially how people view and trust a fashion brand, and it is significantly impacted by trademarks'



capacity to uphold and reflect a brand's identity.

A fashion brand becomes a representation of authenticity and quality when it develops a strong trademark, such as a unique logo, name, or design. Customers start to connect these marks with a specific calibre of style, consistency, and craftsmanship. The brand's reputation improves as a result.

Consider the repercussions of a damaged reputation to better understand the relationship between trademarks and brand reputation. A tarnished reputation can have disastrous consequences in the fashion sector, because customers have a wide range of options. It may be caused by a number of things, such as trademark infringement or imitation.

## **BENEFITS OF REGISTERING A TRADEMARK**

- Exclusive right to use the trademark: The exclusive authority to use trademarks in commerce belongs to the registered trademark owners. This implies that they have the authority to stop unauthorised use of their trademarks.
- Protection against infringement: Owners of registered trademark are able to sue anyone found to be using their mark illegally. This can involve filing a lawsuit. The trademark owner's ownership of the trademark is demonstrated by a registered trademark. This can be useful in settling conflicts over trademarks.
- International protection: Registered trademarks can be protected in other countries through the Madrid System. With the use of this approach, companies can register their trademarks in several nations with just one application.

Some befitting examples of trademarks in the fashion sector include Chanel, Gucci, Louis Vuitton, Nike, Prada, and design components like the interlocking GG design on a Gucci handbag, the tartan pattern on a Burberry scarf, and the red sole of a Christian Louboutin shoe. Fashion brands are able to safeguard their reputation and brand identity through trademark registration. They can expand their company and keep a competitive edge thanks to this.

## **COUNTERFEITING AND INFRINGEMENT IN FASHION**

Fashion companies have two significant hurdles in today's world: counterfeiting and infringement. The unapproved manufacture and distribution of products bearing the trademark or copyright of another company is known as counterfeiting. Unauthorised use of another brand's intellectual property, such as a trademark, copyright, or design, is known as infringement. The fashion sector is especially vulnerable to counterfeiting and infringement since they can reduce a brand's value. Customers who buy counterfeit goods are not receiving the quality or experience they are used

to from the legitimate brand. Customers may become disenchanted with the brand as a result and decide to shop elsewhere. Damage a brand's reputation. If counterfeit goods are of poor quality or pose a safety hazard, this can damage a brand's reputation and make consumers less likely to purchase its products in the future. Revenue loss for established brands. Since they frequently offer their products for less than reputable brands, counterfeiters have the potential to eat into sales and cut earnings.

Fashion firms have several options for safeguarding their intellectual property from infringement and counterfeiting, such as registering their copyrights and trademarks in important areas. This provides brands with a legitimate groundwork for legal action against infringers and counterfeiters. Putting money into steps to stop counterfeiting. This can involve creating distinctive product labels and packaging, applying RFID tags, and putting online brand protection initiatives into action.

Keeping an eye out for products that are illegal or counterfeit. Companies can identify and seize counterfeit items by cooperation with law enforcement and customs authorities. They can also keep an eye out for fake and infringing goods on social media sites and online markets.

Fashion brands should additionally inform customers about the risks associated with infringement and counterfeiting in addition to the previously mentioned actions. Customers need to be informed that fake products are frequently of low quality and could be dangerous. They ought to understand that buying fake items encourages illegal activities.

## **GLOBAL CONSIDERATIONS AND EMERGING TRENDS**

Fashion brands need trademarks to compete in the worldwide market. The exclusive right to use a brand name, logo, or other distinguishing mark in connection with particular goods or services is granted by registration of a trademark. This can assist fashion brands in maintaining their goodwill and reputation. A well-established trademark facilitates customers' ability to recognise and connect a certain brand's goods and services. Building loyalty and trust are important for success in the fashion sector.

- Prevent imitation and counterfeiting: In the fashion sector, counterfeiting is a big issue that can harm a brand's finances and reputation. Fashion firms can fight counterfeiting with the legal power to pursue infringers thanks to a registered trademark.

- Enter new markets: Fashion brands must make sure that their trademarks are registered and protected in different jurisdictions before entering them. By doing

this, disputes with other parties may be avoided, and the goodwill and reputation of the brand may be preserved.

The fashion sector is witnessing several growing trends that are influencing the significance of trademarks. For instance, counterfeiters now find it simpler to market their goods to customers worldwide thanks to the growth of e-commerce and social media. Fashion firms must therefore exercise greater caution while safeguarding their trademarks on the internet.

## CONCLUSION

To sum up, fashion firms need trademarks to compete in the worldwide market. They support a company's growth into new markets, guard against imitation and counterfeiting, and preserve its good name and reputation. Fashion firms confront many obstacles when it comes to trademark protection in the modern digital age. For instance, counterfeiters can quickly and easily reach a global customer base by selling their goods online. Social networking sites can also be used to mislead customers and create brand confusion. Fashion firms must take aggressive measures to safeguard their trademarks in order to overcome these obstacles. This entails registering trademarks as soon as possible and in all applicable jurisdictions, keeping a close eye on counterfeiters, and prosecuting infringers.

## INCREASING IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS IN THE FIELD OF FASHION

**Josna & Irfan**

## INTRODUCTION

Creativity reigns supreme in the fast-paced realm of fashion, where trends come and go like the seasons. Fashion designers are style architects, weaving their artistic visions into fabrics and shapes that captivate the world. However, amidst this whirlwind of innovation, the importance of Intellectual Property (IP) law in the fashion industry emerges as a silent guardian, protecting the essence of creativity and originality. In this article, we delve into the pivotal role played by IP law in safeguarding unique designs, fostering innovation, and sustaining the multi-billion-dollar fashion industry. From warding off counterfeiters to promoting a culture of creative excellence, the fashion industry's reliance on IP law is more profound than ever, ensuring that style remains an art worth protecting.

## WHAT ARE IP RIGHTS?

IP rights are legal safeguards given to people or organizations to preserve their original and inventive works. These rights provide authors complete ownership over their careers and allow them to profit from their intellectual property. They fall under various categories, each designed to safeguard multiple facets of intellectual property. IP rights are a potent barrier against imitation in the fashion business context, ensuring that fashion designers' original ideas and creative expressions are shielded from unlawful use. They are also essential for encouraging innovation and preserving a free and open market.

## IP RIGHTS RELEVANT IN THE FASHION INDUSTRY

### Trademarks

Trademarks are the unsung heroes of the business world because they act as the visual signatures that set one brand apart. These recognizable signs, symbols, logos, and markings are the silent storytellers of the corporate world, saying a lot without saying a word. Consider the Puma pouncing jaguar or the Nike swoosh. They are both protected by trademarks. Trademarks dominate the dynamic, trend-driven fashion world, affecting customer loyalty and purchasing decisions. To save a brand from potential copying, trademark registration is more than a formality. It is impossible to exaggerate the importance of trademarks in the fashion business. They ensure that a brand's identity stays obvious and avoid the worst-case situation of "likelihood of uncertainty" among consumers. A brand is protected from having an identical mark that might deceive or distract potential buyers if it has a registered trademark. These essential safeguards in the fashion industry are governed and upheld by the Trademarks Act of 1999, which serves as its legal foundation.

### Trade Dress

A product's secondary meaning triggers the use of trade dress, another aspect of intellectual property rights. It includes a product's physical attributes like packaging and visual appeal and acts as a potent source-identification tool for customers. Consider the Apple iPhone's unusual trade dress, which includes its distinctive appearance, configuration, and packaging.

Particularly in sectors where a product's look significantly impacts consumer decisions, this branch of trademark law is essential. Beyond words or symbols, trade dress encompasses the observable characteristics that distinguish a product from others on the market. It even contains audible and visual components, making it a flexible instrument for brand protection. For instance, an Adidas shoe's specific design and color scheme are all part of its distinctive trade dress.

## **Copyrights And Designs**

The Copyright Act, 1957[1] established copyright protection for works of art, literature, theater, and music. By providing inventors with financial rewards, these protections promote creativity. In the fashion business, copyrights cover a design's aesthetic and physical aspects but not its practical components. Imagine a stunning fashion illustration or textile pattern; these are examples of creative works protected by copyrights. To safeguard the aesthetic and design elements of various creations, including shapes, configurations, patterns, ornaments, lines, and colors, the Designs Act, 2000[2] on the other hand, comes into play. It's about maintaining a design's distinctive visual identity. It's crucial to remember that there are situations when the distinction between design and copyright might become hazy. Design protection strictly covers original designs, while copyrights shield a broader range of creative works.

## **Patents**

Although less common in the fashion industry, patent law is nonetheless significant. It primarily protects the original elements of designs. A design must satisfy two essential requirements: novelty and originality to be eligible for a patent. Novelty guarantees that the idea was truly made for the first time, while uniqueness indicates that it is technically practical. However, due to its stringent restrictions and the expensive and challenging registration process, patent law is more common in technological domains. Patents are less frequently sought after than trademarks or copyrights in the fast-paced fashion world because trends shift with the seasons. The fashion business depends heavily on quick innovation and inventiveness; therefore, the security provided by patents is frequently offset by the lengthy process and the dynamic nature of the sector. As a result, patents have less influence in this dynamic and quick-paced industry.

## **RELEVANT LEGAL PROVISIONS APPLICABLE TO THE INDIAN FASHION INDUSTRY**

### **The Designs Act, 2000**

The Designs Act 2000 helps in the registration process and protection of the designs of the industries in the country. The goal is to allow for the structures of the articles to be protected, thus encouraging creativity and innovation. As per the definition, a design is the feature of a shape, configuration, surface ornamentation, or a combination of these applied to an article. The protection lasts ten years from the date of its registration. An extension request can be used for an additional extension of 5 years to the concerned authority.

### **The Copyrights Act, 1957**

The Copyright of 1957 is a law that seeks to protect creative works such as musicals,



literature, films, sound recordings, etc. The main aim of the Act is to ensure that the articles that are invented are the original work of the authors so that they can exercise exclusive rights over their invention for a long time. This helps increase innovations and ensures that the creator is paid for their intellectual creations. Literary works (e.g., books, articles), theatrical works (e.g., plays, screenplays), musical works, artistic works (e.g., paintings, sculptures), cinematograph films, sound recordings, and computer programs are all covered by the Act.

### **The Trademarks Act, 1999**

The Trademarks Act of 1999[3] is an Indian law that checks the registration, protection, and enforcement of trademarks in India. The main aim is to safeguard brands in the form of symbols, names, and phrases that are an intimation to identify goods and services and prohibit unauthorized use. The trademark defines a mark as being capable of being graphically depicted and capable of identifying one's product from another competitor. When an owner has registered a brand, he has the exclusive right to use it with connections to goods and services. Some examples are names, logos, slogans, labels, etc.

### **RELEVANT CASE LAW**

Christian Louboutin v. Abubaker[4]

The dispute in this case is between the appellant, Christian Louboutin, an established footwear designer, and the defendant, Abubaker, a Delhi-based footwear firm. The suit was filed against Abubaker for selling shoes with red soles, a trademark feature of Louboutin's designs. The court held that using a single color in the sole of a shoe would not be claimed as a trademark as it does not fall within the scope of a 'mark.' The court also stated that a single color would not result in a single-colored device as per Section 10(1) and 10(2), which uses the expression 'combination of colors.' The defendants were selling their goods under 'Veronica' and the petitioners under 'Christian Louboutin.' Therefore, the court held that there was no deception or confusion in the marketing strategies of both parties.

### **REFERENCES**

[1] The Copyright Act, 1957

[2] The Designs Act, 2000

[3] The Trademark Act, 1999

[4] Christian Louboutin v. Abubaker and Ors. 2018(7)AD(DEL)376

## **SAFEGUARDING THE RUNWAYS: COUNTERMEASURES IN THE FASHION INDUSTRY AGAINST CULTURAL APPROPRIATION**

**Lytta Niharika A.**

### **INTRODUCTION**

The fashion industry is well known for its rapidly shifting trends and ability to draw inspiration from a wide range of foreign cultures, yet it is crucial to use intellectual rights to safeguard each concept. Cultural appropriation frequently results from this artistic freedom. The act of appropriating elements of another culture for one's own benefit or that of a business, usually without the necessary consent, understanding, or knowledge, is known as cultural appropriation. Within the fashion industry, this tendency has generated discussions and accusations of insensitivity and exploitation.[1] Significant legal issues are raised by cultural appropriation, and its effects go beyond the fashion business. In addition to potentially harming the integrity and reputation of the fashion companies and designers involved, it also has the potential to cause harm to the cultural communities whose heritage is being appropriated. The fashion industry has been concentrating more on enacting laws to protect its runways and develop intercultural understanding in order to allay these worries.

### **UNDERSTANDING CULTURAL APPROPRIATION IN THE FASHION INDUSTRY**

In the context of the fashion business, cultural appropriation refers to the practise of stealing or copying aspects of other cultures, frequently without giving their cultural value the proper consideration. This phenomenon can take on various forms, including but not limited to haircuts, clothes, accessories, and runway presentations. It can be difficult to navigate the legal line between admiration and appropriation, which can occasionally result in disagreements and conflict. Though several incidents have drawn intense legal attention within the fashion industry, it is crucial to remember that not all incidences of cultural appropriation are intrinsically bad. These cases concern circumstances in which apparel companies have used religious symbols, traditional Indigenous patterns, or cultural stereotypes improperly in their designs. In addition to being blatantly insulting to the cultures being appropriated, such actions may result in legal problems, accusations of cultural insensitivity, and even damage to the reputations of the fashion brands involved.

## LEGAL PROTECTIONS

Legal defences against cultural appropriation in the fashion industry are a developing yet crucial component of preserving runways.[2] While copyright and trademark laws and other intellectual property protections exist to safeguard some cultural designs and symbols, they may not necessarily apply to traditional cultural aspects. However, in recent years there has been a greater acceptance of the requirement for legal safeguards to safeguard the cultural legacy of marginalized populations. Important legal measures and factors include:

- Cultural Intellectual Property Rights: Promoting the establishment of cultural intellectual property laws to safeguard conventional patterns, motifs, and designs.
- Community Consultation: According to the law, fashion companies must consult with local cultural groups and get their approval before using any distinctive cultural characteristics.

Legal safeguards are an effective instrument, but they must be created in cooperation with cultural communities to guarantee that they reflect the goals and values of those communities.

## COPYRIGHTS AND TRADITIONAL CULTURAL DESIGNS

Fashion businesses should use traditional cultural patterns, motifs, and designs with prudence. These designs might occasionally fall under the purview of copyright laws, particularly if they are regarded as unique and creative works. The copyright owner receives the sole authority to publish, display, and reproduce the work. As a result, unauthorized usage of such designs may result in legal problems, including accusations of copyright infringement. To ensure legal compliance, fashion designers and companies should do in-depth research to ascertain the copyright status of cultural aspects and, as necessary, get permission or licenses.

## INTELLECTUAL PROPERTY OF INDIGENOUS ARTISANS

A large number of indigenous tribes and artists have their own intellectual property rights over their customary patterns and handiwork. Comprehensive agreements that include intellectual property rights, payment for the usage of designs, and cultural sensitivity should be included in any collaborations with these communities. This might entail revenue-sharing contracts that pay the Indigenous tribes and craftspeople fairly for the traditional components they use in fashion designs. Such partnerships may benefit both parties, promoting economic development and safeguarding cultural heritage. [3]

## GEOGRAPHICAL INDICATIONS AND TRADEMARKS

Geographical indications are associations between certain fashion items and particular geographic areas. False geographical origins claims made by brands for

their products must be avoided since they may infringe intellectual property rules and mislead customers. Fashion companies should also be aware of trademark regulations to prevent unintentional trademark infringement on other people's cultural or geographical marks. Brands can handle these challenges by carrying out exhaustive trademark searches and consulting legal counsel.

## **DESIGN PATENTS AND TRADEMARKS**

Fashion firms can still safeguard their distinctive logos, brand names, and other distinguishing characteristics through trademark registration even though garment designs themselves are often not eligible for design patents due to their utilitarian nature. To make sure that their trademarks do not clash with already-existing trademarks, particularly those that might be connected to cultural or geographical marks, it is crucial for brands to do trademark searches.[4]

## **LICENSING AND PERMISSION**

Fashion firms should proactively request the necessary licenses and permissions when utilizing traditional designs, especially those that are recognized as intellectual property, to prevent intellectual property concerns and cultural appropriation.

## **CASE STUDIES AND INDUSTRY TRENDS**

It is instructive to look at case studies and market patterns that illustrate both achievements and obstacles in defending runways against cultural appropriation in order to obtain a fuller understanding of the efficacy of these remedies.

### **GUCCI'S CULTURAL SENSITIVITY**

When Gucci unveiled a jumper in 2019 that looked strikingly similar to blackface, a highly disgusting and racist caricature historically used to humiliate Black people, it sparked a considerable uproar. The public's response was fast and critical, with social media users and public figures criticizing the company for its racial and cultural intolerance. Gucci made a number of corrections in reaction to the harsh criticism and after realizing the seriousness of their error.

Gucci's approach, nevertheless, went beyond harm reduction. In an effort to inform them of the historical context and ramifications of cultural appropriation and offensive imagery, the company implemented required cultural sensitivity training for all of its employees. This training was a crucial step in ensuring that upcoming designs will be sensitive to cultural differences and respectful of them. This action was viewed as a proactive measure to combat cultural insensitivity within the brand. It served as a case study to show how a prominent fashion brand may handle such disputes and seek to stop similar occurrences with the help of law in the future.

## **MISAPPROPRIATION OF INDIGENOUS DESIGNS**

Fashion companies face widespread charges of stealing Indigenous designs without giving due credit or remuneration, as seen in the cases of Urban Outfitters and Chanel, among others. In many cases, brands have taken design cues from Indigenous communities' vibrant and distinctive visual cultures, frequently without acknowledging or appreciating the cultural value of these designs. Such actions pose questions regarding morality and the law in addition to perpetuating cultural prejudices.

These disputes highlight the requirement for more robust legal safeguards and moral cooperation in order to stop cultural appropriation. Legal protections should be strengthened to ensure that traditional Indigenous patterns, designs, and motifs cannot be utilized without the appropriate authorization and payment. These safeguards ought to preserve the rights of Indigenous groups while taking into account the cultural value and ownership of these designs. Additionally, it is essential to work ethically with Indigenous artists and artisans. Collaboration initiatives can give these groups a forum to respectfully and advantageously share their cultural legacy.

In the case of Sreyoshi Guha, *People Tree v. Dior* – Orijit Sen and Gurpreet Sidhu, two designers, founded the small organisation People Tree, which assisted traditional block print designers in marketing their creations. The designers did not establish the organisation for financial gain, but rather for the social and economic advancement of the traditional block print designers in the Rajasthani village of Kalandera. Sonam Kapoor wore a Dior garment that replicated the hand-printed yoga motifs from the people tree cloth. The media exposed Dior for plagiarism.

The main concern in this instance is copyright violation. A copyright to block print designs is one of the many artistic works that are protected by the Copyright Act of 1957. But because copyright law gives exclusive rights to the rightful owner of a design, it presents a dilemma. Since several artisans have contributed to the designs of traditional Rajasthani block prints, it is challenging to give one-person sole ownership of these creations. Trademarks are another possible type of intellectual property (IP) protection that is taken into account. A trademark is the distinct name or symbol used to promote clothing items created by a specific designer. The trademark or brand name is protected from plagiarism by the Trademark Act of 1999. Applying trademark protection in this particular instance is difficult, though, as a trademark needs to set one provider's goods and services apart from another. Traditional art does not meet the requirements for trademark protection because it involves a community rather than a single or particular producer.



Based in the UK, ASOS is an online fashion shop that recently debuted its Chandelier hair clip collection. The “chandelier hair” was actually a piece of traditional Indian jewellery known as a “mang tikka” which is worn by Indian brides and other ladies of Indian descent during celebrations. The hair clip design was influenced by Indian culture, yet ASOS failed to mention this or give India any credit for it. Social media users chastised the brand for their Act. But since this is the world of fast fashion, people quickly forgot about the uproar when a new collection was introduced a few days later. It’s important to keep in mind that, despite the tikka’s obvious Indian heritage, its exact origin is difficult to determine because it’s a traditional piece of Indian jewellery that’s made and worn all over the country. It’s only a component of Indian culture; it has no specific geographic location within India that it may be connected to. This is the point at which the issues of cultural appropriation in Indian fashion cannot be adequately resolved by Indian legislation.

These are only two examples of intellectual property infringement and cultural appropriation; many more occur without being reported. It’s observed that a designer faces criticism for cultural appropriation on the internet practically daily.

## CONCLUSION

Although cultural appropriation in the fashion industry continues to be a major concern, it is encouraging to see the proactive measures being taken to protect runways from this practice. A more culturally respectful and inclusive fashion scene is influenced by case studies, industry trends, diverse design teams, ethical collaborations, legal protections, media responsibility, and continual dialogue influence a more culturally respectful and inclusive fashion scene.

The fashion business must place a high priority on cultural responsibility and sensitivity as it develops. By doing this, it can promote a more original and genuine creative process in addition to preventing harm to marginalized communities. In the end, the fashion industry’s resolve to stop cultural appropriation will determine its destiny and how it plays a part in advancing worldwide cultural understanding and respect.

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## UNVEILING THE DYNAMIC SITUATION OF COUNTERFEITING IN FASHION

**Disha Fernandes**

### INTRODUCTION

In contemporary society, the fashion industry stands as a symbol of creativity, luxury, and innovation. However, beneath its glamorous facade lies a persistent issue that has plagued this paramount industry: counterfeiting. Counterfeiting can be defined as an imitation of something else with the intent to deceive. Counterfeiting in fashion refers to the unauthorized production and distribution of replicas of designer products, mimicking the genuine articles in appearance but lacking the quality, craftsmanship, and legal standing that make the originals unique. Since one can remember, counterfeiting has been rampant in the fashion industry. However, it can be claimed that since the “big brands” began to gain popularity after the turn of the 20th century, counterfeiting has expanded to the general public. The proliferation of counterfeit goods in the fashion industry not only threatens legitimate businesses’ economic stability but also raises concerns regarding intellectual property rights, consumer safety, and the essence of creativity and innovation. In this article, we will delve into the multifaceted dimensions of this phenomenon, exploring its consequences and potential solutions to combat this detrimental practice.

### CONSEQUENCES

Firstly, it is crucial to understand the nature of counterfeiting in the fashion industry. The introduction of counterfeiting in the fashion industry is a result of various intertwining factors. Primarily, the rise of globalized trade and the increased accessibility of counterfeit manufacturing have contributed to its proliferation. The ease of replicating designs and the availability of low-cost production facilities in developing countries further exacerbate the issue. Additionally, the growing demand for luxury goods at affordable prices, coupled with consumer aspirations to emulate the lifestyles of the affluent, fuels the market for counterfeit fashion products. The advent of e-commerce platforms has also provided these illicit operations with a broader reach, making it easier for counterfeiters to deceive unsuspecting consumers.

The fashion industry itself is profoundly affected by counterfeiting. Not only does it suffer substantial financial losses due to the presence of cheap knockoffs, but the reputation of legitimate brands is also tarnished. Counterfeiting undermines the exclusivity and value associated with authentic fashion products; thereby eroding consumer trust and brand loyalty. As a result, the industry faces a decline in sales revenue and profit margins, thus hampering its potential for innovation and growth. The proliferation of counterfeits in fashion has far-reaching implications, and the repercussions ripple through various stakeholders. Firstly, it undermines the economic

stability of legitimate fashion businesses. These counterfeit products, often manufactured and sold at significantly lower prices, cannibalize the market share of authentic brands, resulting in revenue loss and potential job cuts within the industry. It undermines the exclusivity and value associated with authentic fashion products. Moreover, counterfeit fashion not only deceives consumers into purchasing substandard products but also tarnishes the reputation of legitimate brands by association. Counterfeiting in fashion also poses significant risks to consumer safety and well-being. Inferior materials, poor craftsmanship, and lack of quality control inherent in counterfeit products can lead to a range of adverse effects. From allergic reactions caused by toxic dyes to injuries resulting from faulty construction, consumers unknowingly put themselves at risk when purchasing counterfeit fashion items.

In addition to the economic and safety implications, counterfeiting threatens the fundamental principles of intellectual property rights. Fashion brands invest significant resources in research, design, and development to create unique, innovative products that resonate with consumers. Counterfeit fashion not only infringes upon these intellectual property rights but also discourages creativity and stifles innovation by rewarding imitation rather than originality.

## **POTENTIAL SOLUTIONS**

### **HOW TRADEMARK INFRINGEMENT CAN BE DEALT WITH**

When trademark infringement occurs, one can issue a notice to the person who is using the same trademark to stop them from using it. A direct notice may be issued to the individual using the trademark, threatening legal action if he or she does not stop using it. If the offender ceases to use the trademark after the notice is issued, the case is closed.

However, one can also send a notification to the person using their trademark, claiming the damages caused to one's firm as a result of the unauthorized trademark usage or the profits gained from the use of trademark. If the allegation is denied by the infringer, they can be used for infringement in both civil and criminal courts. The registered trademark owner may file a civil suit for trademark infringement in the District Court of the appropriate jurisdiction, which is the location where the registered trademark owner resides or conducts business. The registered trademark owner may initiate a criminal suit against the infringer if the registered brand is falsely applied to his or her goods or services.

### **RELIEF FOR TRADEMARK INFRINGEMENT**

Section 135 of the Act grants remedy in a civil trademark infringement suit. The court has the authority to issue a permanent injunction prohibiting/restraining the person from using the registered brand. The court may also award compensation for losses caused by improper trademark use. When a criminal suit for infringement is filed

under Section 103 of the Act, the court has the authority to punish the person who is using another person's trademark.

The punishment may include six months in prison, which can be prolonged up to three years, and a fine of Rs.50,000, which can also be extended up to Rs. 2,00,000.

Non-statutory solutions include:

#### 1)International Anticounterfeiting Organization

The International Anticounterfeiting Coalition, or IACC, is the world's largest non-profit organization dedicated completely to intellectual property protection. Its ultimate goal is to eliminate counterfeiting. Members in the IACC include individuals in the automobile, software and entertainment, apparel, pharmaceuticals, and food industries, in addition to those in the luxury goods section (IACC, 2011). The International Anticounterfeiting Coalition (IACC) brings together major and small businesses to fight counterfeiting and piracy.

#### 2)Market Surveillance:

Fashion businesses can perform frequent market surveillance to discover counterfeit products and pursue legal action against the perpetrators. The Customs Act of 1962 in India authorizes customs officials to confiscate and detain goods suspected of breaching intellectual property rights.

#### 3)Educating Customers:

Fashion firms can educate customers about the dangers of purchasing counterfeit goods and the advantages of purchasing real goods. This can assist consumers in making educated decisions and avoiding the purchase of counterfeit goods.

#### 4)Utilization of Anticounterfeiting technology:

To make it difficult for counterfeiters to reproduce their products, brands can utilize anticounterfeiting technology such as holograms, watermarks, and QR codes.

## CONCLUSION

In the fashion sector, counterfeiting has become a pressing problem with legal repercussions for fashion firms. To protect brands against copycats, Indian intellectual property law offers both criminal and civil remedies. Fashion brands can take a number of actions to defend themselves from counterfeiters, such as registering their trademarks and designs, surveying the market frequently, working with law enforcement, and deploying anticounterfeiting technology. Fashion brands may protect their intellectual property rights and avoid damage to their brand's reputation and sales by doing this.

Even though progress in preventing counterfeiting is sluggish, something must be done to stop this wrongdoing. People are drawn to brand names and the desire to purchase a phony watch or bag that resembles designer goods. The buyers do not appear to care that the goods are of lower quality. If people are made aware of the negative impacts of counterfeiting, this crime might be curbed. Instead of purchasing a counterfeit, consumers should assist our country's economy by spending their money at a legal establishment.

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## FASHION'S CONFLUENCE: NAVIGATING THE LEGAL NEXUS BETWEEN COMMERCIAL INTERESTS AND TRADITIONAL CULTURAL EXPRESSIONS (TCES)

**Mrinmoyee Chatterjee**

## INTRODUCTION

This article explores the thin line between pursuing commercial interests and appropriating Traditional Cultural Expressions (TCEs) within the context of Indian Fashion. TCEs encompass diverse elements of the rich Indian heritage and have been inspiring artists, including designers and entrepreneurs. However, this dynamic creates a complicated interplay between innovation, cultural sensitivity, and legal frameworks. This article dives into the importance of TCEs in Indian culture, its impact on the economic interests of the fashion industry, and the ethical considerations surrounding the appropriation of TCEs.



It also delves into the legal issues, including copyrights, trademarks, and geographical indicators, along with the challenges that crop up while enforcing them. Finally, amidst the ever-changing dimensions of the Indian fashion industry, the article explores collaborative methods, ethical fashion practices, and the probable need to strike a balance between economic interests and cultural preservation.

## **TRADITIONAL CULTURAL EXPRESSION (TCEs) IN INDIAN FASHION**

India has a legacy of its unique tapestry of cultures and customs and has long served as a source of inspiration for artists, designers, and entrepreneurs. The diverse Traditional Cultural Expressions (TCEs) of India, ranging from textiles, patterns, and motifs, to jewelry and craftsmanship, have piqued the fashion industry's interest and inventiveness. However, the junction of commercial interests and TCE appropriation in the fashion industry propagates significant issues, notably in terms of intellectual property rights and cultural preservation.[1]

TCEs are the manifestations of a diverse range of cultural practices, knowledge systems, and creative expressions that have been passed down from generations within specific communities. TCEs are deeply interwoven with India's rich history, representing the traditions, customs, and workmanship unique to numerous regions respectively, in India. Therefore, TCEs serve as a reflection of the communities' collective identity and play a key role in maintaining cultural heritage.

## **THE PURSUIT OF COMMERCIAL INTERESTS IN INDIAN FASHION**

The fashion industry in India is currently a budding sector from an economic point of view. The demand for products 'Made in India', both domestically and internationally, has drastically increased in recent years. Indian designers and fashion houses are beginning to capitalize on this need by developing products that appeal to a large number of people. To do so, they often modify traditional elements in order to make them feasible for a broader audience. This situation in particular is a double-edged sword, on one hand, it enables the designer to create culturally relevant products, but it also raises concerns about cultural appropriation. Cultural appropriation in the fashion industry has gained attention since it is defined as "use of elements of a non- dominant culture in a way that does not respect their original meaning or give credit to their source."

Unauthorized use of another culture's traditional knowledge, art, and expressions, also known as cultural appropriation, is understood to encompass another culture's attire, folklore, religious symbols, and so on. The United Nations Educational, Scientific, and Cultural Organization (UNESCO) defines "heritage" as "cultural legacy received from the past, lived in the present, and passed on to future generations." [3] It specifies that cultural legacy includes, among other things, social manners, knowledge, and methods related to traditional trades.

The line between appropriation and appreciation in the fashion industry is often blurry. What one person may see as a tribute to a culture, another may view as a disrespectful theft of cultural elements for profit. This ambiguity underscores the need for legal frameworks to address these concerns. [4]

## **INTELLECTUAL PROPERTY AND TRADITIONAL CULTURAL EXPRESSIONS (TCEs)**

It is critical to study the function of intellectual property (IP) regulations in order to negotiate the complicated terrain of employing TCEs in fashion. Copyright, trademarks, and patents are examples of intellectual property rights that play an important role in preserving the rights of artists and inventors. However, applying these regulations to TCEs is riddled with difficulties. Cultural awareness is essential in the fashion industry's interaction with TCEs. Designers and businesses must be conscious of the cultural importance of the items they use in their work. This understanding extends to ethical concerns, such as proper recompense for craftspeople and recognition of the communities who are the TCEs' caretakers [5]

### **COPYRIGHTS AND TCEs**

Original literary, artistic, and musical works are protected under the copyright law. The application of copyright to TCEs, on the other hand, is a complicated subject. Traditional idioms passed down through generations may not fulfill the originality barrier necessary for copyright protection. This provides a legal grey area in which designers can include TCEs in their works without infringing on copyright law.

### **GEOGRAPHICAL INDICATIONS (GIs)**

Geographical indications are a type of protection that protects items that originate in a certain geographic place, such as Banarasi silk or Pashmina shawls. GIs are critical in protecting the cultural legacy linked with these items and ensuring that they are not manufactured in an unsuitable or fraudulent manner.

### **TRADEMARKS AND TCEs**

Trademarks are essential for preserving the uniqueness and branding of fashion items. TCE parts are frequently used as trademarks by fashion firms to differentiate their items in the market. This raises the question of whether such use is permissible and if it may be considered cultural appropriation. Trademark law generally forbids the registration of marks that are likely to create consumer misunderstanding or deception. It may not, however, resolve the ethical or cultural difficulties involved with the use of TCEs. Fashion houses may need to strike a balance between financial objectives and the cultural relevance of these manifestations.

### **CHALLENGES AND ENFORCEMENT OF TCEs**

Due to factors such as community ownership of cultural expressions and the

difficulty in establishing infringement, enforcing intellectual property rights in the context of TCEs can be problematic. The implementation of these rights frequently necessitates cooperation among communities, governments, and the fashion industry. [6]

### **THE ROHIT BAL AND SAMANT CHAUHAN ROW OVER THE JALABIYA SILHOUETTE**

A scandal regarding appropriation erupted in the Indian fashion industry, with designer Samant Chauhan accused of stealing a shape from legendary couturier Rohit Bal, specifically a jalabiya garment. The episode prompted concerns about the proper forum for addressing design plagiarism and the blurring borders in fashion between inspiration, imitation, and derivation. The question of total ownership, on the other hand, is distinct. After all, every design and fashion has antecedents. Inspiration, interpretation, development, evolution, and consistency are all part of the process. "Fashion without the context of time is nothing," remarked a seasoned designer on the particular incident.

### **ANITA DONGRE'S CAMPAIGN WITH SEWA (SELF EMPLOYED WOMEN'S ASSOCIATION)**

Designer Anita Dongre, with a longstanding connection to SEWA, is continually amazed by the organization's strong network of women. Among these, Bachiben, one of the oldest artisans, shares her intricate embroidery skills, breathing life into fading craft traditions. Grassroot's (a collection by the said designer) debut campaign juxtaposes tradition and modernity through Bachiben, a custodian of vanishing crafts, and Diana, a contemporary figure, symbolizing the transfer of wisdom. The designer's work underscores deep collaboration with artisans, emphasizing respect for their craft and heritage. Cultural appropriation, they argue, stems from disrespecting these legacies. Their goal is to bring traditional crafts into the 21st century, cultivating appreciation among younger generations. They also spotlight artisans to boost their confidence, driven by genuine intent.

### **SABYASACHI X H&M: WANDERLUST**

The collaboration between Sabyasachi and the fast fashion brand H&M have created a huge debacle in the fashion industry. The designer was being called out for the cheap and distasteful digitalized recreations of the Indian craftsmanship. Amidst the chaos, the question of owning proprietary rights to historical symbols and motifs was raised. A culture is not owned by anybody. We live in one and have the right to our own interpretations of it. At the same time, there is no doubting that it is hilariously troublesome when someone who does a simple duplicate makes substantially more money than those who laboured over the original.

## **BALANCING THE COMMERCIAL INTERESTS AND CULTURAL PRESERVATION**

There has to be a striking balance between the portrayal of culture through the fashion industry and the preservation of the same. Collaboration is one method for striking a balance between business interests and cultural preservation. Designers and fashion brands may collaborate directly with craftsmen and communities to form partnerships that assure equitable remuneration and recognition of TCEs' cultural importance. Ethical fashion practices, such as supply chain transparency and responsible material procurement, can also contribute to a more balanced approach. Fashion firms may embrace ethical guidelines that support the preservation of TCEs and the communities who create them. To address the issues raised by TCE appropriation, India may need to pursue legal measures that give stronger protection for traditional cultural expressions. This might involve creating a system specialized to TCE protection or revising current intellectual property laws to better accommodate the distinctive character of cultural assets.

## **CONCLUSION**

The delicate balance between economic interests and the appropriation of Traditional Cultural Expressions (TCEs) in Indian fashion highlights the intricate interplay between creativity, cultural heritage, and the law.[7] While TCEs continue to inspire and innovate the fashion industry, their appropriation poses crucial issues of cultural sensitivity and ethical responsibility. The legal framework, which includes copyright, trademarks, and geographical indications, is critical in regulating this connection, but it also poses issues in terms of enforcement and protection. To properly negotiate this complex terrain, a collaborative strategy including fashion designers, companies, craftspeople, communities, and legal authorities is required. This strategy should prioritize cultural preservation, equitable recompense, and ethical behaviour. Furthermore, legislative reforms may be required to give more solid protection for TCEs, ensuring that India's rich cultural history remains a source of inspiration and pride for future generations while also conserving it. The amicable cohabitation of economic interests and cultural preservation is not only conceivable, but also necessary for Indian fashion's continuous growth and profitability.

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## **STITCHING THE FUTURE: NAVIGATING THE EVOLUTION OF FASHION AND IP**

**Preemal D'Souza**

### **INTRODUCTION**

The fashion industry, characterised by its creative and innovative trends, is ever-growing. With a global turnover of 1.53 trillion USD as of 2022, the industry continues growing with the increasing prominence of fast fashion and online shopping. The rapid growth has given rise to many famous lawsuits worldwide, seeking the protection of creative works. In India, legislation relevant to fashion and IP mainly includes The Designs Act, 2000, The Trade Marks Act, 1999, and The Copyright Act, 1957. This article discusses the various lawsuits that have shaped and served to regulate intellectual property rights in the fashion industry.

### **TRADEMARKS**

A Trademark is a "sign capable of distinguishing the goods or services of one enterprise from those of other enterprises." Trademarks are an integral part of the fashion industry, as they help consumers make an informed choice about the products they purchase. Christian Louboutin S.A. v. Yves Saint Laurent Am. Holding, Inc., 709 F.3d 140, is a famous US lawsuit seeking trademark protection for the designers' distinctive red lacquer on the shoes' outsole. In this case, The Second Circuit US Court of Appeal bench, while elucidating the doctrine of aesthetic functionality, stated that the District Court's conclusion that a single colour can never serve as a trademark in the fashion industry is incorrect. They further held that the District Court's holding that Louboutin's trademark has developed "secondary meaning" in the public eye was firmly rooted in the evidence of record and was not erroneous and that the Red Sole Mark is a valid and enforceable trademark. They further went on to limit the Red Sole Mark under Section 37 of the Lanham Act, 15 U.S.C. § 1119, to a red lacquered outsole that contrasts with the colour of the adjoining "upper."



Similar was an Indian case, *Christian Louboutin v. Pawan Kumar and Ors* (2017), where the plaintiff claimed ownership of its “Red sole” Trademark in India. The mark was a red tint displayed on the soles of women’s footwear. Christian Louboutin sued for injunctive relief against its trademark infringement against some shoe outlets in Karol Bagh, New Delhi, which used this shade of red on the soles. The matter was presented before the Delhi High Court, and the single judge bench presiding over the matter ruled in favour of the plaintiffs by holding the plaintiff’s exclusive ownership of the trademark of the red colour on the soles of its ladies’ footwear.

However, this decision was later overturned in the case of *Christian Louboutin v. Abu Baker* (2018), where the Hon’ble Delhi High Court held that the use of a single colour of Christian Louboutin SAS does not qualify the single colour to be a trademark given under Sections 2(m) and 2 (zb) of the Trade Marks Act, 1999. The Hon’ble court was of the view that “Combination of colours is sine qua non, and meaning thereby that quite obviously one single colour, as contra-distinguished from a combination of colours, cannot be a mark falling in the definition “mark”. Hence, a single colour not being a mark, the single colour cannot be claimed as a trademark.”

Another significant trademark case is *Louis Vuitton v. My Other Bag* (2016). In this case, the defendant, “My Other Bag,” sold tote bags with images of various luxury handbags printed on one side. Louis Vuitton took offence to these parody bags and sued, claiming trademark infringement and dilution under the Lanham Act, 15 U.S.C. § 1125(c), among other things. The District Court held that the bags produced by My Other Bags were not actionable per se as per trademark infringement and dilution and that they were mere parodies. In response, Louis Vuitton appealed the decision to the Second Circuit Court of Appeals.

On appeal, the Second Circuit affirmed the trademark infringement part of the summary judgment, finding no real likelihood of confusion as to the source or origin of My Other Bag’s products. In arriving at its decision, the Second Circuit pointed to:

1. The apparent differences in My Other Bag’s mimicking of Louis Vuitton’s trademark with a caricature drawing and replacing Louis Vuitton’s famous interlocking “L” and “Vs” with interlocking “M,” “O” and “Bs”;

2. the lack of market proximity between Louis Vuitton’s high-end luxury handbags with a bourgeois target market and My Other Bag’s ordinary canvas tote bags with a proletariat target market, and

3. The failure of Louis Vuitton to produce convincing evidence of consumer confusion between the two bags’ manufacturers.

## COPYRIGHTS

Copyrights are the rights held by creators over their literary and artistic works. In the fashion industry, copyright protects unique designs, not generic apparel cuts. The distinction between the apparel cut and the actual design was observed in the famous case of *Star Athletica v. Varsity Brands*. The respondent, Varsity Brands, is a Cheerleading uniform manufacturer. They created, produced, and marketed Cheerleading uniforms across America and have amassed over 200 registered copyrights for two-dimensional constructions. The patterns on the surface of these outfits contain numerous lines, chevrons, and brightly coloured objects. The Petitioner allegedly infringed the copyright of five of their designs, and the Respondents filed a lawsuit. In the summary judgment, the district court concluded that the designs could not be conceptually or physically detached from the uniforms and thus did not go against copyright. This was overturned by the sixth circuit, which concluded that the graphics could be "recognised separately" and were "capable of existing independently".

The issue in this case was whether copyright laws protect the graphics printed on the cheerleading uniform. The judgement of the Sixth Court that the graphics used by a firm that makes cheerleading outfits are protected by copyright since they can be distinguished from the uniforms the company made and can exist on their own was upheld. According to the court, any feature, design, or graphic that has been incorporated into or implanted in the design or as the design of a helpful article is eligible for copyright protection if it can be perceived as a two-dimensional work or design, which is distinct from the helpful article itself and qualify as a protectable "pictorial, graphical, or sculptural work," either on its own or after being fixed in some other tangible medium of expression if they were imagined independent to the article they include.

The courts' judgement complies with Section 101 of The Copyright Act of 1976.

## E-COMMERCE

Of late, e-commerce has played a significant role in shaping the fashion and apparel industry. By reaching a broader consumer base, online platforms have also been exploited to sell counterfeit products and violate intellectual property rights. Issues relating to the liability of E-commerce intermediaries were addressed in *Christian Louboutin v. Nakul Bajaj and Ors.* before the Delhi High Court, a case dealing with trademark infringement. In this case, the respondents, darveys.com, a website marketing itself as a luxury brands marketplace, displayed products under the name of "Christian Louboutin" on their website and claimed that they were merely an intermediary that linked the products from the registered seller to the buyer and also claimed to have protection under Section 79 of the Information Technology Act, 2000 .

The Delhi High Court examined the positions of intermediaries in the USA, European Union and India. It concluded that the defendants were more than an intermediary and exercised complete control over the products being sold on their website. Therefore, it did not have the grounds to be a safe harbour exempt from Section 79(3)(a) of the IT Act, 2000. The court further mandated that the intermediary remove all meta-tags bearing the plaintiff's mark and that it holds its sellers accountable for upholding the plaintiff's promises and guarantees.

## CONCLUSION

The case discussed above shows fashion IP's close relationship with the Information Technology Act due to the boom in E-commerce. A few more cases have dealt with similar issues relating to copyright infringement that have arisen in the digital marketplace. However, Fashion IP as a whole is a dynamic and evolving sphere that is relatively new. The industry requires laws that award rights to individuals/companies that deserve them and make litigating a less strenuous task when there is a violation of these rights. This ensures innovation by ensuring the protection of creative works. Thus, there is a need to revisit the existing laws and update them to be functional in today's day and age. Including this, precedents will also play an essential role in ensuring artists are protected and intellectual property rights are upheld.

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## **CULTURAL APPROPRIATION IN THE FASHION INDUSTRY: THE PROBLEMS SURROUNDING LEGAL ENFORCEMENT?**

**Gonalo Oliveira Martins**

### **INTRODUCTION**

The fashion industry encompasses various economic activities, making it a complex reality on a large scale. In general, it encompasses activities related to the creation, production, distribution, and commercialization of clothing, accessories, and fashion-related products, including both large luxury brands and small independent companies and professionals. To better comprehend its economic dimension, in 2023, it is estimated that this industry will be worth around 1.7 trillion euros, representing 2 percent of the Global Domestic Product (GDP). As such, it is an economic reality in which the great flow of global operations and transactions leads to the growth of legal disputes in different jurisdictions, which give rise to disparate solutions and the most varied

doctrinal discussions. Among the main factors we can list, for instance, e-commerce (which is growing exponentially, and one can often find people selling without authorizations and licenses from the producers or designers of the pieces) and the relocation of many factories to cheap labor hemispheres where replicas of original pieces are produced without any concern for the holders of their rights.

One of the topics that has been raised the most in recent decades, in relation to the above, is the issue of "cultural appropriation." Cultural appropriation refers to when mainstream design companies adopt cultural elements (such as common clothing,

patterns, or symbols) without fully acknowledging or respecting their historical context, which can be especially problematic when the object of appropriation is particularly sensitive. Although it is common knowledge that the use of trademarks, logos, or designs of other brands constitutes a violation of intellectual and industrial property rights, when we talk about cultural expressions, the issue becomes blurred. The challenges of cultural appropriation date back to the time of maritime discoveries and colonization, when certain groups in positions of dominance used the cultural elements of other subordinated groups to their advantage. Since then, the subjects have changed, but the essence of the phenomenon has not. There are now big brands and famous independent fashion designers who, whether on purpose or not, practice behaviors that could offend or abuse (in an economic and social sense) certain cultures. Therefore, nowadays, cultural appropriation lawsuits are a constant in the fashion industry. In order to better understand the same, the discussion and analysis is structured under the following sub-heads: 1) Legal Framework, 2) Case Studies, and 3) Legal Enforcement and Challenges.

## **1) LEGAL FRAMEWORK**

The legal framework surrounding cultural appropriation varies from jurisdiction to jurisdiction and is usually set individually by each country, showing a lack of global legislative force and the will to protect potential cultural violations in the fashion sector. Even so, there are certain legal instruments and concepts that can be used, such as intellectual property laws, such as copyrights, trademarks, and patents; laws on the protection of cultural heritage, which, although not common to all countries, may have specific regulations on violations of what is considered to be the cultural heritage of these places; and consumer protection laws, since in these cases we may be dealing with misleading behaviors on the part of the public and the market, which misleads them into thinking that they are dealing with authentic, authorized and registered products from a particular culture. In addition, human rights protection laws may also be considered, especially regarding the protection of the identity and cultural expression of people, which are likely to be violated in cases of cultural appropriation; or laws protecting minorities, such as indigenous people.

Additionally, any sector-specific rules or regulations that can be adapted to the specific case should also be used, particularly with regard to abusive behaviors in the fashion sector. An example would be the application of rules for the commercialization of cultural products in each country that imposes seals of originality and authenticity, thereby guaranteeing the licensing of the products.

At the European level, some precedent and legislation seeks to protect against unfair and abusive behaviors, which can include cultural appropriation. And if they are legally appropriate, these cases must be safeguarded within the scope of these rules. Meanwhile, in Common Law countries, 'Trade Dress' protection in the United

States and remedies for 'Passing Off' in the United Kingdom afforded in situations where one attempts to make their products into someone else's products, it is easier and more permeable to apply the precepts under discussion to future cases of infringement; not least because more and more of them are being judged and the perpetrators are sentenced to pay hefty compensation to the victims.

## 2) CASE STUDIES

The debate around cultural appropriation is not limited to the fashion sector, but also arises in the media and music sector (for instance, in the Deep Forest Project, a French music project that produced ethnic electronica, mixing ethnic with electronic sounds enigma return to renaissance, with its signature song "Sweet Lullaby" that centers around an uncredited recording of an ancestral Baegu lullaby, "Rorogwela", from Malaita, sung by a woman named Afunakwa, and recorded by ethnomusicologist Hugo Zemp, and which recording was used without authorization from Afunakwa, Zemp, under the label UNESCO discs or distributor Auvidis); cinema (as in the Disney film "Moana", a story adapted from Polynesian culture, which, according to published analyses, harmed Polynesian culture by: depicting the figure of "Maui" a demigod illustrated in a very different way to the original form; depicting the Kakamora people; depicting the coconut cliché; removing Maui's family from the story, etc. According to experts, this has led to deviations of opinion regarding the representation of the Polynesian population and beliefs), among many others.

Sometimes, exchanges between cultures can have a positive impact. If we look, for example, at the case of the designer that, in the 1800s, presented a style in Europe where women felt free from having to wear salts or dresses or corsets; clothes that were liberating for women at the time, (whether this was the result of masculine cultural appropriation or not is debatable), resulted in a noticeable innovation that is still present today. However, this is not the case with most of these abusive behaviors.

A famous case study is Sephora's marketing of fragrance sets with tarot cards, sage leaves, and rose quartz, aimed at "beginners in witchcraft," as the packaging said. This caused outrage among so-called "modern witches," who accused the company of cultural appropriation, claiming that they felt Sephora was using their beliefs to make more money; and the brand ended up withdrawing this product from all shops. Some other fashion brands that have already been accused of cultural appropriation are Marc Jacobs (2017), Gucci (2018), Victoria's Secret (2010), Burberry (2019), Carolina Herrera (2019).

At industry events, particularly fashion shows, brands should be careful with their behaviors, as the use of certain models, postures, or items of clothing can be considered cultural appropriation, as was the case with Commes des Garçons (2020), which was accused of cultural appropriation for having run with white

models wearing wigs with cornrows, which are typically associated with the black culture.

In Portugal, there were not only latent cases of counterfeiting, with Arraiolos Rugs (carpets embroidered with wool on jute or cotton canvas, traditional to the village of Arraiolos in Portugal – the oldest references to the “Tapete de Arraiolos” making technique date back to the end of the 15th century) being mass-produced in China for later sale without any license or authorization, but also of cultural appropriation of the famous Bordalo Pinheiro crockery (Raphael Bordallo Pinheiro is one of the most important figures in 19th-century Portuguese culture, with a remarkable output, particularly in the areas of humorous drawing, caricature and ceramic creation – today, typical crockery of his design style is produced in his memory, which is registered and has industrial and intellectual property rights safeguarded) and the Camisola Poveira (traditional clothing of local fishermen considered one of the main identities of the Póvoa de Varzim people – the originality of this sweater gradually made it one of the most distinctive and iconic items in Portuguese culture), which inspired great creators and designers all over the world; reaching its peak with their sale on the famous fashion designer Tory Burch’s online shop, where they were advertised as her own creation.

### **3) LEGAL ENFORCEMENT AND CHALLENGES**

Before any legal proceedings can be initiated, victims of cultural appropriation or their representatives must ensure that they are recognized as authentic and authoritative. It is only at this stage that any proceedings aimed at protecting these rights can begin. Even so, issues related to cultural legacies and the values of certain cultures can be dubious, depending on the legal system in question, when viewed from the point of view of registering rights and recognizing protections.

If we look at the Portuguese example explained earlier, regarding the misuse of the Camisola Poveira by the famous fashion designer Tory Burch, the Portuguese State, through its Ministry of Culture, had to file a lawsuit in the New York City Court, although an out-of-court settlement was later reached between the parties involved. This is, therefore, the perfect example to illustrate the lack of intermediate bodies when it comes to judicial protection of these issues. The Centre for International Governance Innovation has also promoted a number of initiatives in this direction, with a view to raising public awareness of these problems and trying to strengthen the social and legislative systems in place by promoting suggestions. As in the sports industry, where there is the TAS/CAS (Tribunal Arbitral du Sport/Court of Arbitration for Sport), there are also independent bodies in the fashion industry responsible for resolving disputes relating to legal issues in the sector, such as WIPO Arbitration and Mediation for Fashion, which is responsible for providing legal advice and case management with a view to resolving any disputes. However, there is a need for



greater protection, not only at a private enforcement level but also at a public level, providing the various bodies around the world with the tools and expertise to resolve these disputes.

## THE WAY FORWARD

In conclusion, a thorough analysis should be made of the current state of the fashion sector and the cases of cultural appropriation that have already taken place in order to find legislative solutions, from the point of view of intellectual and industrial property rights, that are suitable for shielding this reality. The legal enforcement of questions related to fashion law should also be strengthened by establishing mechanisms according to which certain behaviors, such as cultural appropriation, are punished; establishing compensation horizons for those who are harmed by such behaviors. Another basis that could serve as a tool for studying solutions to these difficulties is the document 'The Protection of Traditional Cultural Expressions: Draft Articles', which recognizes in its Preamble "the rights of indigenous [peoples] and the interests of local communities] to maintain, control, protect and develop their intellectual property over their cultural heritage, including their traditional cultural expressions," prepared by the WIPO Intergovernmental Committee at its fortieth session held in mid-2019.

The fashion industry will always face legal problems, some of which are new or re-patterned from old issues that have been with it since antiquity. What distinguishes us as a society as a whole and as professionals in the sector is not how we characterize them but how we are able to reinvent legal concepts and mold existing laws and rules to resolve disputes fairly. As John F. Kennedy once said - Change is the law of life. And those who look only to the past or present are certain to miss the future.

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# HAUTE COUTURE'S LEGAL BREAKTHROUGH: THE 1986 FRENCH LAW THAT GRANTED ARTISTIC PROTECTION AND INSPIRED IP LAW REFORMS ACROSS THE GLOBE

Anshuman Gogoi

## INTRODUCTION

Haute couture, or high fashion, is the creation of exclusive custom-fitted clothing made from high-quality materials and with meticulous craftsmanship. Haute couture is considered as a form of artistic expression that reflects the vision and style of the fashion designer. However, for a long time, haute couture creations were not adequately protected by intellectual property law, which left them vulnerable to imitation and piracy. This article will explore how the French law of 1986 changed the legal landscape for haute couture by granting it special status as a work of art and how this law inspired other countries to adopt similar measures to safeguard the creativity and originality of haute couture.

## THE LEGAL CHALLENGES OF PROTECTING HAUTE COUTURE

Haute couture is a term that is legally defined and regulated by the Chambre Syndicale de la Haute Couture, a professional association of Parisian fashion houses that sets the criteria and standards for haute couture. According to these criteria, a fashion house must have an atelier in Paris with at least 20 employees, present two collections per year with at least 50 original designs each, and offer bespoke fittings to private clients.

However, despite these strict requirements, haute couture creations were only sometimes recognized as works of art by the law. Before 1986, haute couture designs were mainly protected by industrial design law, which grants a limited monopoly over the appearance of a product for a certain period of time. Industrial design law aimed to protect a product's functional and aesthetic aspects but not its artistic value or expression.

This meant that haute couture designs could be copied or reproduced without infringing the design rights, as long as they did not create confusion among consumers or harm the reputation of the original designer. Moreover, industrial design law only protected designs that were registered with the relevant authorities, which imposed an additional burden and cost on the designer. Furthermore, industrial design law did not prevent the unauthorized use of photographs or illustrations of haute couture creations, which could be quickly disseminated through mass media and exploited by counterfeiters.

Therefore, industrial design law was insufficient and inadequate in protecting the artistic and creative aspects of haute couture, which go beyond the mere appearance or functionality of a garment. Haute couture designers needed a stronger and more comprehensive legal protection that would recognize their works as expressions of their personality and artistic talent.

## **THE FRENCH LAW OF 1986 AND ITS RECOGNITION OF THE ARTISTIC VALUE OF HAUTE COUTURE CREATIONS**

In 1986, France enacted a new law that amended its intellectual property code and introduced a special provision for haute couture. The law stated that “the protection conferred by this code to works of applied art shall apply to creations having an artistic character in themselves or being incorporated into an artistic work.”

This provision effectively granted haute couture creations the same protection as works of art under copyright law, which is based on the principle of originality and expression. Copyright law protects the expression of an idea, not the idea itself, and gives the author exclusive rights over his or her work for his or her lifetime plus 70 years after death. Copyright law also covers derivative works, adaptations, translations, reproductions, distributions, performances, and communications to the public.

By recognizing haute couture as a work of art, the French law of 1986 gave haute couture designers more control and freedom over their creations. They could prevent any unauthorized copying or imitation of their designs, regardless of whether they were registered or not. They could also claim moral rights over their works, such as the right to be identified as the author, the right to respect their work’s integrity, and the right to oppose any modification or distortion of their work.

The French law of 1986 was a landmark for haute couture protection because it acknowledged the artistic value and originality of haute couture creations, which are not merely products but expressions of creativity and culture. The law also reflected France’s historical and cultural attachment to haute couture, which is considered as part of its national heritage and identity.

Haute couture is a protected term in France and is defined and regulated by the CCIP and the CSHC, which set the rules and criteria for haute couture houses. Before 1986, haute couture creations were not specifically protected by French intellectual property law and had to meet the standards of novelty and individual character to be registered and protected.

The law of 1986, also known as Loi L  otard, changed this by adding a new provision in Article L. 112-2 of the French Intellectual Property Code that stated that creations of the seasonal industries of dress and articles of fashion were considered works of the mind. This provision granted haute couture creations the status of works of authorship that were exempt from the requirements of novelty and individual character. The rationale behind this provision was to acknowledge the artistic value and contribution of haute couture to the French culture and identity, to encourage and reward the creativity and innovation of haute couture designers, and to protect them from unfair competition and imitation.

## **THE INFLUENCE OF THE FRENCH LAW OF 1986 ON THE DEVELOPMENT OF INTELLECTUAL PROPERTY LAWS IN OTHER COUNTRIES**

The French law of 1986 was a pioneering and progressive move that inspired other countries with a strong fashion industry or aspiring to develop one to follow suit and adopt similar or comparable measures to protect haute couture creations under their intellectual property laws.

For instance, in Italy, where fashion is one of the most important sectors of its economy and culture, a decree was issued in 1991 that recognized "the artistic value" of fashion designs and granted them "the same protection as works belonging to figurative arts." In Spain, where fashion is also a prominent industry and a cultural expression, a law was passed in 1996 that stated that "the protection of industrial designs shall not affect the protection that, in accordance with the provisions of this law, may correspond to works of applied art."

In other countries, such as the United States, the United Kingdom, and Germany, haute couture protection is not explicitly regulated by law but rather by case law and judicial interpretation. In these countries, haute couture designs can be protected by either design law or copyright law, depending on the degree of originality and artistic expression they exhibit.

However, not all countries have adopted the same approach as France. Some countries, such as China and India, have different legal and cultural perspectives on haute couture and intellectual property. In these countries, haute couture is not seen as a work of art but rather as a craft or a skill that can be learned and reproduced. Moreover, these countries have a tradition of copying and imitating as a form of learning and innovation, which clashes with the Western notion of originality and exclusivity.

Therefore, there is still a lack of harmonization and consistency in the legal protection of haute couture across the world. This poses challenges and opportunities for haute couture designers and consumers, who have to navigate different legal systems and cultural norms when creating or acquiring haute couture creations.

## CONCLUSION

Haute couture is a unique form of artistic expression that combines creativity, craftsmanship, and culture. However, for a long time, haute couture creations were not adequately protected by intellectual property law, which left them exposed to imitation and piracy. The French law of 1986 changed this situation by recognizing haute couture as a work of art and granting it the same protection as other artistic works. This law was a milestone for haute couture protection and influenced other countries to adopt similar measures to safeguard the creativity and originality of haute couture. However, there is still a diversity of legal approaches and cultural attitudes towards haute couture across the world, which creates challenges and opportunities for haute couture designers and consumers.

In conclusion, we have seen how intellectual property law has evolved to recognize and safeguard the artistic value of haute couture creations. The French law of 1986 granted haute couture creations the status of works of authorship that are eligible for copyright protection. It also acknowledged the artistic dimension and contribution of haute couture to the cultural heritage and identity of France, encouraged and rewarded the creativity and innovation of haute couture designers, and protected them from unfair competition and imitation. This law was a significant milestone in the history of intellectual property law in relation to haute couture, as well as a model for other countries to follow in order to protect their own creative industries.

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## **CELEBRATING THOM BROWNE: BEYOND STRIPES – A TRIUMPH AND ENDURING LEGACY**

**Aditi Singh**

### **INTRODUCTION**

The recent Adidas v. Thom Browne trial has been likened linked to the classic David v. Goliath, Underdog vs. Big Corporation, and Individual Designer vs. Big Brand narratives in various news and fashion articles. However, the recent outcome of Thom Browne’s victory over Adidas, as determined by an eight-person jury in the Manhattan Southern District Court, where the American luxury designer was found not liable for any damages or profits related to the sale of products featuring four stripes or its trademark grosgrain ribbon, carries more profound and significant, wide-ranging positive consequences than may initially meet the eye.

Thom Browne hailed the decision as a “protection for creativity” against large corporations, emphasizing that when one creates something, it shouldn’t be taken away from them. Browne, in his conversation with the Associated Press, expressed his hope that the preservation of his striped designs on luxury athletic wear and accessories would serve as an inspiration for those whose creative work is contested by larger clothing manufacturers.

## BACKGROUND

In June 2021, Adidas initiated a lawsuit against Thom Browne, alleging trademark infringement, unfair competition, trademark dilution, and harm to business reputation under New York law. The lawsuit was centered on Thom Browne's sale and promotion of athletic-style apparel and footwear, which featured four parallel stripes in a manner that Adidas deemed confusingly similar to its own Three-Stripe Mark. Adidas had originally intended to request the jury for compensation exceeding \$7.8 million.

## CONTENTIONS

Thom Browne mounted three key defenses in the trial:

1. Browne argued that his customers were highly sophisticated, and that there had been no confusion between his products and Adidas'
2. He contended that his Four-Bar Signature did not dilute Adidas'; Three-Stripe mark because the two were used differently, and other companies also employed stripes on footwear.
3. The most critical defense was that Thom Browne and Adidas were not competitors. Browne positioned his items as high-end luxury wear sold in exclusive outlets, contrasting with Adidas' ; budget-friendly sports brand marketed to a wider consumer base. The price distinction was substantial; for instance, a Thom Browne cardigan with four stripes cost £1,300, while an Adidas track top with three stripes was priced at £36. Browne's legal team emphasized that stripes were a common design element, asserting, "Adidas does not own stripes."

Indeed, this assertion was reinforced by the designer himself when he arrived at the United States District Court in Manhattan. Thom Browne made a statement with his attire, donning his signature look: a shrunken jacket and tie, a knit cardigan, leather brogues, and tailored suit shorts that extended just above the knee. Notably, he showcased his distinct style by wearing his trademark hiked-up, four-bar-striped athletic socks.

Furthermore, in their efforts to highlight the distinctions between Adidas and Thom Browne, Browne's attorney pointed out that Browne had been incorporating stripes into his designs from the very outset. They clarified that Browne used stripes as a reference to collegiate varsity sweaters.



## ANALYSIS

Growing up as the fourth of seven siblings in an Irish-Italian family, Thom Browne, originally named Tom Browne and later changed his name, had a strong connection to his childhood and early days of swimming. In fact, he even earned a spot in Notre Dame's Division I swimming team. This background sheds light on the significance of the red-white-and-blue striped grosgrain ribbon, a recurring element in every Thom Browne piece.

Browne's designs feature this ribbon as an accent, whether it's a tab hanging from the back of a collar or encircling a shirt arm. This isn't just a design choice; it's a tribute to the ribbon necklaces that adorned the sports medals Browne won during his competitive swimming years.

Thom Browne draws inspiration from his father, who wore a grey suit to work daily. Thom Browne's creations predominantly revolve around two key colors: grey and navy. Its distinctive design elements include the iconic 4-bar horizontal stripes, the signature red, white, and blue grosgrain stripes on sleeves and blazers as well as whimsical animal motifs such as Hector the dog and playful dolphins. These defining features are what set Thom Browne's designs apart. Moreover, Thom Browne is celebrated for its tailored, pleated skirts, an enduring component of each unisex collection released season after season. According to Thom Browne, his world revolves around the concept of the uniform. In his own words, "my world is that of the uniform. It allows me to evacuate the question of style and focus on the other things life has to offer..." In another one of his previous talks with Esquire, Thom Browne expressed his thoughts on uniformity, stating that he finds it intriguing because he believes it reveals true individuality and true confidence.

This vision extends not only to Browne but also to his employees, who become enveloped in this world of grayscale elegance. A testament to this is the starter kit thoughtfully provided by the brand to its employees. This kit features two gray suits, five white oxford shirts, a gray wool tie, and a white pocket square. Detailed guidelines for wearing what Browne calls a "uniform" are outlined in an eleven-page PDF, using visual aids and bullet points, with an emphasis on never referring to it as "the uniform" or "a uniform". This vision appeared to have been brought to life at the New York Fashion Week in the September of 2019, through his performance/installation, aptly titled the "The Office people", where twenty models, comprising 10 men and 10 women, disembarked from a school bus branded with Thom Browne's name. Amidst the hustle and bustle of midtown Manhattan, they moved in perfect synchronization—crossing streets, queuing up, sitting down, and opening their briefcases.

With remarkable uniformity, they enjoyed bites of peanut butter and jelly sandwiches and flipped through a few pages of books like *The Hardy Boys* for the boys and *Nancy Drew* for the girls. Afterward, they neatly closed their briefcases, stood up, and boarded the Thom Browne school bus in pairs. Notably, every model was clad in the exact same Thom Browne uniform.

In a conversation with *W Magazine*, Browne confessed that he viewed this as more of an art installation rather than a performance or a mere fashion moment.

Regarding the intersection of fashion and art, Browne in an interview by *Artnet* said that he acknowledges that art and fashion naturally go hand in hand but suggests that, for him, they appear more as separate means to delve into and explore his interests and the world at large. In 2019, he unveiled his initial art installation in Miami, titled “Palm Tree, I.” The installation featured a life-size palm tree, standing at 21 feet tall, and bore Browne’s distinctive touch. Its trunk was adorned with a medley of textiles in sherbet yellow, green, and pink seersucker, pincord, and gingham oxford fabrics with even the palms made of fabric. This artistic creation was situated within a square-shaped jet-black sandpit.

The idea conveyed the contrast between the serious, business-focused side of America and the carefree, vacation-oriented tropical paradise.

Browne also draws his inspiration from American Fables and stories, be it the Cinderella inspired Spring 2023 collection albeit with his own take on it, *Moby Dick* Pre-Fall 2023 collection, or a “teddy Talk” toy inspired Autumn-Winter inspired Collection. He had a winter-wonderland inspired collection as well, inspired by biblical themes; models adorned with bunny ears and dressed in preppy college blazers took center stage.

For Thom Browne’s 2023 Paris Haute Couture debut, he went about it in a novel way; he aimed to integrate his guests directly into the performance by showcasing an inanimate audience seated in the auditorium. And when the curtain was raised, exposing 2,000 cardboard cutouts in the audience, the pre-recorded applause elicited a genuine and enthusiastic ovation from the audience. It was a case of art imitating life as the show also drew inspiration from a bustling railway station.

## CONCLUSION

A trailblazer, Browne has been challenging conventional gender roles through his clothing and walking the balance between conformity and individuality. Thom Browne is widely acknowledged for his innovative approach to revitalizing today’s clothing norms. Browne’s designs consistently express a genuine American sensibility characterized by top-notch craftsmanship and meticulous tailoring. There is no way of knowing what path the American designer will take from here and what he will create next, but as the judgment given by the District Court proved, one thing’s for sure – that he is here to stay and will continue to make his mark in the fashion and art industry and inspire generations to come.

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## **FAST FASHION: CAN THE PROTECTION OF DESIGNS KEEP UP WITH THE CHANGE OF PACE?**

**Harini Venkatesh & Ssowmiya Narayan M**

### **INTRODUCTION**

In the fast-paced world of fashion, trends change within the blink of an eye. Fast fashion, known for its ability to make and distribute fashionable and budget-friendly clothes, has revolutionised the industry. Though it is recognised for being pocket-friendly and in accordance with societal fashion, it has raised significant intellectual property (IP) law concerns. In this article, the critical role of IP rights in preserving creativity, innovation, and ethical practices within this dynamic business has been considered. The importance of IPR in rapid fashion is apparent and calls for a closer look, from design theft to advances in sustainable fashion. From the environmental toll to the social and ethical implications, the challenges and potential solutions are explored to ensure a more sustainable, creative, and responsible future for the fashion industry.

### **SHORTCOMINGS IN THE CURRENT LAW**

Zara, H&M, GAP, Mango, etc. are prime examples of Fast Fashion and have been in the limelight for a long time due to their affordable prices and trendy looks. However, the part that has been overshadowed is the copying of designs within these brands itself and the absence of provisions that address the same. The rampant copying of ideas in the fashion world raises significant legal and ethical questions. Designers who invest their time and money in making original and creative designs strive to release new designs only for them to resemble copycat brands. This undermines the creator's value and loses the essence of fair competition. In this exploration of the fast fashion dilemma and the issue of copying of designs, the consequences of these practices should be prioritised.

The loopholes in the current provisions like the Design Act, 2000 <sup>1</sup> and Copyrights Act, 1957 <sup>2</sup> are reasons why retail brands like Shein benefit and get away with the same. The competition between the brands is not healthy anymore as it is based on copying each other's designs. Even after continuous allegations on by brands like H&M on Shein, no action has been taken, and the need for IP rights has become even more crucial at this stage. Even if the trend remains the same after a while when it comes to fast fashion, the artistic design creator has to be recognised and addressed.

The cause of such problems includes the lack of strict provisions around the world, especially in India, where the fashion industry is vast and is descending into debt due to not having an effective regime to protect domestic designers. When it comes to fashion, the two laws that come under the purview of IP rights are the Design Act, 2000 and The Copyright Act, 1957. Copyright is one of the most essential laws in India that protects clothing designs as it comes under 'original artistic works. Under Section 2(c) of the Copyright Act, 1957<sup>3</sup>. Any artistic craftsmanship can protect clothing designs. Usually, the concept of copyright is considered only for items like drawings, music and literary creation. However, copyright plays an important role in safeguarding the creator's rights. Contrary to this, the Designs Act, 2000 does not protect the design of clothes as it had been covered under the Copyright Act. In India, according to the Design Act 2000, only articles with features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article are protected under the act. In the case of *Rajesh Masrani v. Tahiliani Design Pvt Ltd.*<sup>4</sup>, the Plaintiff filed a suit for infringement under the Copyright Act against the defendant, i.e., Rajesh Masrani, on the ground that the defendant had copied their fabric prints, including the drawings or sketches thereof, or of copyrighted works of the Plaintiff, including works of artistic craftsmanship. In this case, the honourable court held that the Plaintiff's work was entitled to protection under section 2(c) of the Copyright Act, 1957. This case is one of the most important cases as the importance of an IP rights in fashion was highlighted in the same, and protection was given to the original owner. The nexus between the Design Act, 2000 and Copyright Act, 1957 was laid down in the case.

## **POSITION IN THE UNITED STATES OF AMERICA**

India has a set of laws not strict enough to ensure original creators the rights to their designs. In this sense, U.S. laws on IP are different yet similar in many ways. The laws related to IP in the United States can be considered broader and have a higher scope when compared to the laws in India. The U.S. protects artistic work under the Copyright Act, 1976, has a comprehensive foundation and is clear in nature unlike in India. The legislation does not entirely prevent copying ideas and designs, but the possibility of approaching the court due to stealing designs is higher. The Landmark case of the U.S., i.e., *Star Athletica LLC v. Varsity Brands Inc.*<sup>[i]</sup> is one of the most significant cases highlighting the loopholes in the system that deprives owners of their rights to be enforced.

The Supreme Court devised a "separability" test, that grants the ability to copyright their designs based on separate identification and independent existence. The case includes the dispute between Star Athletica and Varsity Brands, two manufacturing units. Varsity Brands had accused Star Athletica of copying after the cheerleading

outfits made with similar materials resembled the ones of Varsity. Star Athletica did not only copy but also sold the outfits at a lesser price, which attracted consumers. This case is known as a landmark case because it included the legal issue of whether designs can be copyrightable subject matter. The court also held that clothing possesses aesthetic value and is useful for the articles of clothing. The court ruled in Varsity's favour, stating that the design should be separable from articles and should be copyrighted. This case brings light on the difference between a similar look and the actual design of the clothing that laws have overlooked and that many brands have been taking undue advantage of.

Due to the lack of rigid and clear laws, India has a restrictive scope when it comes to protecting owners of their designs. For example, in cases like *Ritika Apparels v. BIBA Pvt Ltd.*<sup>[ii]</sup> identifies the loopholes in IPR laws in India. In this case, BIBA copied a design from the Plaintiff and started selling it under their name. The Plaintiff sued the Defendants for copyright infringement. However, the defendants shielded themselves under Section 15(2) of the Copyright Act 1957, which states that the owner will lose ownership due to reproducing the same design more than fifty times. Due to the Plaintiffs' not registering the design, it became even more accessible for the defendant to prove themselves. In this way, the laws in the USA are more liberal as registration must be done, but that does not take away the owner's right from being recognised as the original creator.

The advent of a new IP right called a "design patent" is already being considered in countries like the U.S. and the European Union, which usually protect visual qualities of a manufactured item like ornamentation or a distinct configuration. However, the protection of dress designs also comes under the ambit of a design patent. Its prerequisites are rigid but provide more protection to owners due to the need for a new design and the non-obvious nature of the dress, which India has not considered yet and hence becomes the need of the hour.

When it comes to fast fashion, the most common question that arises is whether IPR is needed to protect designs that are not going to be in trend after a specific amount of time. However, the basic idea of competitive advantage is lost for original creators. Consumer Safety is also encouraged as customers are ensured standardised clothes. Fast fashion companies that invest in creativity and quality should have the opportunity to compete fairly without the threat of copycats undercutting their efforts. Laws need to be more precise and specific in India for the creators to have that belief in courts. The ability to have locus standi in courts, even if copyrights are not registered, is supposed to be allowed as provided in the USA. Design owners are supposed to be given royalty if it has been used without any particular reason or collaboration. The rigidity in such laws is the only way creators

will be ensured of their recognition[iii].

## CONCLUSION

In conclusion, defendants have been let free due to the loopholes present in the system in several cases. If we consider the design legislations in the U.K. and USA, the provisions are way ahead of our time and provide protection to unregistered designs too. Even if the registration is made compulsory for strict enforcement of the law, it may not make a difference as the registration period itself takes 10 to 12 months, which nullifies the use of an IP right in the first place. The tedious and ineffective law system is the priority and is the need of the hour, which should be modified. Creating an environment that is sustainable enough for fast fashion to continue, and modifying laws in a manner that benefits creators will build people's trust in the law as well.

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## EXPRESSIONS IN MODERN FASHION TRENDS - AUTHENTICITY VERSUS SENSATIONALISM

**Akash Chatterjee and Ishant Jain**

### FASHIONISTA - THE NEW WORLD ON OLD BRICKS

The Fashion Industry has evolved from catering to the "classes" to belonging with the "masses." Dress is no longer attire; attitude and style are statements resembling personality. Designers are constantly trying to evolve unique ways of developing their products. In such strenuous pursuits, they often look around for creative inspiration from existing works, cultural symbols, and artistic works of ethnic groups. The problem lies in how we can use these existing works and what amounts to unfair use. This issue gets further complicated when these works are maneuvered by designers in churning out commercial success, leaving out the ones from whom



channelized such activity.

Commercialization creates something that people accept, effortlessly relate to, and connect with. When it comes to selling fashion, the choice of the people and their inclinations play the most crucial role in determining which trend or style will go viral and which will fail. Catering to the masses and, at the same time, conforming to niche standards is quite a challenge for designers in their forever quest to solve this riddle. To survive in business, constantly brainstorming creative ideas is required to help churn out trends people can assimilate into their mundane fashion. The more significant issue involved is - how original their creativity is. Is it a product of their imagination and an artistic gift, or is it often a shortcut to success by borrowing ideas that the mainstream society is unaware of? Fashion or style, trends, and dressing ideas are progressive developments that derive inspiration from nature, existing ideas, social interaction, and the synthesis of cultural combinations. While the composition of art is never unilaterally vested in the creativity of one person, the scope for "direct copying" or "substantial similarity" needs to be analyzed in the light of intellectual property protection.

Fashion needs hardcore strategizing to survive in an era of competing brands where the bar is increasing daily. Designers are at the edge of their intellectual competence to churn out creativity, and the increasing sensibility around the aesthetics of indigenous communities already promises a profitable endeavor. It is almost too lucrative to ignore the immense value that tribal ethnic fashion carries to prospective consumers' minds. Channeling their shared heritage by stretching an unwarranted intrusion into their cultural heritage is a practice many brands and designers adopt. Despite the tremendous value it brings monetarily and in popularizing their culture, there lies deep-rooted negative consequences for these tribal societies.

One such practice is the commodification of cultural symbols or styles of these communities- the use of "motifs" in preparing designs for their attires. These motifs carry value to the eyes of the consumers who not only want to explore the ethnicity of remote tribes but own a part of them in their attire or dresses. The use of these symbols in commercial fashion business stems from an ideology that they are part of a "shared" culture, and there is no reasonable restriction on regulating their usage. In reality, they are nowhere an element of "commons," nor is there any permission from the tribal communities to allow designers to profit from them. Sanganer, Madhubani, and Bandhini varieties of sarees are examples of such a practice.

Tribes of the Mexican mountain village of Tenango de Doria raised the alarm when their women weavers found their traditional cultural patterns and symbols by a United States-based designer. They had complained about how characters carrying meaning for them were used as mere tokens to commodify their ethnicity in a fashionable trend. Fashion giant Louis Vuitton's 2012 collection landed in controversy on similar lines. They had launched a group "inspired" by the Maasai Tribe's dressing style. It was a blanket called "Shukla" with colorful shades of red and blue. The resemblance was too direct to be able to term it a mere "inspiration." It was indeed a form of cultural Appropriation by the brand to launch a profitable clothing style. The issue of importance here is that it did not compensate the tribes, and neither were any efforts made to establish a benefit-sharing system to share some profit that this brand minted on the intellectual property and cultural heritage of the Masaai tribes. The Maasai Intellectual Property Initiative (MIPI) was established to safeguard any form of misappropriation and wrongful unauthorized usage of the sacred symbols of this tribe in mainstream business.

French fashion designer Isabel Marant developed a costume in 2015 that had a sharp resemblance to the dressing style of the Mixe people of Santa María Tlahuitoltepec. The dress was sold at a very high price, none of which was shared with the Mixe people, whose cultural attire was used without their consent or knowledge.

Culture is a possession shared by people belonging to an identity. The intangible quotient of this heritage manifests as a way of life, often associated with emotional, educational, religious, and sentimental values. Culture is an asset to associate with, not a token to commodify. Cultural Appropriation is a malpractice where the artifacts of a particular social group or tribe are used without their consent, with no benefits being shared or even remotely keeping them involved. As much as the argument of a composite culture stands, the authenticity of intellectual property in culture must be protected and guarded, and not at the risk of being appropriated by anyone to mint profits. Popularizing any ethnic cultural trend or making people aware of indigenous cultural roots has to be sharply contrasted with stealing the same with a 'material gains' motive.

An effective legal regime needs to be established to eliminate this situation, the absence of which is a glaring lacuna. The ideology of 3C - Consent, Credit, and Compensation, is vital to make this incorporation of ethnic styles in fashion fair. According to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the system of free and prior informed consent is an essential right of the indigenous communities. While specific communities hold the traditional cultural expressions as their shared heritage, the intellectual property rights vested in them lack a clear custodian or ownership. This makes the process even more complex and opens up the scope for freely exploiting them.

There are encouraging examples where constructive attempts are undertaken to establish a sound and effective "benefit sharing" system. Là Fuori is a brand conscious of executing different strategies towards a more tribal-inclusive fashion business. They aim to integrate tribal fine craftsmanship by involving artisans in producing their brand clothes. They also share profits with these communities by keeping them engaged as a part of the product, which rests on the intellect they have vested in their shared cultural heritage.

Traditional cultural expressions belong to the community, and these rights stay vested with the communities that guard and practice them. However, the modern I.P. the regime fails to protect them and provide a formal protection channel. Their access is open to the public with no safeguard mechanisms in place.

### **I.P: DO WE HAVE PROTECTION?**

Cultural Appropriation is defined as the use of Traditional Cultural Expressions without giving due regard to the cultural significance of the holder of the TCE.[1] Whether inspirational fashion should be termed as cultural Appropriation or cultural appreciation is another debate. The current portion of the discussion looks into the I.P. element of the issue, if any, and further discusses the respectful behavior towards the TCEs. This unwarranted or unauthorized usage is evidently encouraged due to the glaring lacuna of the current Intellectual Property regime that seeks to establish a connection with the creator and the creation in a commercial sense of monopolization. The administration needs to explore beyond this unilateral connection. With the gamut of ethnic intellectual assets lying without legal protection, appropriating them does not seem like a "theft" and hence goes on.

In the famous case of Mixed Huipui, as mentioned earlier, the indigenous community, Mixe, was neither asked for their consent to appropriate a dress that is a part of their cultural identity nor were they given any benefit from commercializing their creation. Later, the court declared the Mixe community to be the owner of the design and not the designer in a separate dispute of Plagiarism.

The above case establishes that a claim against Plagiarism is a remedy for cultural Appropriation by anyone.

In another case in 2011, one American apparel retailer was criticized for its Navajo-themed clothing and accessories, including a "staring at stars skull native headdress" T-shirt and a "Navajo hipster panty," which reached a conclusion through mutual agreement, and the suit was withdrawn. Later, it was used by other companies, which ignited the heat, leading to another lawsuit regarding the violation of trademark laws and the U.S. Indian Arts and Crafts Act (1990). Post the heated argument of inspiration and infringement, the parties reached a settlement

and, subsequently, a supply and licensing agreement.

Further, in India, 'Toda Embroidery' was given a geographical indication tag by the Government of India but had been copied. Despite the issue being raised, no action was taken. This is mainly due to the marginalized existence of these tribal communities who are not acquainted with the formal protection system of guarding their creativity.

The above cases mentioned give a picture of the protection of TCEs. However, they need to be granted protection in the I.P. regime. The copyright law, to protect a work, demands that the work be original, fixed, and arising from an author. However, in the case of tribal fashion, they are not the work of an individual who developed them solely with his labor. Instead, they are passed on from one generation to the other, making it nearly impossible to have an individual author.

Furthermore, if an individual author is traced, in a majority of cases which is not found, the protection granted is time-bound, which creates individual-oriented protection and not Indigenous community-oriented one. The copyright protection would bring it into the public domain after the expiry of the copyright protection, which is not the idea of protecting a tribal cultural expression.

## THE WAY FORWARD

A healthy, sustainable industry should prioritize ethics over commercial gains. Survival of any sustainable enterprise depends on equity in its process and products. Correct use of creative assets helps the healthy operation of industrial growth. It is, hence, imperative that cultural Appropriation be prevented, and the moral consciousness of fashion giants needs to devise a sharing and consent-based approach if at all they wish to incorporate ethnic styles in their commercial brands. Also, there is a need for the development of strict laws to prevent Traditional Cultural Expressions from being safeguarded against such Appropriation.

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## **FASHION, ART AND VIRTUAL REALITY: IP CHALLENGES IN VIRTUAL RUNWAYS AND IMMERSIVE GALLERIES**

**Natasha and Sakala**

### **INTRODUCTION**

The convergence of fashion, art and VR has enabled creators and customers alike to gain an ever more vigorous and immersive experience within a fast-evolving technology landscape. However, several intriguing challenges relating to the protection of Intellectual Property Rights is at stake in this exciting fusion. This article sheds light on the challenges of IP protection in virtual runways and immersive galleries.<sup>1</sup>

### **PRESERVING ORIGINALITY: COPYRIGHT AND DESIGN RIGHTS IN VIRTUAL FASHION**

The spirit of originality and innovation has always been central to the fashion industry. Designers spend thousands of hours crafting unique clothing that expresses their artistic visions. Designers have often relied on copyright and design rights in order to protect these creations. These legal shields are not only to safeguard the integrity of their work, but they also serve as an expression of ownership. Designers must understand how such rights go from a physical representation of their designs to an electronic one when they are created in Virtual Reality.

It is necessary to have a sophisticated understanding of copyright law in order to move from physical fabrics into virtual 3D models. The ownership and reproduction rights of digital works need to be taken into account by designers, so that they do not face unauthorized duplication or distribution. Controlling the use and propagation of these digital art forms, license agreements and authorizations are crucial to allow designers to be confident about their navigation in a Virtual World.

Moreover, new challenges are arising due to the development of technology. Complex copyright issues are further complicated by the intricacies of safeguarding Augmented Reality Overlays and Invasive Elements in Virtual Spaces. In these immersive environments, designers need to be careful to understand how their creations are experienced and how they interact with them.

## **DIGITAL REPRODUCTION AND DISTRIBUTION: 3D MODELS AND BEYOND**

Virtual reality has brought about a time when fashion transcends the limits of physicality. The building blocks for this digital revolution are 3D models and textures, allowing designers to breathe new life into their works in the virtual world. The issue of the reproduction and distribution of these digitized assets raises important questions in relation to this transition.<sup>2</sup>

The task of protecting digital creations from unauthorized use or replication must be tackled by creators. In this context, the complexities of copyright laws are particularly relevant in order to reach a balance whereby designers are not sharing their work with an entire world audience but, protecting their trade secrets. An essential tool for ensuring control of the distribution of digital models and textures is clear licensing agreements and authorization mechanisms.

In addition, concerns about ethical use of User Generated Content (UGC) in the Virtual Space are at the forefront. It is a delicate balancing act for designers and developers to ensure compatibility of the UGC with copyright and other intellectual property rights while promoting creativity and user engagement.

## **VIRTUAL BRANDING: NAVIGATING TRADEMARKS IN IMMERSIVE ENVIRONMENTS**

Marks are an essential element of the identity of a fashion brand. It acts as a visual symbol, which brings to mind the essence of the brand's philosophy. Ensuring a proper representation of the mark will be an important challenge with regard to virtual reality platforms, which open up new opportunities for brands.

In order to have proper representation of trademarks in the virtual world, a comprehensive understanding of legislation is required. It is important for designers and brand managers to perform a thorough study of the complexities of trademark law, so as to enable virtual designs to comply with existing legislation. It is necessary to obtain the relevant authorizations and licenses in order to maintain the integrity and identity of a brand within an immersive environment.

At the end, as fashion, art and virtual reality converge, we will be entering a new era of creativity. But this constantly changing world poses a whole set of issues in the area of Intellectual Property. As a result of the way in which these challenges are being addressed, creators will find solace in the fact that their work is eligible for legal protection. This confluence of creativity and legal acumen ensures that the virtual runways and immersive galleries of the future remain a testament to human ingenuity and artistic expression. The full potential of this creative junction in which the digital environment is being explored, can be realized carefully.

## **CASE SCENARIO: NAVIGATING IP CHALLENGES IN VIRTUAL RUNWAYS AND IMMERSIVE GALLERIES**

In the world of virtual reality, where fashion, art and technology come together, some important legal issues need to be taken into account. In order to improve our understanding of these problems, this case study looks at a hypothetical situation.

Imagine a fashion designer named Alex. They are known for being innovative and want to showcase their latest collection in a virtual reality experience.

Alex is doing what he can to keep their designs fresh, even in the Virtual World. The brand knows that it is essential to have copyright and design rights in order to protect its designs. In order to best defend their inventions in cyberspace, it is recommended that the designs be registered both physically and electronically. Alex is therefore establishing a solid foundation in order to protect the designs. If someone infringes any of them by copying or using them illegally, Alex has a legal basis to defend the work.

Alex starts working on 3D models, but preventing others from copying or sharing them without permission is a potential issue. The legal team is advising Alex to lay down simple rules and agreements regarding the use of such digitally-based models. Alex is going to follow this advice and come up with a system that allows others to use their 3D models. This approach fosters cooperation, without infringing any legal right by balancing creativity with responsible sharing. Alex is focusing on their brand logo as the virtual runway draws to a close.

Alex checks all the rules on trademark law with a team of lawyers, to ensure that they follow them. Alex ensures that their brand stays true to the Virtual Space by securing appropriate permissions and licenses. In this way, the reputation of a brand remains intact and stands out as an excellent example for brands to be represented in Virtual Worlds.<sup>4</sup>

### **FINDING THE RIGHT BALANCE**

A case study on Alex's journey illustrates the importance of balancing creativity with legal knowledge in a virtual world. By taking proactive steps and seeking legal advice, Alex not only protects their work but also sets a good example for responsible and innovative practices in virtual fashion shows and art galleries.

As the virtual and physical worlds are mixed, this case study reminds us that bringing together creative ideas with legal knowledge is important. The trend is led by inventors like Alex, who show that innovation works best when it's founded on a good understanding of intellectual property rights.



## **CASE LAW: CHRISTIAN LOUBOUTIN V. YVES SAINT LAURENT**

The topic of trademark protection for the red soles of Christian Louboutin's high-heeled shoes was at the center of this high-profile litigation.

Fashion designer Christian Louboutin is well-known for his high heels with red-lacquered soles and other luxurious women's footwear. For the use of a red lacquered sole on women's high-fashion footwear, Louboutin had secured a U.S. trademark registration.

The fundamental question in the case was whether Louboutin was entitled to trademark protection for the red sole of his shoes; and if Yves Saint Laurent's use of a red sole that was comparable to Louboutin's amounted to trademark infringement.

In its initial decision, the U.S. District Court for the Southern District of New York sided with Yves Saint Laurent, holding that Louboutin's red sole trademark was invalid because it attempted to shield a single color used on a piece of clothing. According to the court, such a trademark would hinder innovation and competition in the fashion sector.

However, the U.S. Court of Appeals for the Second Circuit only partially overturned the judgment on appeal. The court ruled that Louboutin's red sole trademark was legitimate with some restrictions. In particular, it decided that the trademark could only be used when the red sole of the shoe stood out against the color of the top. The trademark wouldn't be valid if the entire shoe was red.

Due to this ruling, Louboutin was able to effectively defend the use of his red sole trademark even when the remainder of the shoe was another color.

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## **SUSTAINABLE FASHION AND INTELLECTUAL PROPERTY: BALANCING CREATIVITY AND ENVIRONMENTAL CONCERNS**

**Rituraj Mal Deka and Reema Mariam Philip**

### **INTRODUCTION**

The fashion industry is at a turning point as it struggles with a rising understanding of its significant environmental impact. Existential worries have been expressed for the health of our world as a result of climate change, pollution, hazardous waste, and the depletion of essential resources. Fashion, which was traditionally associated with glitz and luxury, is increasingly seen as a significant factor in the current environmental disaster. Its links to dangerous chemicals, pesticides, high carbon emissions, waste production, and pollution have drawn attention. However, amidst these concerns, a paradigm shift is underway within the fashion industry. Fashion brands are realising that sustainability is no longer an optional accessory but a necessity to safeguard their brand values and the future of our planet. This shift is driven by the need for concrete action rather than mere lip service to environmental responsibility[i].

Recent research reports have illuminated the industry's extensive carbon and environmental footprint, tracing it from the extraction of raw materials to manufacturing, distribution, consumer use, recycling, and disposal. These reports have exposed the urgent requirement for the fashion industry to move beyond superficial sustainability pledges and embark on a journey of genuine environmental improvement. An extensive 8% of the world's greenhouse gas emissions are thought to be attributed to the garment and footwear industries, according to a joint analysis by Quantis and the ClimateWorks Foundation. A substantial portion of the environmental impact of consumerism in Europe can be attributable to clothes alone, according to a report by the European Parliamentary Research Service. The crucial challenge for the fashion business is to strike a balance between its inherent inventiveness and intellectual property rights and the urgent need for environmental responsibility. The discussion on "Sustainable Fashion and Intellectual Property" revolves around this delicate balance between creativity and environmental concerns.[ii]

### **SUSTAINABLE FASHION AND ENVIRONMENTAL CONCERNS**

The fashion sector, a well-known global economic powerhouse with a staggering worth of 2.5 trillion USD, employs over 75 million people globally. This business has expanded significantly over the past two decades, with apparel output tripling between 2000 and 2014. Surprisingly, despite the fact that consumers bought 60% more clothes in 2014 than they did in 2000, the lifespan of these clothing items

decreased by 50% over the same time period.[i] The fashion industry has, however, come under increasing scrutiny as a result of its significant adverse effects on the environment as it continues to grow. The production of clothing alone is responsible for 10% of the world's carbon emissions, depletion of water supplies, and contamination of rivers and streams. Every year, a startling 85% of all textiles are discarded, and washing some clothing types releases a sizeable amount of microplastics into the ocean (UNECE, 2018).[ii]

The transition of the fashion business was greatly aided by the post-World War II invention of synthetic materials like polyester and nylon. Over 60 million tonnes of synthetic fibers were consumed worldwide in 2018, up from just a few thousand tonnes in 1940. Particularly since the late 1990s, polyester has dominated the textile industry, accounting for 60% of garments and 70% of household textiles.

But over the course of their lifespan, these textiles made of plastic have a significant negative impact on the environment and climate. They are connected to the emissions of pollutants and greenhouse gases. With the production of synthetic fibres consuming about 1% of crude oil production, the textile industry has become a bigger factor in the climate crisis. Additionally, it contributes significantly to oceanic microplastic pollution, accounting for 35% of it, with an annual discharge of between 200,000 and 500,000 tonnes of microplastics from textiles into the marine environment. Given these serious worries, it is imperative to acknowledge that the textile industry is a crucial part of the ongoing plastic crisis[iii]. One of the biggest environmental problems of our time is plastic pollution, which has prompted involvement from a number of stakeholders. As a result of the resolution passed at the UN Environment Assembly in March 2022[iv] negotiations for a global, legally binding agreement on plastic pollution are currently under way. The need for a thorough revaluation of the fashion industry's practises and materials is highlighted by the intersection of fashion, sustainability, and environmental concerns. Initiatives and innovations in sustainable fashion are becoming more and more important to lessen the environmental harm the industry causes.

## **INTELLECTUAL PROPERTY IN FASHION**

The law governing intellectual property (IP) has become a crucial factor in the development and prosperity of the fashion sector. The runway is a well-known setting where IP is crucial. Even though only a small number of the designs seen on runways are actually sold in stores, these high-profile occasions offer designers a chance to demonstrate their creative talent, attract media attention, and establish their brands. Additionally, runways give fashion companies the chance to capitalise on the allure and visibility that their fashion shows generate by marketing more approachable products like perfumes, cosmetics, or branded T-shirts. The fashion industry is fundamentally driven by this strategic use of IP licensing.

The interaction of copyright law with the fashion industry has attracted a lot of attention because it has historically been a significant source of protection for fashion designs in the United States. However, trademarks stand out as the most frequently used tool used by fashion brands to protect their interests in the American market. With their capacity to safeguard brand identities, trademarks are essential to maintaining the standing and distinctiveness of fashion labels.[i]

However, there has been a discernible increase in the use of design patent protection, especially among well-known brands with sizeable financial resources. To protect their essential, timeless products—those made for various seasons—these brands frequently use design patents. Design patents are viewed in such circumstances as an investment in long-term brand integrity. Additionally, there is a rise in the use of logos on clothing and other fashion accessories, such as bags. This style is in line with the preferences of Gen-Z and millennial shoppers, who frequently try to draw attention to the brands they are wearing. At the same time, it gives businesses a legitimate way to safeguard features of their practical products that might not otherwise be protected by traditional IP channels.

The growing focus on sustainability in the fashion industry is a significant development. Sustainability has changed from a fad to a necessity as environmental concerns grow more pressing. The Federal Trade Commission in the US and the Advertising Standards Authority in the UK are two organisations that are anticipated to increase their scrutiny of "sustainable products" labelling. Sustainability is currently a strong selling point, but there are no established standards to determine what "sustainability" or "all-natural" actually entails.

As a result, the market may eventually see the emergence of regulated legal standards that require any product bearing the label "sustainable" to satisfy certain requirements. This would be a significant step in the direction of ensuring accountability and transparency in the pursuit of sustainability in the fashion industry. In conclusion, the fashion industry's dynamic use of intellectual property exemplifies its many functions, from safeguarding brand identities and designs to adjusting to new trends like sustainability. The complex interactions between IP law and the creative and commercial endeavours of the fashion industry will change along with fashion as it continues to develop.[ii]

## **THE INTERSECTION: SUSTAINABLE FASHION AND INTELLECTUAL PROPERTY**

In "A Sand Country Almanac," a book by Lepold, he makes the case that sustainability can be viewed as a moral and ethical framework for our interactions with the environment. Sustainable clothing refers to methods for producing non-toxic, high-quality, and reasonably priced clothing services and goods while ensuring safe and secure livelihoods. It also refers to the efficient use of resources, including

renewable resources. Intangible works of human intellect are included in the category of property known as intellectual property. Different nations recognize different kinds of intellectual property to varying degrees. The most well-known types include trade secrets, patents, copyrights, and trademarks. The growth of sustainability in the fashion sector is significantly influenced by intellectual property. Intellectual Property plays a crucial role in the fashion industry as it protects the unique designs, logos, and trademarks of designers and brands. Thus, IPR helps in maintaining the exclusivity of their products and prevents others from misusing their designs. IPR play a variety of roles in preserving sustainable fashion, including protecting design and innovation. IPR safeguards a company's originality as well as the product's visual representation, ensuring that others cannot steal their design or ideas without their consent. Companies and designers frequently work together through licensing and collaborations. They are able to use their ideas by paying each other back thanks to the IPR's copyright and trademark protections. Eco-baiting prevents misleading with regard to the sustainability of products by applying lawsuits to parties who infringe. There are several factors involved in the intersection of sustainable fashion and intellectual property. Sustained fashion should be able to manage different issues to preserve their distinctive identities; they should be able to promote themselves and should be responsible towards the environment; along with that, they should secure the money they invested in design and technology. With creative solutions, which in turn ensure a more responsible and sustainable fashion industry, there can be a balance between sustainable fashion and intellectual property.[iii]

## **BALANCING CREATIVITY AND ENVIRONMENTAL CONCERNS**

Sustainable fashion, an industry that is becoming increasingly conscious of its environmental impact, has traveled a multifaceted path to find a healthy balance between artistic expression and ethical standards. One key development following the tragic Rana Plaza catastrophe is the drive for brand transparency. Consumers now demand fashion brands to be open and honest about their labor practices and supply networks. Consumers are better able to align their values with the companies they choose thanks to this transparency, and the industry as a whole is more supportive of corporate responsibility. Sustainable fashion addresses problematic chemicals and dyes, which have historically plagued the industry, in addition to transparency. A significant change is the research of naturally occurring colors coming from flora and organic materials. A well-known insect-based dye like cochineal, for instance, is becoming more and more popular, particularly for fabrics made of proteins like silk and wool. At the same time, fashion businesses are experimenting with non-toxic dye substitutes to reduce environmental damage and the health risks to people and ecosystems. Additionally, using chemical-free organic resources encourages the manufacture of textiles in a way that is more environmentally friendly.

The textile industry's insatiable appetite for freshwater is a further pressing issue. The impact on this finite resource is obvious as industries and textile mills, mostly located in developing countries, use an estimated 1.5 billion cubic meters of freshwater annually. [i]. First of all, there is an increasing trend toward the use of dyes that use less water, hence reducing the strain on water resources. Second, non-toxic substitutes lessen damage to aquatic ecosystems, thus reducing the environmental impact of the sector. Thirdly, choosing organic textiles that are grown without hazardous chemicals not only conserves water but also encourages the use of sustainable farming methods. Additionally, the idea of "refashioning" or "upcycling" has gained popularity as a sustainable strategy in the fashion industry. This method involves repurposing used clothing to create fresh, innovative designs, extending their useful lives and keeping them out of landfills. For instance, turning worn jeans into one-of-a-kind and stylish goods decreases waste while also enhancing the creativity and distinctiveness of clothing options.

## CONCLUSION

The stark reality of the fashion industry's substantial environmental effect has brought it to a critical crossroads. The complicated difficulties it encounters in striking a balance between innovation and environmental responsibility are highlighted by the interaction between sustainable fashion and intellectual property. The fashion business, a major force in the world economy, has contributed to both innovation and environmental deterioration. Its quick expansion has resulted in pollution, water shortages, and carbon emissions. Previously lauded for their invention, synthetic textiles like polyester are today recognised as a significant source of plastic pollution and greenhouse gas emissions. The protection of fashion firms' distinctive identities has benefited greatly from intellectual property rights such as trademarks and design patents. They help brands to keep their exclusivity, safeguard innovations, and facilitate collaborations. These rights will be crucial in preventing eco-baiting and guaranteeing labelling accountability as sustainability assumes greater prominence. A careful balance is required at the point where sustainable fashion and intellectual property collide. Transparency, a reduction in chemical use, and a cap on freshwater consumption are all goals of sustainable fashion. In order to increase the usefulness of clothing and reduce waste, it looks for innovative methods like up-cycling. To adapt to this shifting environment, intellectual property laws must develop, encouraging responsible behaviour without impeding innovation. The fashion industry must acknowledge that sustainability is not just a trend but a moral requirement in light of this paradigm change. Brands that embrace sustainability will hold their place in a more responsible and ecologically concerned fashion industry as consumers demand transparency and eco-consciousness. Collaboration, creativity, and a dedication to protecting both artistic expression and the health of our planet are necessary for the voyage ahead.

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## SAFEGUARDING CREATIVITY: NAVIGATING THE LEGAL LANDSCAPE OF FASHION DESIGN, COPYRIGHT AND TRADEMARK

**Mili Gupta**

## INTRODUCTION

"Fashion is not something that exists in dresses only. Fashion is in the sky, in the street. Fashion has to do with ideas, the way we live, what is happening". - Coco Chanel.<sup>1</sup>

Fashion rights and intellectual property (IP) are two important intersecting rights.. Protecting the rights and interests of designers is essential because the fashion industry is known for its creativity and innovation. To protect intellectual property rights, such as trademarks, patents, copyrights and designs, in the fashion industry,



regulation of intellectual property is very important. For example, the “DesignEuropa Award”, which recognises the best innovations in the fashion industry, was established by the European Union in 2019. Similarly, the Indian government has made numerous efforts to support and protect the country's traditional textile and craft sectors. Counterfeiting is one of the main obstacles in the protection of intellectual property in fashion law. In the fashion industry, counterfeiting is a major problem that can seriously damage the industry's reputation and financial stability.

#### Legal Protection offered to Fashion

The fashion industry is exceptional in terms of the items it makes, the speed at which they are made, and how they are marketed. Therefore, intellectual property law that applies to other areas does not always apply to the fashion industry. For example, a fabric pattern design may be protected as a copyright, while a design patent may protect a clothing design. The convergence of intellectual property and fashion law has attracted more attention in recent years. This focus has led to creating specific rules and regulations tailored to the fashion industry.

Due to this infringement, the Government of India has made many laws to protect the fashion industry, some of which are:

- Copyright Act, 1957.
- Designs Act, 2000.
- The Goods Geographical Indications Act, 1999.
- Trademarks Act, 1999.

When a design or model is realized from a mere thought and its originality is evident from its existence, it is immediately classified as a creative work under Section 13 of the Copyright Act, 1957, and Section 15 of the Copyright Act is an important provision relating to copyright for works that are registered or are eligible for registration.. It is specified that firstly, a design registered under the Design Act 2000 will not be eligible for protection under the Copyright Act. Next, copyright on any design registered under the Designs Act but not yet registered ceases when a work to which the design is applied is reproduced more than 50 times by the copyright owner by industrial process or; with that person's permission, by any other person. Accordingly, under the Copyright Act, 1957, the registration of a design and a copyright in an article cannot coexist. The meaning of 'design' is defined in section 2(d) of the Designs Act, 2000. With certain exceptions, 'design' means only the features of shape, configuration, pattern, decoration, or layout of lines or colours applied to any product, whether in two- or three-dimensional form or both, by any industrial, manual, mechanical or chemical process or means, separately or in combination, which is attractive and appreciable as judged solely by the eye. Severe penalties were provided for in Sections 103 and 104 of the Trademarks Act, 1999 for trademark violators who were found to have abused the mark and sold the goods for profit.

## **COPYRIGHT: PROTECTION OF CREATIVE EXPRESSION**

Copyright law is a powerful tool to protect creative works, and fashion is no exception. It includes original and creative aspects of a design, such as unique artistic prints, patterns and textures. However, there is one important limitation: Copyright does not extend to the functional aspects of clothing, such as fit and style. In 2018, Rastaclat, a popular wristband brand, filed a lawsuit against Forever 21 for copyright infringement. Rastaclat claims that Forever 21 copied its shoelace design on the wristband. This case illustrates how copyright can be used to protect unique and innovative elements of fashion, even if they are not part of the garment.<sup>2</sup>

## **PROTECTION OF BRAND IDENTITY**

Branding plays an important role in protecting the identity of a fashion brand. They protect the distinctive logos, symbols and characteristics that consumers associate with a particular brand. A strong brand can distinguish a brand in a crowded market and prevent other brands from taking advantage of its reputation. Christian Louboutin's iconic red sole is a testament to the power of brands in fashion. Louboutin tried to trademark his signature red sole, preventing other designers from using the same feature on their shoes. This legal strategy protected the unique identity of the brand.

## **COUNTERFEIT GOODS IN THE DIGITAL AGE**

With the advent of e-commerce and the global market, counterfeit goods have become a major threat to the fashion industry. Counterfeit products not only hurt the economic viability of authentic designs but also dilute the artistic vision of fashion designers. Luxury fashion brands like Louis Vuitton and Gucci are joining the fight against online counterfeiters. These brands employ a range of legal strategies, from takedown notices to litigation, to combat counterfeiting on e-commerce platforms. Such efforts demonstrate the fashion industry's commitment to maintaining creativity and authenticity in the digital age.

## **PROTECTION OF INTERNATIONAL INTELLECTUAL PROPERTY**

Fashion knows no borders and as designers expand their reach, they must pay attention to international intellectual property protections. Navigating the global legal landscape requires an in-depth understanding of trademark registration and copyright law in different jurisdictions. The case of Zara, the global fashion giant, illustrates the importance of protecting international intellectual property rights. Zara has faced numerous legal battles over allegations of intellectual property infringement. Fashion designers must use a variety of legal strategies to protect their designs in different countries while respecting each country's laws.

## **ETHICAL PRACTICES AND INDUSTRY AWARENESS**

Protecting creativity goes beyond legal battles. Promoting a culture of respect for intellectual property in the industry is essential. Ethical practices, such as supply chain transparency and responsible consumption, can reduce demand for counterfeit

goods. The "Fashion Revolution" movement, born after the collapse of the Rana Plaza factory in Bangladesh, calls for greater transparency and ethical practices in the fashion industry. This movement highlights the importance of responsible consumption and highlights the role of consumers in protecting creativity by supporting ethical and sustainable brands.

There have been many instances recently, whereby international fashion brands have set an example in their approach to trademark infringement. Many popular brands have faced issues of infringement, under the grab of merely taking inspiration. The following case studies analyse the issue:

1. Nike has been involved in a trademark lawsuit with MSCHF over the alleged infringement of Nike's "Satin Shoes." Additionally, the ongoing legal battle between Prada and Dolce & Gabbana over the defamation lawsuit continues to be a point of contention. This highlights the importance of adhering to legal boundaries in the areas of design, copyright and anti-piracy measures. It is a reminder that all businesses need to take these issues seriously in order to protect their intellectual property in the evolving landscape of intellectual property rights and fashion.
2. Tommy Hilfiger has filed a trademark infringement lawsuit against two companies based in Tamil Nadu, India. These companies produce masks with the name and logo of Tommy Hilfiger, a New York-based fashion company. These unauthorized products are openly for sale on various platforms including Indiamart. In a ruling last year, the Delhi High Court sided with Tommy Hilfiger, granting a preliminary injunction to prevent further violations.
3. In the recent legal battle between H&M and Forever 21, Forever 21 is embroiled in a new fashion industry dispute, adding to the history of such disputes. In this particular case, H&M, the plaintiff, filed a lawsuit against Forever 21 for allegedly stealing their 'Beach Please' tote bag design. H&M's lawsuit covers a variety of claims, including copyright infringement, trade dress infringement, and unfair competition. The crux of the controversy revolved around Forever 21's introduction of a palm-lined tote bag with the words "Beach Please" prominently displayed on the front. H&M claims that this model was originally theirs. To remedy this violation, H&M has asked Forever 21 to immediately cease the production, marketing and sale of these tote bags. In addition, they are asking for damages for the alleged violation. However, it should be noted that the case was ultimately resolved through the mediation process without the need for court intervention.
4. In the case of Designer Guild Ltd v Russell Williams (Textiles) Ltd, the plaintiff was in the textile industry and created an outfit named 'Ixia'. This design has a unique combination of flowers and stripes, combining paint styles and using resistant effects. On the other hand, the defendant copied the plaintiff's drawing and named it "Marguerite". This act was considered an offense by the House of

### Commons.

This decision was based on the assumption that the plaintiff has invested considerable effort in making his design eligible for copyright protection. Even if the designs reproduced meet the criteria set forth in *R G Anand v. Deluxe Films*, they were still found to be infringing due to the substantial labor input invested by the plaintiff. This decision emphasizes the importance of recognizing and protecting the intellectual property rights of creators and designers, especially when their creative efforts and originality are evident in their work.<sup>3</sup>

In the world of fashion, drawing inspiration is an integral part of the creative process of designers and brands. However, when it comes to intellectual property rights (IPR), it can be difficult to distinguish between inspiration and infringement.

Designers must ensure that their creations do not infringe the copyrights, patents or trademarks of others. In terms of copyright, fashion designs are generally not protected by copyright in many countries unless they meet specific criteria. Trademarks are essential in establishing brand identity and protecting unique logos, names or symbols associated with a fashion brand. In addition, there is the concept of "sales presentation" in the fashion industry, which refers to the overall appearance and packaging of a product, which serves as an element of identification of the origin of the product. Commercial apparel protection can include things like special color combinations, designs, or specific packaging. Intellectual property rights issues can arise in the fashion industry when designs or elements closely resemble or rely heavily on existing copyrighted works.

To reduce the risk of infringement, fashion companies often take measures such as doing thorough research, making sure their designs are unique, seeking advice from legal experts, and taking proactive steps to protect their intellectual property rights. Regularly monitoring the market and taking action against potential infringers are also important strategies for protecting intellectual property rights in the fashion world. Finding the right balance between getting inspired and creating distinctive pieces is key to tackling the complexities of IPR in the fashion industry.

## CONCLUSION

Protection of creativity in fashion design is a multifaceted endeavor that involves a delicate balance between artistic expression and legal protection. Copyright and trademarks are powerful tools, but they have limitations and complications. The fashion industry's fight against counterfeiting is an ongoing challenge in the digital age that requires vigilance and adaptability. International intellectual property protection is crucial for designers with global aspirations. Promoting ethical practices and raising industry awareness are key to preserving creativity and authenticity.<sup>10</sup>

As fashion continues to evolve, the strategies used to preserve creativity must evolve as well. In this ever-changing landscape, fashion designers, brands, consumers and legal professionals must work together to ensure that artistic visions can flourish while respecting property rights. By shedding light on the legal framework

surrounding fashion design, we can pave the way for a more creative, authentic and sustainable future for the fashion industry.

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## SAFEGUARDING CREATIVITY: TRADEMARKING FASHION ELEMENTS

NEHA SRIKANTH AND DAYA RAJESH

### TRADEMARKS IN THE FASHION INDUSTRY

Trademarks play a pivotal role in the fashion business, serving as the industry's cornerstone of brand identity and protection. In the context of fashion law, a trademark refers to a recognizable symbol, design, word, or combination that distinguishes one fashion brand's products or services from those of others in the market. These trademarks can encompass various elements, including logos, brand names, slogans, and specific patterns or colors associated with a particular fashion house. In the highly competitive and visually-driven fashion world, trademarks are potent tools for building and maintaining brand recognition. They not only help customers identify and connect with their favorite brands, but also provide legal safeguards against unauthorized use or imitation by competitors. Therefore, understanding the importance of trademarks and their legal aspects is essential for fashion designers, companies, and entrepreneurs looking to establish and protect their unique brand identities in this dynamic and creative industry.

Traditionally, fashion designers relied on copyright and patent laws to protect their creations, primarily focusing on the overall garment design rather than specific elements. However, as fashion became increasingly fast-paced and accessible, the need to safeguard distinctive elements like logos, patterns, and color combinations became evident. One pivotal moment in this evolution was the emergence of luxury fashion houses in the late 19th and early 20th centuries, such as Louis Vuitton and

Gucci, who began to use logos and monograms as distinctive trademarks on their products.<sup>2</sup> These logos served as a symbol of luxury and a powerful tool for brand recognition and authenticity. The digital age further accelerated the need for fashion trademark protection as e-commerce and fast fashion posed new challenges concerning counterfeiting and copying. Brands like Christian Louboutin famously trademarked the red sole of their shoes, solidifying the idea that a single, distinctive element could be protected as a trademark.<sup>1</sup> A detailed analysis of this landmark case will be dealt with in the latter part of this article.

Today, the evolution of trademark and fashion elements continues as designers and brands grapple with protecting their intellectual property in an ever-changing landscape. With the rise of social media and influencer-driven fashion, the boundaries of what can be considered a trademark in the fashion world are continuously shifting, making it essential for the industry to adapt and navigate the evolving domain of intellectual property laws.

### **CAN A COLOR BE TRADEMARKED? THE RED - SOLED SHOES OF CHRISTIAN LOUBOUTIN: A CASE STUDY**

Christian Louboutin is a renowned French luxury footwear designer known for his high-end, red-soled shoes. <sup>3</sup> Louboutin first introduced the red sole in the early 1990s, apparently inspired by an assistant painting her nails with red nail polish. This signature red sole quickly became synonymous with the brand's exclusivity and style.

The case study concerns a trademark dispute between Christian Louboutin and Yves Saint Laurent (YSL).<sup>5</sup> In 2011, YSL released a line of monochromatic shoes with red soles, prompting Louboutin to file a lawsuit, alleging trademark infringement. YSL argued that red soles were a common design element in the fashion industry and could not be trademarked. The main legal issue in this case was whether Christian Louboutin's red sole could be protected as a valid trademark in the fashion industry.

In 2012, a New York federal judge ruled that while Louboutin could trademark the red sole, the protection was limited to shoes with contrasting red soles. In other words, Louboutin could prevent other designers from making shoes with red soles as long as the rest of the shoe was a different color. The court's decision was seen as a compromise between protecting innovation in fashion and allowing designers to use common design elements. The Christian Louboutin red sole trademark case is a significant example of how fashion brands can protect distinctive design elements through trademark law. It also highlights the courts' nuanced approach to balance protection and innovation in the fashion industry, setting a precedent for future trademark disputes within fashion design.<sup>4</sup>

## **COUNTERFEITING TRADEMARKS: AN UNENDING BATTLE**

Counterfeiting trademarks is a pervasive global issue that involves the unauthorized reproduction and distribution of goods bearing counterfeit trademarks. These counterfeit products often imitate the branding and logos of well-known and reputable companies, deceiving consumers into believing they are purchasing genuine items. Counterfeiting not only infringes upon the intellectual property rights of legitimate brands but also poses significant risks to consumers, as counterfeit goods are typically of inferior quality and may present health and safety hazards. To combat this illicit industry, government, law enforcement agencies, and brand owners have implemented various measures, including stricter intellectual property laws, enhanced border controls, and public awareness campaigns, in an ongoing effort to curb the production and sale of counterfeit products.

However, combating counterfeiting trademarks requires a multifaceted approach. Firstly, brands can invest in cutting-edge anti-counterfeiting technologies, such as holograms, QR codes, and RFID tags, which makes it easier for consumers to verify the authenticity of products. Collaboration with law enforcement agencies and dedicated intellectual property rights enforcement teams is crucial in identifying and prosecuting counterfeiters. Further, brands can also engage in public awareness campaigns to educate consumers about the risks of counterfeit products and how to spot them. Additionally, working closely with e-commerce platforms and social media networks to remove counterfeit listings and accounts is essential in curbing online sales of fake goods. In the international platform, strengthening international trademark protection through treaties and agreements can provide legal recourse across borders.

## **WHAT DOES THE FUTURE ENTAIL?**

The future of trademarking fashion elements is expected to evolve in response to the ever-changing landscape of the fashion industry. With the rise of digital fashion, social media influencers, and non-traditional fashion experiences, trademarks may expand beyond physical products to include virtual wearables and digital assets. Blockchain technology could play a significant role in establishing and verifying the authenticity of fashion elements in the digital realm, with the help of NFTs (non-fungible tokens). Moreover, as sustainability and ethical concerns continue to gain prominence, trademarks might be used to denote eco-friendly materials and practices. The fashion industry will likely see a continued emphasis on protecting unique design elements, logos, and color schemes, especially in the face of increasing global competition and online marketplaces. Ultimately, the future of trademarking fashion elements will be shaped by technology, consumer preferences, and the need for brands to assert their identity in an increasingly diverse and dynamic fashion ecosystem!



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