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Stitches & Statutes: Weaving IP into Fashion Law



INDEX

EDITORS' NOTE	3
COLOUR MARKS IN THE FASHION INDUSTRY	4
COPYRIGHT AND FASHION DESIGNING	6
PROTECTING TRADITIONAL CULTURAL EXPRESSION FROM THE BRUNT OF CULTURAL PLAGIARISM BY FASHION GIANTS	10
THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF LUXURY BRAND OWNERS ON E-COMMERCE PLATFORMS.....	13
THE EVOLUTION OF DESIGN RIGHTS IN THE FASHION INDUSTRY	17
PATENT LAW IN THE FASHION INDUSTRY	20
LOGO BATTLES IN THE FASHION INDUSTRY	23
A COMPARATIVE ANALYSIS OF REGIMES OF FASHION DESIGN PROTECTION IN INDIA AND THE EU.....	27
TRADEMARK LAW AND THE CONCEPT OF TRADEMARK SEARCHING IN THE FASHION INDUSTRY.....	31
LOOPHOLES IN IP PROTECTION IN THE FASHION INDUSTRY	35
PROTECTION OF TRADITIONAL FASHION VIA GEOGRAPHICAL INDICATIONS	37
FASHION PIRACY: BANE TO THE FASHION INDUSTRY	40

EDITORS' NOTE

Dear Readers,

We proudly present the third edition of Volume 4 of Intellectualis, with the theme 'Stitches & Statutes: Weaving IP into Fashion Law'. With the increasing recognition of intellectual property in the fashion industry, issues such as protection to colours, designs and related rights have been widely discussed. We have compiled this issue to highlight the interface between intellectual property and the fashion industry. This issue has various riveting articles on topics ranging from piracy in fashion, to protection of fashion via geographical indications, and protection of luxury brands which will engage the reader and offer a different perspective.

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 newsletter. We would also like to thank our Chairpersons, Dr. Avishek Chakraborty and Dr. Aradhana Satish Nair for constantly supporting us and guiding us through the drafting of this newsletter.

We hope you enjoy reading this Edition!

EDITORS

Nidhi Rachel Kurian

([linkedin.com/in/nidhi-rachel-kurian-7010b5198](https://www.linkedin.com/in/nidhi-rachel-kurian-7010b5198))

Pemmaraju Lakshmi Sravanti

([linkedin.com/in/sravantipemmaraju-b78460166](https://www.linkedin.com/in/sravantipemmaraju-b78460166))

FACULTY CONVENERS

Dr. Aradhana Satish Nair, Dr. Avishek Chakraborty & Ms. Aditi Singh Kavia

COLOUR MARKS IN THE FASHION INDUSTRY

- *Joanna Mathias*

Introduction:

In the fashion sector, buyers buy a product based on the newest trends and designs, as well as how aesthetically appealing the colour is. A colour monopoly might offer a true threat of colour depletion in the fashion business, putting other designers at a disadvantage. Furthermore, for a colour to be associated with a specific brand, it must be utilized consistently across all seasons. However, colours in the fashion business are employed seasonally, such as earth tones for fall, florals and pastels for spring, and white or brighter shades for summer. Due to a lack of acquired distinctiveness, no monopoly can be assigned to the colours if the designer utilizes them according to the season. Only a few colours can resist the fashion industry's constantly shifting trends and seasons. Monopoly of these colours would put other designers at a competitive disadvantage and discourage them from entering the market since they would be unable to employ the consumer-pleasing coloursⁱ. Given the limited number of colours available, a monopoly on a single colour is the major point of contention, since it would result in a loss of originality. Colour has the ability to distinguish a design in the marketplace and build a brand. Signature colours are associated with

several well-known luxury products and fashion companies, like Hermés orange, Louis Vuitton brown, and Tiffany blueⁱⁱ. Consumers are more likely to notice a product's colour or packaging than other visual aspects. Colours send out subliminal psychological messages that merchants and manufacturers may use to influence purchasing decisions in the marketplace, both at the point of sale and through advertising.

Colour Marks and Fashion:

Colours were not previously recognized as acceptable trademarks. However, the Supreme Court recently declared that a colour can function as a trademark provided it fits all other trademark conditionsⁱⁱⁱ. Colour markings can either be registered on the primary register or be recognized as trademarks under common law. The Act's definitions of the terms "mark" and "trademark" include "combinations of colours" or "any combination thereof." Colour is inherently indistinct under trademark law, however a combination of hues with enough acquired meaning can earn distinctiveness and be registered as a trademark. A colour combination may be regarded distinctive for trademark purposes only if it can be proven that the colour combination is so closely linked with a product or brand that the product or

brand can be identified solely by the colour combination. To demonstrate the uniqueness of a colour trade mark, the colours must be employed in a precise way to accomplish the trade mark function of uniquely identifying the commercial origin of goods or services. The use of a distinctive colour combination assists clients or the general public in relating the items to their source, which serves to boost the market of a certain source while also preventing others from benefiting from this unique brand. When applying for a colour trademark, an applicant must provide proof that the claimed colour combination or hue is uniquely connected with the applicant, and that the general public links the colour with the items listed in the application^{iv}. Evidence might be in the form of public polls establishing a link between the applicant's product or brand and the colour combination. Obtaining protection in this manner, however, may be difficult without strong supporting proof. Cadbury proved that its distinctive shade of purple (Pantone 2865C) on the wrappers packaging for its milk chocolates had gained a distinctive character in the famous Cadbury case, *Cadbury UK Limited v. The Comptroller General Of Patents Designs And Trademarks & Société Des Produits Nestlé S.A. (Case No: A3/2016/3082)*^v. After a protracted legal struggle with Nestle, a public poll was filed as support of this allegation, and it was granted on October 1st, 2012. The Delhi High Court recently refused the trademark of red colour on the sole of heeled shoes in the case

of *Christian Louboutin v Abu Baker CS (COMM) No.890/2018* on the grounds that the mark was just a single colour red, which is invalid under the definition of a mark under Section 2(1)(m) of the Trademarks Act, 1999, that requires a mark to be a "combination of colours." 'Mixture of colours' is sine qua non, which means that a single colour, as opposed to a combination of colours, cannot be a mark, coming within the definition of "mark" and "trademark". The use of the word "combination of colours" in Section 2(1)(m) indicates the legislature's purpose to prohibit single-colour trademarks, according to the Court. The Court separated this case from *Deere & Company v. Mr. Malkit Singh & Ors.* and *Christian Louboutin Sas v. Mr. Pawan Kumar & Ors.*, saying that the provisions of Section 2(1)(m) and Section 30(2)(a) were not considered in either instance^{vi}. The trademark is not infringed when a person other than the registered owner of the trademark uses the mark to represent a characteristic of an item or service, according to Section 30(2)(a). In this case, the court appears to have construed the provision incorrectly, interpreting it to mean mark 'in relation to' a characteristic rather than mark 'indicating' a feature. Furthermore, despite Section 27(2) of the Trade Marks Act, 1999 dictating that nothing in the act should prejudice the rights of a person filing for passing off, the court rejected the passing off remedy, which is a common law remedy and independent of Indian statutes, on identical grounds.

Conclusion:

Designers might employ colour marks to add originality to their designs and limit others' ability to reproduce them without the use of a visible brand. Designers are no longer bound by old colour standards, and colours are changing more quickly. Colours are losing their long-felt connections in the

minds of customers as a result. The fashion cycle begins when a designer uses a hue regularly enough for it to be associated with his brand. As a result, when the colour is imitated, it is because of the designer's position, making the colour mark intrinsically source-identifying.

ⁱ 'Protection Of' (*Mondaq.com*, 2021) <<https://www.mondaq.com/india/trademark/814512/protection-of-colour-under-the-trademark-law>> accessed 23 November 2021.

ⁱⁱ Id.

ⁱⁱⁱ RESHAM MEHTA, 'Colour Mark In The Fashion Industry' (*Baskaranslegal.com*, 2021) <<https://baskaranslegal.com/blog/2020/10/06/colour>

-mark-in-the-fashion-industry/> accessed 23 November 2021.

^{iv} 'Colour Trade Mark Protection In The Fashion Industry - CSY' (CSY, 2021) <<https://csy-ip.com/colour-trade-mark-protection-in-the-fashion-industry/>> accessed 23 November 2021.

^v Ibid at 1.

^{vi} Ibid at 1.

COPYRIGHT AND FASHION DESIGNING

- *Athul Vijay*

Introduction

The fashion designing industry is one of the most thriving industries within the world. With a projected growth rate of 1.5 trillion dollars by 2025ⁱ. It is one of the most rapidly growing industries in the world. In India alone, the fashion design industry is worth around 38.7 billion dollars excluding any accessory items and footwearⁱⁱ. Designer clothes, shoes, wallets, jewellery and other accessories comprise the fashion industry and thus, is one of the most important and thriving industries within India. Designers take great pains in creating apparel that is unique to their style.

The unique designing techniques used by such creators result in a brand name being created which is synonymous to the creator.

India is a country that has prided itself for its unique clothing designs for centuries. The designers of the modern age have advanced that tradition by weaving unique and original designs. But owing to the high price usually assigned to such original work, and the low cost involved in creating cheap imitations, people tend to gravitate towards such imitations. Such imitation apparel infringes upon the original designs

which have been created by the designers and thus results in their copyright being infringed. Piracy in fashion designing has thus become a rampant problem which needs to be addressed. Designers have the option of copyrighting their designs in order to protect such designs from being infringed, thus ensuring the exclusivity of the designs.

The Copyright Act, 1957ⁱⁱⁱ, Designs Act, 2000^{iv} and the Trademarks Act, 1999^v are the three major Indian legislations that provide proper protection for designs in fashion. Design sketches of the apparel can be protected under the ambit of an ‘artistic work’ within the Copyright Act, 1957 and specific forms of design can be protected under the ambit of the Third Schedule of the Design Act, 2000.

Copyright and fashion

Protection of intellectual property can be acquired in multiple ways within the realm of intellectual property rights such as copyright, patents, trademarks and designs. Fashion designs can be protected through copyright within India under the tenets laid down within the Copyright Act, 1957. Section 2(c) of the Copyright Act defines ‘artistic works’, wherein works that possess a certain artistic quality can be registered properly under copyright. Within India, Copyright persists for the lifetime of the creator plus 60 years after their death, making copyright protection an important facet of intellectual property rights within the fashion industry in India.

Designer Rohit Bal was the first person to get a copyright over his entire design^{vi} which led many other designers to follow suit and seek proper protection for their designs.

Copyright Protection can be obtained for sketch designs and artistic designs as a proper physical form of the sketch needs to be there in order to avail proper protection under Copyright. Thus, sketch designs and colour combinations can be protected under the ambit of the Copyright Act, 1957 as sketches and colour combinations would count as a physical representation of the intellectual property and thus can be copyrighted without any issue.

Another major form of protection in designs can be availed by seeking protection under the Designs Act, 2000. Here, the particular design of an article can be protected under the Third Schedule of the Design Act, 2000 along with the brand of fabric used. Section 11 of the Design Act, 2000 provides for protection of a particular design which can be availed for 10 years upon registration of the design wherein the period can be extended by 5 more years if the same is applied before the protection of the design ends. Piracy of design is prohibited under Section 22 of the Design Act wherein any copying or infringing upon the registered designs of copyright would result in legal action taking place against the person who had infringed upon the copyright unless proper permission has been acquired from the holder of the

intellectual property rights for the use of the design. Classes of design are provided within the Third Schedule of the Act wherein protection of designs for articles of clothing and other apparel fall under Class 2 of the Third Schedule thus providing a proper basis for the protection of the registered design.

Copyright protection or design protection?

Section 15 of the Copyright Act deals with copyright in designs wherein a conflict between the Copyright Act and Designs Act exists. If a design is registered under the Designs Act, then copyright protection will not exist for the same, thus creating a discernible dichotomy between copyright and design protection. This makes it clear that an overlap between intellectual property rights protection in design and copyright cannot co-exist.

A major contention between design and copyright arose within the *Rajesh Masrani vs. Tahiliani Designs Pvt. Ltd.*^{vii} case wherein the overlap between design and copyright was brought to light. Here, the contention was raised as to whether designs printed on fabric would come under the ambit of protection within the Copyright Act, or the Designs Act. The Delhi High Court in this case had laid down that only if material with such designs are produced below 50 in number, and not used for proper commercial use, can someone avail protection under Section 15(2) of the Copyright Act without registering the design under the Design Act.

As per the definition of design laid down under Section 2(d) of the Design Act, it excludes all that falls within the ambit of ‘artistic works’^{viii} as laid down within Section 2(c) of Copyright Act. Hence a proper separation between artistic works and its design aspects exist. To protect certain aspects of design, it needs to be registered mandatorily under the Designs Act.

Contemporary issues involving IPR in fashion design

One of the main issues that arise with respect to infringement of intellectual property rights within the fashion industry is the piracy of designs in the form of counterfeit products and knock-offs. Counterfeit products include replicas of the original product wherein most aspects of the product are pirated and passed off as the original in order to trick the consumer into buying the counterfeit product. Knock-offs on the other hand is an unlicensed copy of the original product without the express permission of the copyright owner. Here, the product has been made with the intention of providing a cheaper product of lesser quality while still retaining the elements which make the item popular such as the trademark of the creator. Such items have been made and sold illegally. These products clearly infringe upon the copyright of the original owner and provide a huge problem for the original holders of the design.

The type of protection that has to be taken for the design is another major contention for designers. For mass production of a particular design, registration as a design under the Design Act, is mandatory. But the process of registering the design is tough, as the distinctiveness of the design from the plethora of designs that exist out there must be proven. Furthermore, the tediousness of the process of registering the design results in the existing trends being replaced by new trends which leads to huge losses for creators. This also results in their work being extremely vulnerable to plagiarism thus resulting in losses for the creators as counterfeits and knockoffs would enter the market without the presence of any proper protection.

Conclusion

Intellectual property rights for designers form a core aspect within the realm of fashion designing as proper

protection awarded to them would result in more incentives for fashion designers to pursue their skills and create unique designs of their own without any fear of infringement. The dichotomy created between registering under the Design Act and the Copyright Act must be resolved in order to award creators with adequate protection for their works. Fashion designing companies who produce products in bulk must be able to protect their designs as fast as possible in order to receive their due profits without any fear of infringement of their design.

Thus, a proper framework must be laid down for the protection of intellectual property rights for designers as without it, fashion designers would be left without a weapon to fight for the authenticity and ownership of their design without any fear of infringement.

ⁱ M. Shahbandeh, 'Global Apparel Market – Statistics & Facts' (STATISTA, Jan 22nd, 2021) <<https://www.statista.com/topics/5091/apparel-market-worldwide/>> accessed 21st November 2021.

ⁱⁱ 'Fashion Industry Statistics India' (FASHION UNITED) <<https://fashionunited.in/statistics/fashion-industry-statistics-india/>> accessed 21st November 2021.

ⁱⁱⁱ The Copyright Act, 1957.

^{iv} The Design Act, 2000.

^v The Trademarks Act, 1999.

^{vi} Shashi Sunny, 'Rohit Bal becomes the first designer to patent and copyright his entire collection' (ECONOMIC TIMES, July 28th, 2017) <<https://economictimes.indiatimes.com/magazines/panache/rohit-bal-becomes-the-first-designer-to-patent-and-copyright-his-entire-collection/articleshow/59803202.cms?from=mdr>> accessed 21st November 2021.

^{vii} Rajesh Masrani vs Tahiliani Design Pvt. Ltd. FAO (OS) No.393/2008.

^{viii} Abanti Bose, 'Limitation of Copyright Law to protect fashion designs' (IPLEADERS, August 18th, 2021) <<https://blog.ipleaders.in/limitation-copyright-law-protect-fashion-designs/>> accessed November 21st 2021.

PROTECTING TRADITIONAL CULTURAL EXPRESSION FROM THE BRUNT OF CULTURAL PLAGIARISM BY FASHION GIANTS

- Aleena Anabelly A

Introduction

The law of property exhibits an enigmatic duality in its application; resonating with Cartesian Dualismⁱ, scholars have named this phenomenon - *Property Dualism*ⁱⁱ. According to this philosophical thought, an entity with physical existence has mental properties as wellⁱⁱⁱ. Admittedly, traditional notions of ‘property’ since its inception recognized the owner’s right over a physical ‘thing.’ But it was after the advent of Intellectual property rights, property dualism was recognized by extending legal protection to ideas and intangible intellectual assets. Therefore, it is a settled fact that intellectual assets exclusively belonging to an individual or group deserve protection under the law. Interestingly, the dualism mentioned above can be invariably applied to ‘cultural expressions’ and ‘traditional knowledge,’ of different communities and distinct ethnic groups,

existing in antiquity;^{iv} because cultural or traditional knowledge, an intangible body of intellectual understanding, collectively owned and intergenerationally preserved, is manifested through cultural expression. Therefore, it qualifies as Intellectual property owned collectively by indigenous groups. Authenticity is attributed to such expression due to its distinctiveness and originality by virtue of its exclusive use. Then, when the fashion industry quite conveniently appropriates cultural expressions, do the indigenous communities to whom such expressions belong have recourse under Intellectual Property law? This question is more complicated than one perceives.

Cultural Plagiarism in fashion industry

The fashion industry is a perfect intersection of art, creativity, and glamour. Beyond this, they have

exhibited relatively higher tendency to appropriate cultural expressions without any formal accreditation or acknowledgement to its origin or originator. And, creating imitations of cultural expressions by branding them as ‘works inspired from them’ has become a recurrent occurrence. And such imitations initiated by an individual or group belonging to a comparably dominant culture by appropriating the expressions of a minority community are a form of cultural plagiarism. In *Navajo Nations v. Urban Outfitters*, U.S courts, deliberated on this issue and ruled against Urban Outfitters by deterring them from commercial distribution of ‘Navajo’ themed underwear^v after recognizing the tribe’s trademark rights. Urban Outfitters invited this legal action when they began economically benefitting from the illegitimate use of the tribe’s name – ‘Navajo’ in their goods. On a similar account, the New York fashion brand Carolina Herrera was called-out by the Mexican government^{vi} for using Mexican indigenous patterns and textiles in their Resort 2020 collection^{vii}. Similarly, from Nike’s workout leggings featuring the *Samoan* male tattoo^{viii} to Isabel Marant’s Etoile collection inspired by clothing and textile of the *Mixe* Community, many famous brands and known designers were publicly flayed for imitating cultural expressions exclusively protected by indigenous groups. Then, it becomes crucial to analyze the legality of such appropriation.

Legal framework

Article 31 of the United Nations Declarations on the Rights of Indigenous peoples recognize Indigenous groups’ right to “*maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions*”^{ix}.

Hence, according to this, the indigenous groups have a right to exclude non-community members from using or benefitting from their traditional cultural expressions. Further, fashion designers are allowed to craft their designs by taking inspiration from such expressions to ensure innovation and creativity in the industry, provided that they do not appropriate such unique cultural marks. This thin line between appropriation and inspiration is determined using the following indicators^x -

- a. The designer is expected to avail the full and free consent of the community after disclosing the intended purpose and method of using the traditional cultural expression
- b. Provided that the consent of the owner was acquired, post-creation and publicization of the design, the fashion designer acknowledges the source
- c. If monetary benefits arise out of the use of such expressions, a part thereof shall be paid to the community as compensation

Owing to the possibility of designers circumventing these conditions. Traditional Cultural Expressions (TCEs) are protected in two distinct ways -

1. Positive protection

Under this framework, the laws aspire to empower the indigenous communities with comparatively

weaker agency and social bargaining power by granting them exclusive Intellectual property rights to protect their expression from all forms of exploitation. Further, they are affirmatively equipped to benefit from their TCEs with the state's assistance economically.

2. Defensive Protection

In this strategy, the states actively intervene to prevent all forms of exploitation by designers outside the community through the use of TCE by acquiring their Intellectual Property Rights.

In India, the Intellectual property legislations have proven to be insufficient for protecting such TCEs. The only protection extended to such expressions is through Geographical Indications tags, which recognise the originality and exclusivity of certain

tangible products belonging to a particular region. But this mechanism is limited in its application, as it selectively recognises only few forms of TCE.

Conclusion

Resonating with the findings in WIPO document - The Protection of Traditional Cultural Expressions: Updated Draft Gap Analysis, it is suggested that the world needs better Intellectual property laws for the protection of TCE. When the world of fashion habitually plagiarises cultural knowledge without inviting any legal action, the state, has a responsibility to politically recognise the traditional sagacity embedded in such expressions by extending special legal protection to them.

ⁱ Descartes R, *Meditations on First Philosophy* (Dancing Unicorn Books 2019).

ⁱⁱ 'Dualism (Stanford Encyclopedia of Philosophy)' (Plato.stanford.edu, 2003)
<<https://plato.stanford.edu/entries/dualism/#ProDua>> accessed 18 November 2021.

ⁱⁱⁱ Lowe. E., *Encyclopedia of Neuroscience* (Springer 2009).

^{iv} P Shand, 'Scenes from The Colonial Catwalk: Cultural Appropriation, Intellectual Property Rights, And Fashion' (2002) 3 Cultural Analysis.

^v 'Crimes Of Fashion: Intellectual Property and Indigenous Dress | Glocal Notes - University of Illinois At Urbana-Champaign' (*Publish.illinois.edu*, 2016)
<<https://publish.illinois.edu/iaslibrary/2016/04/13/crimes-of-fashion/>> accessed 20 November 2021.

^{vi} V Friedman, 'Homage or Theft? Carolina Herrera Called Out by Mexican Minister (Published 2019)' (*Nytimes.com*, 2019)
<<https://www.nytimes.com/2019/06/13/fashion/caro>

<lina-herrera-mexico-appropriation.html>> accessed 18 November 2021.

^{vii} Anastasios Antoniou, 'Amid A Flurry Of "Cultural Appropriation" Claims Aimed at Carolina Herrera, What Is Going On (Legally)? - The Fashion Law' (*The Fashion Law*, 2019)
<<https://www.thefashionlaw.com/in-a-swathe-of-cultural-appropriation-claims-against-carolina-herrera-what-is-really-going-on/>> accessed 19 November 2021.

^{viii} B Vézina, 'Curbing Cultural Appropriation In The Fashion Industry With Intellectual Property' (*Wipo.int*, 2019)
<https://www.wipo.int/wipo_magazine/en/2019/04/article_0002.html> accessed 23 November 2021.

^{ix} United Nations Declarations on the Rights of Indigenous peoples, 31.

^x 'How Can the Fashion Industry Treat Indigenous People and Craft Communities With Fairness And Equity?' (*Culturalintellectualproperty.com*, 2020)

people-and-craft-communities-with-fairness-and-equity> accessed 22 November 2021.

<<https://www.culturalintellectualproperty.com/post/how-can-the-fashion-industry-treat-indigenous->

THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF LUXURY BRAND OWNERS ON E-COMMERCE PLATFORMS

- *Lilian Grace Thomas*

Introduction

The acceleration and growth of e-commerce and its expansion in market offerings have undeniably contributed to the ease of purchasing and higher consumer satisfaction in India. With a wide variety of products being available at the tip of a finger, the fast-moving world of e-commerce is steadily pouring billions of rupees into the country's economy. However, several complexities are cropping up concerning brand owners and their goods along with this growth. The rise has also enabled individuals the ease of selling counterfeit products by using these platforms. The article will address certain issues that may arise before fashion designers and their product offerings, particularly luxury goods and why such designers may be reluctant to offer their products in the online marketplace.

The Reluctance of Luxury Brands in Embracing the Digital World

E-commerce websites are a hotspot for counterfeit goods and intellectual property rights violations. The extent of violations can occur in the form of design or brand infringements. Besides infringement, brands are also concerned that they may not provide the same luxury and personal experience provided in an in-store environment. The essence of a luxury brand is its reputation, the aura and most importantly, its exclusivity in the marketplace. Owners of luxury brands are reluctant to accept the online market as its base is based on prestige and the ability to stand out. Third-party infringers on digital platforms can hamper this exclusivity by copying or duplicating high-fashion brands and offering them at lower prices. This rules out the physical experience a consumer attributes to the brand. Moreover, similar websites, domain name squatting, phishing, and

payment fraud may add on to the list of legal issues arising out of the adoption of online websites.ⁱ This can further put the reputation and brand image at risk. The absence of a long-lasting solution also puts a burden on brand owners. Several websites offer takedown solutions that may remove an infringing listing for a temporary period. However, there is no assurance that another party will prevent itself from posting infringing material. The process forms an endless loop wherein the difficulty of monitoring every movement and tracing such infringers' origins increases. The dilemma is further enhanced as infringers may be located in different jurisdictions, and these locations may lack requisite legal mechanisms to hold them liable. Hence, luxury brand owners interested in pursuing online platforms, may be discouraged from doing so as they are left with little to no means of recourse.

Diamond in the rough? Why Tiffany & Co. lost its trademark appeal

Tiffany & Co. is a global luxury jeweller known for its high-end quality and style of diamonds. Tiffany offers its products through its offline stores, catalogues, and its own website. However, it does not concern itself with second-hand versions of its products. Concern arose in 2004 within the company when it found that certain individuals were selling counterfeit products on eBay, an e-commerce platform. Third-party sellers were engaged in showcasing products which bore the name of Tiffany

but were sold at a cheaper price. An independent survey conducted by Tiffany established that around 73% of the products online were counterfeit. A suit was thus instituted alleging the online retailer of trademark infringement, dilution, and false advertising.ⁱⁱ

The Court rejected the contention of direct trademark infringement on the part of eBay by applying the 'doctrine of nominative fair use' wherein a defendant is permitted to use the trademark of the plaintiff for identification in cases where there is no likelihood of confusion with respect to the source of the defendant's product or any affiliation.ⁱⁱⁱ eBay could not guarantee the genuineness or quality of the goods it sold. It further mentioned that it had incorporated a "fraud engine" system whose function was to identify illegal and counterfeit listings. The algorithm set was to figure out potential violations or infringing activities. eBay was aware of counterfeit goods and had undertaken necessary steps in order to stop such infringement. It had taken down several ads and products sold under the brand's name within hours of being notified. The Court further stated that eBay was never in the possession of such goods, nor did it indulge in or gain from any such fraudulent transactions. It thus rejected the contention of contributory trademark infringement by taking into consideration the proactive efforts and measures undertaken by eBay in removing such content.

The case put forward several crucial questions concerning trademark allocation and infringement in the era of the Internet. The effects of the infringement practices on the website had far-reaching consequences. Even though loyal consumers would resort to original Tiffany pieces, the competition in the market had increased as individuals were opting for similar pieces at lower rates. Thus, it is seen that luxury brand owners are often put at stake when it comes to holding individuals responsible for the infringement of their products.

Tackling the Issues

In the area of high fashion, it is essential that the brand carves out a niche in the market, thrives on this position through its products, prices, distribution, and marketing, and assures itself a distinct impression in the minds of the consumers.^{iv} An issue that commonly arises is the lack of awareness amongst newer fashion designers and their IP rights. They are not adequately equipped with the knowledge and means to go against infringers and will only engage in battles once things go downhill. Doing so causes delays and losses, as a strong foothold would not have been established prior. The process can be taxing on smaller or newer businesses, and designers can be left vulnerable.^v

Another essential aspect while dealing with fashion designers is balancing their rights and freedom on the Internet, without overregulating this free space.

Online marketplaces must be held accountable with regard to the infringing material on their platforms. Once the online retailer is in possession of the knowledge of such infringement, he is obliged to and must take active steps to remove such content. This process would simplify the enforcement of IP rights as owners would not have to go against each infringer rather against the website proliferating such material.^{vi} Secondly, concerning online advertising, retailers permitting the display of counterfeit goods must be held liable, especially in cases where an average consumer might tend to confuse or believe that the products sold are genuine.^{vii} Postings of ingenuine links or search results will also lead to trademark infringement as consumers may be duped while clicking on such links.^{viii} However, in cases where the intermediary is found innocent, the ISP will not be held liable or ordered to pay costs relating to a blocking order. These costs will fall on the brand owner who requested for such blocking.^{ix} Thus, it is necessary that brand owners find the necessary legal recourse while dealing with online platforms and infringers. In the absence of this, their willingness to enter the online market will be diminished.

Conclusion

It is estimated that the value of the global fashion market is to hit 2.25 trillion U.S. dollars by 2025, as compared to the 1.5 trillion dollars it generated in 2020.^x This shows a rise in the demand of the fashion arena in the global market. However, luxury fashion

brands are still hesitant to embrace the digital market. For luxury brands to effectively adopt the online world, adequate enforcement mechanisms must be put in place to curb growing infringements. Luxury brands are targeted as it is seen to acquire the benefits of exclusivity and distinction. Any fashion brand that wishes to adopt the online medium to further their brand must be afforded sound IP protection. The shift to the online mode has resulted in higher consumer expectations from brands and their ability to

experiment and provide satisfaction.^{xi} Fashion brands must view this as an opportunity and adapt to the dynamic environment to stay ahead of the game. There are several options available in terms of Virtual Reality and Artificial intelligence solutions where each consumer's experience can be catered to their likes or preferences. However, this can only be implemented in the light of effective IPRs which are adequately monitored and enforced.

ⁱ Sun H., 'The Distinctiveness of a Fashion Monopoly' (2013) 3 NYU Journal of Intellectual Property and Entertainment Law 142.

ⁱⁱ Tiffany (NJ) Inc. & Tiffany and Company v eBay Inc. US 600 F.3d 93 2d Cir. (2010).

ⁱⁱⁱ Merck & Co. v. Mediplan Health Consulting, Inc., US 425 F. Supp. 2d 402, 413 S.D.N.Y. (2006).

^{iv} Vincent Bastien, 'Marketing to a High-End Consumer, Using the Luxury Strategy' (Entrepreneur 20 September 2015) <<https://www.entrepreneur.com/article/250745>> accessed 15 November 2021.

^v Robert W. Payne, 'Dealing with Unauthorized Online Dealers: Sales of "Genuine" Products' (A.B.A July 2014) <<http://www.americanbar.org/publications/blt/2014/07/01/payne.html>> accessed 13 November 2021.

^{vi} Case C-324/09 *L'Oreal v eBay* [2011] EU: C: 2011: 474.

^{vii} Cases C-236/08, C-237-08 and C-238-8 *Google France and Google Inc v Louis Vuitton Malletier, Viaticum SA and Luteciel SA*, joined, EU: C: 2010: 159.

^{viii} *Lush v Amazon* [2014] EWHC 181 (Ch).

^{ix} *Cartier and others v BskyB and others* [2016] EWCA civ 658.

^x M. Shahbandeh, 'Global Apparel Market' (January 22 2021) <<https://www.statista.com/topics/5091/apparel-market-worldwide/#dossierKeyfigures>> accessed 21 November 2021

^{xi} Deloitte University, 'Global Powers of Luxury Goods 2017' (2017) <<https://www2.deloitte.com/content/dam/Deloitte/global/Documents/consumer-industrial-products/gx-cip-global-powers-luxury-2017.pdf>> accessed 21 November 2021.

THE EVOLUTION OF DESIGN RIGHTS IN THE FASHION INDUSTRY

- *Anjali Saran*

Introduction

The entire Fashion Industry finds its base in just one thing- '*Design*'. It is this important factor that differentiates the products of different fashion houses from each other. Every fashion house has its own way of designing things. For example, Christian Louboutin shoes are one of the most famous and expensive shoes in the world, the cost of which can go up to crores. Yet, all their shoes have red soles that are distinct from others. It is one of their most identifying qualities which not only distinguish them from their competitors but also enable them to charge premium prices for their product. This is true not just for this brand but for many other brands. Versace is known for designing clothes that scream women empowerment, which many other brands like Gucci and Chanel haven't achieved. The designs of these famous brands, over time, became one of the fundamental reasons for their popularity. It also helped them establish rights over these designs so that no one would be able to imitate them. This is where the role of Intellectual Property comes in, to grant design rights to the rightful owners/creators.

Significance of Design Rights

It is a fact noted since time immemorial that design has been an important component of almost everything. From the designs used in building the Pyramid of Giza to the Taj Mahal, it all narrows down to this one particular thing. However, in keeping with the theme of the present article, it can always be observed that historians all over the world are able to gather abundant information about a particular period from the dressing style of that period. It may be the jewellery, clothing, shoes, or any other accessories. They all exude some special design of that period and the designer. This is not just true for modern times.

Designing was famous since ancient times, when different classes of people were designated using the design of their clothing and other accessories. However, during the medieval period, this became even more prominent, especially with the emergence of different design houses and their unique style of clothing. Designs were sometimes used to deliver powerful political statements like the red and white striped pants during the French Revolution, worn to show disassociation from the aristocracy. Another example can be Burberry, established in 1856, which is still a famous luxury fashion brandⁱ.

These Design rights guarantee protection to the creators and incentivise them to continue their novel contribution to the industry. In their absence, it would be nearly impossible to bring innovation in this industry. The fashion industry is renowned for following the *Rapid Product Life Cycle*, wherein a new product is first introduced at an exorbitant cost, then after some time, another brand introduces a product of similar design at a lower cost. This new product marks the end of the popularity and monopoly enjoyed by the first and original product while also offering lower cost to the consumers. This is often debated in litigation cases of the fashion industry.

Landmarks In Fashion Industry

There are numerous instances in the fashion industry where famous brands have knocked on the doors of Courts to get justice for the imitation of their designs. One such case is of *Puma v. Forever 21ⁱⁱ*. Puma's claim against Forever 21 was that Forever 21 is offering clone adaptations of footwear from Rihanna's Fenty line for Puma. As per Puma, the brand had duplicated three of the most conspicuous footwear plans from Rihanna's assortment for Puma, in endeavors to utilise the significant altruism of Puma, Rihanna, and the Fenty shoes. Puma's counsel here applied the test of "separability" in connection with creative elements that are part of a useful article (such as a garment). The intellectual property conflict between fashion retailer Forever 21 and sportswear

company Puma has ceased after both the parties agreed to settle.

A similar case is that of *Louis Vitton v. My Other Bagⁱⁱⁱ*. This is an extremely intriguing case wherein the organization by the name of My Other Bag made a satirical handbag printing the renowned image of Louis Vuitton bags. The court observed that, a farce item should pass on two concurrent and incongruous messages simultaneously: the item printed is unique yet additionally it isn't unique but a satire. This case cleared the way for those multitude of items and brands that came into the ambit of spoofs. My Other Bag was sued under the charges of copyright encroachment and design theft. While they contended that Louis Vuitton was using its big brand image to bully smaller brands, Louis Vuitton justified its stance claiming their right to protect its creations. The court decided that such methodology can't be supported and the brands must be given an opportunity in the setting of their items. And as for this situation, the item was a farce so the charges were not endorsed.

A third case that affected the fashion industry significantly is *Rajesh Masrani v. Tahiliani Designs Pvt. Ltd^{iv}*. In the current case, the inquiry emerged inside the court that whether the patterns imprinted on the textures qualifies as creative work or not and whether it would be secured under the copyright and design acts. It was battled by the respondent that other

than the copyright protection allowed to the texture designs which are drawn for creation, even the patterns imprinted on the texture ought to be protected under the design act. The current case was an allure as Rajesh Masrani was restricted from creating, selling or publicizing any sort of comparable texture under the past judgment. The court expressed that any such designs possibly come under the ambit of copyright protection when not produced in excess of 50 such items that are delivered for business use. While in the present case, only 20 pieces with the specific design were created, which was granted justified protection and any similar printing, selling, or advertising of a similar pattern was prohibited.

Design Laws In India

The Designs Act 2000 is the primary legislation dealing with design in India. Design under this law may refer to three-dimensional features, two-dimensional features or a combination of one or more such features^v. The Act does not have any section talking about the procedural requirement for registration. However, Section 4 of the Act does mention the prohibition of certain designs in India^{vi}. Section 21 of the Act also talks about the display of designs in an exhibition^{vii}.

However, in India, a disclosure of a design by the proprietor to any other person in good faith is not deemed to be a publication of any design sufficient to

invalidate the copyright thereof if the registration is obtained subsequently to the disclosure^{viii}. Therefore, if a person to whom a particular design has been disclosed acts contrary to good faith and uses that design for his/her own benefit, then the proprietor can file a suit under Section 16 of the Designs Act 2000 as this publication of design is not sufficient to invalidate copyright^{ix}. Section 22(1) mentions conditions of piracy and remedies. All this is done to protect the creator from facing any violation of his/her rights^x.

Conclusion

Fashion Industry holds a vital part in everybody's lives. Therefore, it becomes really important to safeguard the rights of the torchbearers of this industry; otherwise, this industry will not be able to work at its optimal level. Although India does have its own set of laws, they are not stringent enough to stop these activities. This is one of the reasons why many of the local shops in India sometimes sell clothes that are akin to those of big brands, but yet do not face any harm. Another reason can also be the lengthy litigation process in India, that will amount to companies spending enormous amounts of money on petty litigations here, especially after the dissolution of the Intellectual Property Appellate Board. It then becomes the government's responsibility to bring in amendments that can protect these rights in a better manner and promote innovation in this field.

ⁱ Anonymous, 'Burberry' (Burberry) <
<https://www.burberryplc.com/en/index.html>>
accessed on 19th November, 2021.

ⁱⁱ TFL, '5 Lawsuits that Stand to Impact the Fashion Industry' (TFL, 8th September, 2017) <
<https://www.thefashionlaw.com/5-lawsuits-that-stand-to-impact-the-fashion-industry>> accessed on 19th November, 2021.

ⁱⁱⁱ Muskan Madaan, 'Landmark Cases related to Fashion Industry in 2020' (Legal Desire 16th January, 2021) < <https://legaldesire.com/landmark-cases-related-to-fashion-industry-in-2020/>> accessed on 20th November, 2021.

^{iv} TFL, '5 Lawsuits that Stand to Impact the Fashion Industry' (TFL, 8th September, 2017) <
<https://www.thefashionlaw.com/5-lawsuits-that-stand-to-impact-the-fashion-industry>> accessed on 19th November, 2021.

^v Designs Act 2000, No. 16, s 2(d).

^{vi} Designs Act 2000, No. 16, s 4.

^{vii} Designs Act 2000, No. 16, s 21.

^{viii} V K Ahuja, *Laws Relating to Intellectual Property Rights*, Page nos.- 229-230 (3RD Edition, LexisNexis, 2019).

^{ix} Designs Act 2000, No. 16, s. 16.

^x Designs Act 2000, No. 16, s 22 (1).

PATENT LAW IN THE FASHION INDUSTRY

- Nachiket Jonnalagadda

Introduction

The fashion industry can be considered to be a highly influential one. An individual fashion sense can be considered as a social norm of sorts in the modern-day world. The industry amasses over 500 billion dollars in revenue per annum all over the globe, making it one of the most lucrative industries in the world.ⁱ One of the main reasons this industry has been thriving since its inception is constant innovation and development. Because there is an ever-increasing demand for newer designs and clothing, there is always much scope for creativity in this industry.

Keeping in mind that many designing and creative works are dealt with within the industry, there is a need to protect these works from various wrongs such as duplication and counterfeit. This is where Intellectual Property comes into the picture.

Intellectual Property Rights can help offer a viable solution to ensure that the creator's rights over his work is protected. It can also ensure that the consumer is provided with a reliable and good quality product. This article shall examine the role of Intellectual Property Law (with particular reference to patent law) in the fashion industry. It shall also discuss various prevalent problems from an Intellectual Property perspective.

Patent Law in India

Before we dwell on the significance of Intellectual Property law in the fashion industry, one must first understand what patent law is all about. The field of intellectual property law that deals with innovations is known as patent law. Traditionally, patent law is associated with scientific discoveries and inventions.

However, in recent times, the scope of patents and patent law has extended to other facets of creativity, such as business strategies, algorithms and even clothes. In general, something that is not a natural object, and is new, practical, and non-obvious, can be granted a patentⁱⁱ. However, many legal scholars and professionals have debated what constitutes a new, practical, and unique object.

A patent grants the inventors the sole right to sell their innovations for the next 20 years. They may also provide other companies with a license to manufacture and sell their innovation in exchange for a price. In India, patent law is regulated by the Patents Act of 1970. This came into force on recommendation by the Ayyangar Committee Report, whose primary focus was on reforming the patent laws that were in existence in India. Subsequently, India became a signatory to several international treaties to strengthen its patent law and integrate it into the modern world. Becoming an active member of the Trade-Related Intellectual Property Rights (also called TRIPS) agreement was crucial to accomplishing this goal.ⁱⁱⁱ The next section of this article shall focus on the role patent law has in the fashion industry.

Patent Law in the Fashion Industry

Although artistic compositions cannot be patented, the technology utilised to create these designs can be protected under the Patent Act of 1970. A patent

protects new technology which is novel, non-obvious, and potentially useful for industrial application. Technical innovation is critical in keeping a fashion business ahead of its competitors. Under Indian law, Design patents are protected for 14 years, whereas utility patents are protected for 20 years. When this protection expires, it comes into the public domain, and the general public is free to then use it for their benefit.

Though patent inventions can be costly and time-consuming, they can be utilised to secure breakthroughs, used in the fashion business for generations. They will not become obsolete if the innovation is new and the procedure is repeatable. An example that highlights this is that of Novozyme. Novozyme, a company that had managed to boost its production, had patented the technology that stone-washes denim clothes. This, in turn, allowed them to be more productive and produce higher-quality goods. However, despite the various advantages that patent law has in the fashion industry, some shortcomings are prevalent in the industry for Intellectual Property law. It is essential to discuss these to better understand the exact nature of IP law in the fashion industry and assist in resolving the same.

The primary challenge is that of protection. Every fashion outlet distinguishes itself from other goods and services through a trademark, patent or even a

Geographical Indication, which is also protected. This protection must include the designer and the fashion house and the subject and even models and other persons who can be considered contributing artists to the design.

Another issue that arises is that of enforcement. Effective enforcement has proven difficult in the case of fast fashion. Fast fashion refers to clothing designs that move quickly from the runway to the stores to meet current trends. Effective enforcement has proven difficult in such cases. The trademark owner knows how far the sign's protection can extend, even in a different jurisdiction. When it comes to enforcement, the challenge of innovation cannot be dismissed. Stable Intellectual Property legislation efficiently protects current rights holders and the cultural relevance of specific communities.^{iv}

Conclusion

ⁱ Saransh Chaudary, Fashion Industry and the Challenges for IP Protection, Mondaq, <https://www.mondaq.com/india/trademark/1024232/fashion-industry-and-challenges-for-ip-protection>, accessed on 18th November 2021.

ⁱⁱ FindLaw, What is Patent Law, <https://www.findlaw.com/hirealawyer/choosing-the-right-lawyer/patents.html#:~:text=Patent%20law%20is%20the%20branch,that%20deals%20with%20new%20inventions&text=Once%20granted%2C%20a%20patent%20gives,in%20exchange%20for%20a%20fee.>, accessed on 18th November 2021.

ⁱⁱⁱ Vidhisha Garg, Jaya Bharatnagar, Patent Law In India, Mondaq,

The fashion industry encompasses more than just clothing and design. It is the capacity to monetise the brand and apparel through intellectual property rights. With an ever-expanding sector expected to reach a trillion-dollar market cap in the coming decade, robust enforcement is required to educate people in the fashion business.

Patent law has no doubt contributed to the benefit of many artists and creators in the fashion industry. It offers specific protection to designs and technology required to create their work. However, one of the main difficulties impeding legal protection for creativity/innovation is a lack of awareness. With the increasing importance of intellectual property, brands should become more receptive to registration. Creators and artists must understand the consequences of illegally reproducing someone else's work to take necessary action against counterfeiters.

<https://www.findlaw.com/hirealawyer/choosing-the-right-lawyer/patents.html#:~:text=Patent%20law%20is%20the%20branch,that%20deals%20with%20new%20inventions&text=Once%20granted%2C%20a%20patent%20gives,in%20exchange%20for%20a%20fee>, accessed on 19th November 2021.

^{iv} Sakshi Jain, The take on IP in fashion conglomerates in India, IPleaders, https://blog.ipleaders.in/take-ip-fashion-conglomerates-india/#The_take_of_IP_on_fashion_conglomerates_recent_trends, accessed on 20th November 2021.

LOGO BATTLES IN THE FASHION INDUSTRY

- **Abhisvara**

Introduction

The identity of the luxury apparel industry, which is worth more than 70 billion dollars worldwide, is its brand name, and even a minor blemish on their monopolistic identification in the market costs heavily.ⁱ The slightest resemblance in brand names, logos, and slogans might result in a massive drop in the market for luxury products.ⁱⁱ The increasing trend of fashion houses branding their businesses can be attributed to the fourth industrial revolution, particularly, Artificial Intelligence.ⁱⁱⁱ With the introduction of 2D and 3D designing tools, smart merchandising alternatives, SEOs and customised software to research new fashion designs, and several other technologies, homogenised manufacturing and network connectivity through AIs have elevated the industry to the next level. On the other hand, increased evolution comes at a higher opportunity cost, which the industry must offset through branding and marketing.^{iv}

Further, prominent designers are frequently copied by smaller designers, and fake branding exists. Additionally, replication of the designs is heavily motivated by the large margins associated with the

goodwill and recognition associated with the design and apparel manufacture. As a result, luxury fashion businesses frequently find themselves in legal battles over trademarks and copyrights, and preserving their brand identity becomes difficult.

Logo Trademark Protection

Logos are granted protection under the trademark law. This implies that no one else may exploit or utilise it. Conversely, these protection requirements may put enterprises and their owners in legal problems due to stylistic similarities with other brands and businesses.

Logo trademark protection is territorial, meaning it must be filed in each nation where its protection is sought. Trademark protection may be given on a country-by-country basis or across the entire European Union.^v The Paris Convention is the primary convention that gives trademark owners priority rights, including protection for their logos. This right enables an applicant to seek for protection in any other contractual state within six months of filing a regular first application in one of the contracting states.^{vi} The advantage of having a

priority right is that the latter application is regarded to have been filed on the same day as the filing of the former application.^{vii} As a result, while deciding whether or not a trademark is infringed, the courts take priority rights into account because such applicants have a competitive edge, if in case another person or business files for the same mark.

Logo battles

In the recent past, multi-national corporations have filed logo infringement suits against small companies and new start-ups. More often than not, the lawsuits filed by the more prominent brands are unreasonable and lead to the suppression of the creative expression of the smaller firms (as will be seen in the case of Harley Davidson-Urban Outfitters and Louis Vuitton-My Other Bag, as discussed below). As a result, it is challenging for the smaller brands to carry on their trade and conduct their profession.

Harley Davidson – Urban Outfitters

Harley-Davidson sued the retail brand Urban Outfitters in early 2014 for counterfeiting, unfair competition, and misrepresenting the origin of its Harley-Davidson branded clothes.^{viii} Harley-Davidson alleged that Urban Outfitters' clothes infringed on its trademarks on two grounds. First, even though some of the clothes were manufactured from authentic Harley-Davidson merchandise, they had been modified or rebuilt without authorisation. Furthermore, while some of the goods may not

appear to be authentic Harley-Davidson products, they have been sold with labels that violate Harley's trademarks. Although the parties negotiated a settlement barring Urban Outfitters from selling any clothing featuring any form of Harley Davidson's trademarks, Harley Davidson sued Urban Outfitters again in 2017.

Louis Vuitton – My Other Bag

Louis Vuitton sued my Other Bag for infringing on its federally registered trademarks and copyright, as well as diminishing the "distinctive character" of the premium bags by using images of the luxury bags on low-cost canvas totes.^{ix} The United States Supreme Court ruled in late 2017 that the parody defence applied to My Other Bag's "designer bag-on-a-canvas" bag — a canvas tote bag embellished with artwork that resembles luxury and designer bags. Louis Vuitton was ordered to cover My Other Bag's attorney fees for using "economic power to infringe on the free speech rights of individuals who don't have their (Louis Vuitton's) deep pockets."^x

Prominent logo battles

Gucci - Guess

Gucci and Guess had been at odds for years when Gucci sued Guess in the federal Court in New York in 2009, alleging the brand of counterfeiting, unfair competition, and trademark infringement — specifically, the interlocking "G"s that appear on a line of Guess shoes, which Gucci claims

was confusing to customers and cost Gucci money.^{xi} Gucci was granted \$4.7 million in damages by US district judge Shira Scheindlin in 2012 for Guess' breach of its signatures, although the amount was a fraction of the \$221 million the Italian luxury house had hoped for. Following the ruling, Gucci proceeded with filing cases against Guess in Italy, France, Australia, and China on the same grounds and initiating procedures with the European Union Intellectual Property Office. However, the EU general court and judgments in Milan and Paris found in favour of Guess, while a Chinese court ruled in favour of Gucci, making it the luxury brand's second international victory over Guess. Australia decided in favour of Gucci in 2015.

After a nine-year legal dispute over the Guess logo and diamond pattern, which Gucci claims are blatant replicas of its trademark, the two companies agreed. The two fashion houses announced that they had struck an agreement "that would result in the resolution of all ongoing IP litigations and trademark office disputes across the world." "The agreement is a significant step forward for both organisations in terms of recognising the importance of safeguarding their distinct property portfolios and design creativity," they said jointly.^{xii}

Chanel - Huawei

Recently, displeased with Huawei's computer hardware's new logo, Chanel approached the EU

General Court claiming that it looked similar to its logo.^{xiii} While both designs included two interlocking curves within a large circle, the thickness and direction of the curves were distinctive. The EU General Court in Luxembourg decided in Huawei's favour, finding that while the logos are alike, there are substantial visual distinctions between them. To clarify, not only do the curves face in a different direction in Chanel's logo, but it also features more rounded curves, thicker lines, and a distinct curve orientation.^{xiv} Further, the two brands are in different sectors. There is the slightest possibility of consumer's being confused after seeing Huawei's logo on computers with Chanel's logo, the Court held. The marks must be compared as applied for and registered without altering their arrangement or position.

The Way Forward

Companies' logos serve as a source of identification; thus, each logo should be distinct from the others. While this is true, there have been incidents of logo infringement in which large corporations have sued smaller businesses and start-ups to widen the scope of their brand and profit from the associated upsides. The giant corporations are indifferent to the financial difficulties that small businesses may experience, where the legal process is the consequence. These businesses already have capital problems, and such cases might deplete their assets altogether. Because there are so many brands globally and only a few

forms and designs that may be employed in a typical logo, copyright and trademark law should allow for considerable flexibility.

ⁱ ‘Luxury Apparel Market Size, Share & Trends Analysis Report By End-user (Men, Women), By Distribution Channel (Offline Retail, Online Retail), By Region, And Segment Forecasts, 2019 – 2025’, (Grand View Research, July 2019). <

<https://www.grandviewresearch.com/industry-analysis/luxury-apparel-market>> accessed 22 November 2021.

ⁱⁱ Maksuda Monir Mimu, ‘Trademark battles between prêt-à-porter de lux products and simple prêt-à-porter’ (*iPleaders*, 5 October 2021). <
<https://blog.ipleaders.in/trademark-battles-between-pret-a-porter-de-lux-products-and-simple-pret-a-porter/>> accessed 22 November 2021.

ⁱⁱⁱ *Id.*

^{iv} *Id.*

^v ‘Trade marks’, (*European Union*). <
https://europa.eu/youreurope/business/running-business/intellectual-property/trade-marks/index_en.htm> accessed 22 November 2021.

^{vi} ‘Summary of the Paris Convention for the Protection of Industrial Property (1883)’, (*WIPO*). <
https://www.wipo.int/treaties/en/ip/paris/summary_paris.html> accessed 22 November 2021.

^{vii} *Id.*

^{viii} Jonathan Weiss, ‘Harley-Davidson sues Urban Outfitters in TM suit’, (*World Intellectual Property*

Review, 9 January 2017). <

<https://www.worldipreview.com/news/harley-davidson-sues-urban-outfitters-in-tm-suit-12802>> accessed 22 November 2021.

^{ix} Dorsey and Whitney LLP, ‘Second Circuit Affirms Louis Vuitton Not Liable for Attorneys’ Fees in Parody Handbag Case’, (*JDSUPRA*, 26 March 2019). <

<https://www.jdsupra.com/legalnews/second-circuit-affirms-louis-vuitton-84783/>> accessed 22 November 2021.

^x Kali Hays, ‘Louis Vuitton Loses Supreme Court Bid in My Other Bag Suit’, (*WWD*, 2 October 2017). <
<https://wwd.com/business-news/legal/louis-vuitton-loses-supreme-court-bid-in-my-other-bag-tote-suit-11017420/>> accessed 22 November 2021.

^{xi} Ben Stevens, ‘Gucci and Guess settle 9-year legal battle over logo’, (*Retail Gazette*, 20 April 2018). <
<https://www.retailgazette.co.uk/blog/2018/04/gucci-guess-settle-9-year-legal-battle-logo/>> accessed 22 November 2021.

^{xii} *Id.*

^{xiii} ‘Chanel loses EU court battle over Huawei logo’, (*BBC News*, 21 April 2021). <
<https://www.bbc.com/news/business-56833244>> accessed 22 November 2021.

^{xiv} *Id.*

A COMPARATIVE ANALYSIS OF REGIMES OF FASHION DESIGN PROTECTION IN INDIA AND THE EU

- *Shreya Sampathkumar*

IP and Fashion - Introduction

"Imitation is the sincerest form of flattery" is a popular tenet in IP law. As pleasing as this might be to hear, imitation is one of the biggest forms of infringement. Sharing its foundation with the economic concept of ownership, there are laws against copying any form of the original creation. There are undoubtedly moral reasons for the fair share of rights that an owner of Fashion IP has over her design, just like other forms of IP. Creativity and innovation skills do not come easy, and copying only frustrates those who create, leaving them without incentive to produce more. A little less traditional, nevertheless popular form of IP is Fashion IP, which has been conceptualized recently since the evolving acceptance of fashion as a form of art. From a legal standpoint, Fashion, alias "apparel design," has stood outside the door of conventional IP, a space that legal scholars defined as "negative space". This term refers to the jurisdiction of IP law where it regulates protection, but for accidental or unimportant reasons, it fails to do so. Despite being branded with a connotation that deems it uncharted territory, the

fashion market thrives despite its dearth of protection and regulation. This can be attributed to one characteristic of this market; trends come and go - once everyone has something, others stop wanting it.ⁱ This allows fashion to exist apart from conventional systems of IP protection. This is not to say that fashion would not benefit from a tailored mechanism of IP protection. This article will examine India and the EU's attempts to protect individual Fashion IPs.

Fashion IP in India

While continually under development, fashion IP in India is relatively structured compared to other countries. Recent times have instituted a new body consisting of leading Indian designers called the "The Fashion Foundation of India", intending to seek IPR protection and control and prevent copying and infringement, respectively. Design owners and creators seek protection under legislative authorities: the Design Act of 2000, the Geographical Indications of Goods (Registration and Prohibition Act) of 1999, the Trademarks Act of 1999 and the Copyrights Act 1957.

Among the three, artistic work on paper is protected under the Copyrights Act of 1957, which can be extrapolated to certain non-functional features of a product, dealing solely with its visual appearances - such as shape patterns and compositions with various colour patterns and lines. Another important legislation is the Design Rules, 2001, which lay down a comprehensive and detailed list of articles based on which IPRs can be created over an article. These acquired rights stay valid for ten years after the term can be extended for five years, subject to certain conditions.

Industrial design protection is the most widely-employed protection system for fashion designs in India, as laid down in the provisions of the Designs Act, 2000. The design should not comprise a trademark according to the definition of a trademark in the Trade and Merchandise Marks Act, 1958, or a property mark as per the Indian Penal Code or any artistic work as per the Copyright Act of 1957.

While the above-discussed systems achieve the objective of fashion designers who require IP protection for their designs, they do not protect the entire garment; instead, they cover individual aspects of the garment - the shape, patterns, and colour. To add to the dilemma, these aspects can only be registered if they fit the definition of 'design' under the Designs Act. According to the Act, the owner of

a registered design obtains copyright, whose ambit covers the sole right to use the design on any article in a class wherein the design has been registered. Categories contain numerous products that fall under it according to Schedule III of the Designs Rules of 2001. Designers who intend to protect their goods may register them under relevant classes.

According to the Act's provisions, copyright in the designs registered will last for ten years from the date they were registered. This duration might be extended for five more years on the application for the same. Throughout protection, registered designs are protected from piracy. If piracy has been committed, the individual liable for the same owes the registered owner of the design a sum not more than rupees twenty-five thousand. Another remedy is for the proprietor to bring forth a suit to recover damages and an injunction to prevent further piracy. The total sum recoverable, however, must not exceed rupees fifty thousand.ⁱⁱ

The owner of the registered designs is permitted to bring forth a suit in any court of choice, not below the Court of the District Judge. The previously-mentioned provisions of the Act elaborate on the system of prevention of piracy of the registered design in question. This Act, although a commendable step towards ensuring a more robust regime of IP protection, does not cater specifically to

the needs of the fashion industry. This is owing to three main reasons:

1. There is no system of protection for unregistered designs. Thus, original designers who do not have their designs registered will not avail of the Act's benefits.
2. Designers will not have the option to file a suit to recover damages for unauthorized copying of unregistered designs and, as a result, cannot file for an injunction. This problem, coupled with the dynamic nature of fashion markets, designers require automatic and immediate protection strategies to safeguard their designs.
3. It deprives designers of the chance to release their clothing in the market due to the general slowness of the entire registration process.

In addition to native laws, India signed three important agreements in June in 2019 - the Nice Agreement, the Locarno Agreement, and the Vienna Agreement. These multilateral global treaties with the World Intellectual Property Organization (WIPO) will be a giant step to strengthening the industry from a global perspective. The purpose of the Nice Agreement is to establish the 'Nice Classification', which serves to register trademarks and service marks internationally. Similarly, the Locarno Agreement creates a system of classification of industrial designs on the international level, while the Vienna Agreement creates classifications for marks that involve figurative elements.ⁱⁱⁱ

Fashion IP in India stands at a nascent stage and is open to change and modernization. There is currently no statute in India that deals mainly with Fashion IP; creations are protected with a combination of numerous statutes aimed at creating a model of IPRs for the Fashion industry.

Fashion IP in the EU

Europe is a hotspot of haute couture, and the protection of designs in the EU is of paramount relevance when considering the standards of comparison of various effective IP regimes. The EU put forth a uniform methodology for the protection of fashion design, approved by its 27 member states, beginning with adopting the EU Designs Protection Directive. This directive coordinated national design protection mechanisms in all EU member states with the requirement of design protection, with the definition of "design" as "the appearance of the whole or a part of a product resulting from the features of . . . the lines, contours, colours, shape, texture . . . or its ornamentation."^{iv}

The prerequisites for receiving design protection are the same as that of India's. One factor, however, that differentiates the EU legislation from India's is the EU Regulation 6/2002, which brought about a new right that covered unregistered designs in the EU. This regulation gave way to two classifications of design rights - Registered Community Designs ("RCDs") and Unregistered Community Designs

("UCDs"). The former type of designs are afforded protection for a term of five years from the date of application and can be renewed in periods of five years with an absolute limit of twenty-five years. The latter type of design protection affords a protection period of three years from when the design was publicized in the EU. However, this period cannot be extended in any circumstance. Designs can also be registered with the EUIPO office by filing an international application under the Hague System and in the EU states' jurisdictions.^v Every member state of the EU has its design registration procedures that must adhere to the EU Directive. Designers can rely on national copyright laws; however, the designs must meet the required levels and conditions of originality, which are appropriately determined by every member state. As per Article 17 of the EU Directive, a design protected by a design right that also fulfils the conditions of copyright protection must also be eligible for copyright protection.

While the EU does not have an international copyright system that protects works internationally, owners of copyright in the EU can claim protection in the US or another country that is a member of the Berne Convention.^{vi}

Conclusion

Having extensively traced fashion IP law in India, it is evident that it is still a subject that is shrouded by

the 'negative space' veil. Seeing the lack of any specific fashion IP jurisprudence, a designer who wishes to obtain rights over their creation must support the best possible combination of all the existing regimes for different types of IP acknowledged by the Indian legislation. When one compares this system to the EU's approach, it appears somewhat similar to India's in that it also shares a cumulative basis - a mixture of laws of the member state and that of the EU Directive. This aspect of EU Fashion IP legislation perplexes judges in numerous fashion IP cases, confusing the various conditions and requirements for copyright and design protection for registered and unregistered designs. Thus, the balance seems to be nowhere close to tipping on either side. On one side of the scale, India's regime of Fashion IP, while not explicitly constructed for fashion design, does a marvelous job despite India's unfamiliarity with the world of modern fashion design that several EU countries are acquainted with. On the other side of the scale, the EU, while it boasts of a rigorous regime of IP protection for registered and unregistered designs, does not have provisions to help cases wherein both the member states' national laws and the EU Directive comes into the picture. This observation can be ultimately construed to the fact that Fashion IP is still a very niche subject that is constantly evolving; it is of a unique, dynamic nature due to the nature of its market and the resultant clientele.

ⁱ Shirwaikar P, "Fashion Copying and Design of the Law" (2009) 14 Journal of Intellectual Property Rights 113

ⁱⁱ Tiwari, Shishir. (2014). Intellectual Property Rights Protection of Fashion Design in India. SSRN Electronic Journal. 10.2139/ssrn.2805346.

ⁱⁱⁱ Chowdhury A and others, "Fashion Law: Applicable Laws and Need for Amalgamation" (2020) 23 Legal Desire International Journal on Law, 69

^{iv} Witzburg FM, "Protecting Fashion: A Comparative Analysis of Fashion Design Protection in the United States and Europe"

<https://cardozoaelj.com/2016/12/01/protecting-fashion-comparative-analysis-fashion-design-protection-united-states-europe/#_ftn1> accessed November 11, 2021

^v Id.

^{vi} Id.

TRADEMARK LAW AND THE CONCEPT OF TRADEMARK SEARCHING IN THE FASHION INDUSTRY

- Ananya Deswal

Introduction

What does the world of fashion look like to you? There is an excellent probability that the first image that flashed through your mind was that of a multi-sectional huge white marble workspace filled with mannequins, markings, vibrant fabrics, and a measuring tape around the designers' necks. However, this is not all. The Fashion industry is a fast-paced, competitive sector where people aim to make the best use of their creative skills, experimentative nature, resourcefulness and problem-solving ability. The multitude of players in this field and various trends that emerge in the fashion

world make it a continuously evolving and "pushing the limits" sector. In such a space, being able to create something that appeals to the consumers and also being able to protect your original work from being stolen or plagiarized is a colossal task.

In the fashion industry, the importance of Trademarks, one of the types of Intellectual Property Rights (IPR), cannot be undermined. Trademarks are one of the best ways for brands or designers to protect their hard work and are considered more effective by some people, given the seasonal nature of fashion and trends.ⁱ In India, a trademark has been defined under The Trademark Act of 1999 as "...a mark capable of

being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include the shape of goods, their packaging and combination of colours."ⁱⁱⁱ

How do trademarks protect individuals in the fashion business?

Simply speaking, registered trademarks can be logos, slogans, designs, brand names etc., which enables the public in identifying the said product or service belonging to a particular company. It allows people to make that distinction between various products or service providers and more. This leads to reputation building and an increase in the face value of a particular company's or its products and services. The very fact that people can recognize a specific sign or logo and associate it with it in terms of familiarity or attach value to it, means that the brand has been able to establish itself in the eyes of the people. An example of this in the fashion industry would be the logo of Gucci. The moment one sees a product with the distinctive logo trademarked by Gucci, people tend to attach a high value to that item and believe that this is a luxury, high-quality product.

The same goes for companies like Louis Vuitton, Chanel, Levi's, Sabyasachi, etc. Louis Vuitton, who have got their trademark logo 'LV', have the same monogrammed on all its products. The company also recently won a civil suit against Iqbal Singh and others, where the Delhi High Court held that the

defendants were guilty of infringement of the plaintiffs' trademark and sold counterfeit products, diminishing the value of the original makers and earning unfair profits.ⁱⁱⁱ The Court awarded the plaintiffs a sum of Rs. 3,50,000 as damages and in addition to it, the advocate's fees', which was a sum of Rs. 9,27,296 were also handed over by the losing party to Louis Vuitton Malletier (India) (the plaintiff).^{iv}

Trademarks allow the creators of these fashion brands and ensure that the immense amount of work, resources and intellect that has gone into their products is protected from the issues of counterfeit or copying and no one benefits from other's honest effort. Trademarks also enable a particular company to stand out and shine apart from everything surrounding it. A good or popular brand with positive reactions from the general public will inherently result in people assigning a high qualitative value to its items. This does not come without the brand itself investing extensively in its creation and production process and paying hefty sums of money for advertising and marketing. When we register our trademark, we essentially have a mechanism through which we can separate ourselves - brand and what it produces - from the rest of the competitors in the market.

One can employ the symbol (™) if the concerned individuals intend to have their designs or images

trademarked. When the registration for the same is complete, the symbol ® represents a registered trademark. This hinders other entities from imitating the said trademark and protects what the customers think of your brand. The term of trademark registration can vary, depending on different countries and their laws, but it is usually ten years. Indefinite renewal is allowed and can happen upon the payment of additional fees. Trademark rights come under the purview of private ownership and their protection is ensured and enforced by orders from the courts.^v

Trademark searching – an important step?

Trademark searching or searches can be defined as "any action taken to determine whether and/or a trademark is used in commerce."^{vi} Trademark searches have the capability to search a multitude of databases for the presence and use of registered trademarks. In addition to this, they may be performed to obtain results regarding brands that are unregistered. Queries for trademark searching can happen either to acquire results based for a particular location or to be carried out on an international level.^{vii} Trademark searches can be conducted by inputting the required keywords as search terms or may also be carried out by trademark number, image or owner.

It is best not to underestimate the value of trademark searching. It is considered a vital step by many experts, conducting trademark searches at different

stages before, during and even after the term of your one's registered trademark. This is the first stage that one should go through before registering their own brand's logos, names, etc. This will allow you to see what is available for you to use and you can be assured that you are not plagiarizing other's works, even accidentally so. Such searches conducted during the tenure of the trademark that you have is the next thing to look at. This ensures that you are aware intermittently about possible infringement of your intellectual property by others and allows you to take the necessary action to protect your trademark rights in case of any such imitation.^{viii}

Trademark searches thus essentially help you in deciding whether an intended trademark is "available for use in connection with certain goods or services." In our country, in the Trademark Registry India, such an online trademark can be undertaken without any fees/payment. For this purpose, Trademark Search is split into three components, and they are:

1. Wordmark – For conducting searches on trademarks that have similar representation of wordmark
2. Vienna Code – For conducting trademark search on similar artistic representation
3. Phonetic – For conducting trademark search on phonetically similar words^{ix}

For a fashion brand or house, conducting something as intensive and costly as 'Trademark Searching' can be a bit of a tricky problem, especially for those who are new in the market.

The simple reason for this is that it mandates the "access to comprehensive databases as well as a legal team" to finalize your requirements and carry only need-based search queries, while discarding the unwanted results. A thing to keep in mind is to ensure that one does not waste monetary resources on extensive services that one's company does not need.^x

Conclusion

In the fashion business, being at the top of your game in terms of your innovative initiatives, resource management and the subsequent product delivery that

meets and exceeds customer's expectations is quintessential. Doing all this and losing out because of lack of understanding and usage of IPR related laws, especially trademarks can really be all the difference it makes between brands who make it big and those brands which crumble to dust before even taking off. Filing trademarks and suing for infringement for the same is the most basic aspect of protecting your work, especially so in the world of fashion but trademark searching also is a very underrated tool that may be the head-start that one needs in order to win this race.

ⁱ Tatiana Lipovaya, Alyona Chernoknyzhnaya, Alexander Fomenko, Nikolay Burak, 'Trademarks in the fashion industry.' (*IPR GROUP*) < <https://iprgroup.info/trademarks-in-the-fashion-industry-digest-03-2020/> > accessed November 15, 2021

ⁱⁱ Trade Marks Act, 1999

ⁱⁱⁱ Divyanshi Arora, 'India: Louis Vuitton Malletier vs. Iqbal Singh And Others' (*Mondaq*, May 27, 2019)

< <https://www.mondaq.com/india/trademark/805796/louis-vuitton-malletier-vs-iqbal-singh-and-others> > accessed November 15, 2021

^{iv} Louis Vuitton Malletier vs. Iqbal Singh and Others CS COMM--607/2018

^v World Intellectual Property Organization, 'Trademarks' (*WIPO*) < <https://www.wipo.int/trademarks/en/> > accessed November 16, 2021

^{vi} 'What is a trademark search?' (*Richards Patent Law*) <

<https://www.richardspatentlaw.com/faq/what-is-a-trademark-search/> > accessed November 16, 2021
^{vii} 'What is a trademark search?' (*Richards Patent Law*) <

<https://www.richardspatentlaw.com/faq/what-is-a-trademark-search/> > accessed November 16, 2021

^{viii} 'How to conduct a Trademark Search' (*Brandstock*) < <https://www.brandstock.com/how-to-conduct-a-trademark-search/> > accessed November 17, 2021

^{ix} Senthil Kumar, 'How to conduct trademark search in India' (*Mondaq*, 12 August 2016) < <https://www.mondaq.com/india/trademark/518682/how-to-conduct-trademark-search-in-india> > accessed November 17, 2021

^x 'Intellectual Property in the Fashion Industry' (*Brandstock*) < <https://www.brandstock.com/intellectual-property-in-the-fashion-industry/> > accessed November 19, 2021

LOOPHOLES IN IP PROTECTION IN THE FASHION INDUSTRY

- *Eashwar B K*

Introduction

The fashion industry is developing rapidly over time. In this day and age, fashion is undoubtedly more than clothes and apparel. Intellectual property plays an important role in the substantial development of the fashion industry. Intellectual property law can protect various creations in the fashion industry, including fashion design components, artistic and literary works, images and symbols that have been used in commerce and industry, the types of intellectual property and its applicability in the fashion industry. This article also sheds light on the various improvements needed in intellectual property law to better protect numerous fashion industry products.

Fashion has been a part of our social life since its inception and represents the social status of a person. The fashion industry, which generates billions of dollars each year, is largely focused on creativity and intellect. Because the industry is proud of its enormous growth, it becomes a breeding ground for rampant and unauthorized copying of designs. As designers and fashion houses are becoming more aware of their intellectual property rights, they endeavor to protect their designs and businesses. With imitations and duplicates in the foreground,

however, it is clear that intellectual property rights offer the fashion industry only limited legal support. Copyright is the most obvious form of intellectual property used to protect creative works such as books, paintings, sculptures, and lyrics, but not items such as clothing and accessories. Copyright does not grant a monopoly on items such as clothing. It protects the creative elements (such as images, graphics and structures) in the design of clothing, accessories or shoes but not the functional elements.

Intellectual Property Rights in the Fashion Industry

Inventions that can be integrated into products are protected by patents. Regarding the fashion industry, it can be said that several products have received patent protection. Some of the examples of such products have been discussed here. For instance, technologies that were used in textiles with UV filters are water-repellent, fire-resistant and crease-free fabrics which were used even in the production of CROCS shoes. An important point to note here is that artistic designs cannot be granted patents, so most fashion designers do not choose to protect garments through patents.ⁱ

In addition to copyright, trademark law protects the name and logo of the fashion brand, which gives companies the protection they need. However, the brand only protects the name and not the designs of the clothes, shoes or accessories. It could provide the desired protection for the underlying designs or the size of the overall shape and appearance of the product, it is not a well-developed area of law in India. Furthermore, in order to be protected by the protection of the commercial image, the product must have acquired a distinctive character, as was held in the case of *Christian Louboutin SAS v. Mr Pawan Kumar and Ors*.

Since the protection criteria are so strict, only high-quality and recognized trademarks can be protected in this area of industrial property rights. Further, when you look at the fashion industry, patent protection doesn't immediately come to mind. However, patent protection can be granted to the technology used to manufacture a particular product. For example, Novozymes, a Danish company, has patented the technology used to manufacture stonewashed jeans. However, patent protection can be very expensive and time consuming, making it a less viable option for fashion houses as the industry relies on rapidly changing trends and seasonal clothing.

Concluding Remarks

These individual loopholes when taken together, aid in fashion design piracy and copying. Fast fashion retailers take advantage of these loopholes to generate billions of dollars each year and are rarely sued for the same. The case *Ritika Apparels v BIBA*ⁱⁱ is an example of how big well-established fashion houses like BIBA take advantage of these loopholes and escape liability. The smaller fashion houses and designers suffer due to the existing loopholes in IPR and lack of funds to receive the same. The most feasible solution would be to introduce a custom made fashion law to reduce the plight of fashion houses and designers.

It can therefore be concluded that the IP Protection in the Fashion Industry has numerous gaps. An important observation that can be derived from this is that the protective measures already in place in the fashion industry urgently need to be reconsidered. There is an urgent need to renew the intellectual property protection of the fashion industryⁱⁱⁱ and modify it to suit the needs of the industry. Furthermore, fashion designers also need to educate themselves about intellectual property protection and determine the best level of protection that can be provided for their products. In order to become benefit through your intellectual property, you need to raise awareness about individual rights. The same can be achieved by closing existing gaps in how intellectual property protects the fashion industry.

ⁱ Shivani Vora, 'Fashion and Intellectual Property', (3rd August 2019) <http://www.legalserviceindia.com/legal/article-3317-fashion-and-intellectual-property.html>.

ⁱⁱ WIPO Magazine, '*IP and Business: intellectual property in fashion industry*' Issue 3/2005.

ⁱⁱⁱ Anjali Srivastava, 'Intellectual Property in Fashion Industry', (23rd February 2019) <https://www.brandstock.com/intellectual-property-in-the-fashion-industry>.

PROTECTION OF TRADITIONAL FASHION VIA GEOGRAPHICAL INDICATIONS

- **Sanjana Santhosh**

Geographical indications are a sort of intellectual property right that can be used to protect a source indicator when a product's quality, characteristic, or reputation can be traced back to its origin. Geographic indications could be described as a sort of cultural protection to the extent that geographic location and culture overlap. GIs are comparable to trademarks, which are emblems that differentiate one company's goods or services from another's. GIs differ from trademarks in that they identify a quality or feature of the product that is related to its place. Furthermore, the GI is not controlled by a single company, but rather by an authorised entity that allows producers who meet the GI's standards to utilise it.

Any modern conversation on 'Fashion' is usually predicated on the assumption that the topic would be

about modern fashion apparels and items and designs developed by well-known designers, design houses, or even nascent, yet modern fashion designers. Fashion is generally associated with what is seen on runways around the world, from New York to Tokyo, London to Delhi. On the other hand, fashion is not limited to the modern era. It also includes traditional fabrics, clothing styles, textiles, gowns, and other items that have been produced for hundreds of years, not by high-end design houses, but by local handloom weavers, knitters, and other skilled workers using their traditional methods.ⁱ

Significance of protecting traditional fashion

Traditional gowns are highly valued, and they are mixed with modern fashion to create stunning, bright, and unique designer outfits. From Kashmir's Pashmina to Tamil Nadu's Kancheepuram Silk, and

Gujarat's Surat Zari to Assam's Muga Silk, India is a land of traditional fashion assets with great economic worth in both the domestic and international markets. The 'Geographical Indication' (GI) contains qualities that effectively answer the needs of indigenous and local weavers, knitters, and designers to safeguard traditional fashion. It denotes that a product comes from or is created in a specific country, area, or town, and that it has unique features, qualities, or a reputation that can be traced back to that location. Climate, geography, manufacturing processes, concentration of comparable enterprises in the same region, specialisation in the production or preparation of certain items, and the maintenance of certain quality standards may all contribute to these unique attributes.ⁱⁱ GIs are jointly owned by communities in the same region that operate in comparable industries, and they highlight the link between human labour, traditions, culture, land resources, and the environment. They are primarily responsible for three tasks:

- (i) identifying fashion items as coming from or being created in a specific territory, region, or location;
- (ii) informing consumers about the quality standards of fashion products based on their geographical origin; and
- (iii) marketing the sale of fashion goods from a specific area.ⁱⁱⁱ

Apart from providing the aforementioned three tasks, GI protection is a vital asset for local and indigenous

weavers and designers in terms of recognition, promotion, and commercial expansion. Small local and indigenous communities of fashion workers lack bargaining power and find it difficult to receive acknowledgment for their efforts when working alone.^{iv} To make matters worse, a scarcity of capital and resources makes large-scale production impossible. In such a situation, collective knowledge, cooperative work, and cooperation aid in the success of their ventures. Because GIs provide owners with an economic benefit for a period of ten years that is renewed on a regular basis with no limit on the number of renewals, they are able to produce revenue for additional investment, which is necessary for the continuation and promotion of traditional fashion works.

Prior to receiving GI classification for Banarasi Silk and Brocade, the Banarasi silk handloom sector was condemned to fail due to competition from mechanised plants that produced Banarasi Silk Sarees at a faster rate and for a lower price.^v Sarees constructed of less expensive synthetic substitutes to silk were another source of competition. Weaver associations in Uttar Pradesh were able to gain the GI rights for the 'Banaras Brocades and Sarees' to help alleviate the problem. GI protection also improves remote-area products' quality, productivity, and marketability. For example, Meetei women of Manipur weave Shaphee Lanphee, a sort of shawl fashioned by needle work without the use of a frame

over Loin Loom fabric, which the Nagas of Manipur wear as a mark of honour.^{vi} This product became so popular once it was granted GI classification that it is now made throughout the state. Furthermore, it is important to note that GI protection contributes to the economic, social, educational, and cultural development of a region or locality by increasing local and indigenous weavers' economic and financial position.^{vii}

Challenges in protecting traditional fashion

Though the importance of GIs for traditional fashion can never be overstated, there is a need to overcome the restrictions that prevent this powerful protection from being fully realised. The obligation of registration and its geographical nature act as a barrier to obtaining protection.^{viii} Furthermore, the lack of a centralised filing mechanism for international registrations exacerbates the problem. Long and arduous registration procedures and registration and renewal fees in many nations cost these little towns an arm and a leg. A single file system for GI protection is desperately needed, as it

will save time and money. It's worth noting that the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, as amended on September 28, 1979, establishes a single filing system for international registrations, under which the application for international registration can be presented to the International Bureau by the competent authority of the country of origin.^{ix} On the other hand, India is not a signatory to the Lisbon Agreement and must ponder on achieving such status for the benefit of existing and future GI owners of the country.^x

Conclusion

The lack of awareness among potential recipients is the final straw in GI protection. Local and indigenous workers are frequently unaware of the means available to safeguard their knowledge, skills, creativity, and goods. Steps must be taken to establish IP legal awareness programs for this group of employees. Information about their rights may be disseminated and support in obtaining them can be provided.

ⁱ Stefan Siegel, "Not just a Label in India", available at: <<http://www.notjustalabel.com/editorial/njal-india>> accessed 22 November 2021.

ⁱⁱ Surekha Vasishta and Amar Raj Lall, "Geographical Indications of Goods (Registration and Protection) Act, 1999", in AK Koul and VK Ahuja (eds), *The Law of Intellectual Property Rights: In Prospect and Retrospect*, 2001, p. 248.

ⁱⁱⁱ Felix Addor and Alexandra Grazioli, "Geographical Indications Beyond Wines and

Spirits: A Roadmap for Better Protection for Geographical Indications in the WTO/TRIPs Agreement", *The Journal of World Intellectual Property*, 2002, pp.865-97, p.866.

^{iv} H.S. Siddamalliah, "Geographical Indication and Knowledge Capital In Evidence-Based Society", *DESIDOC Bulletin of Information Technology*, Vol. 27, No. 6, November 2007, pp.13-18.

<https://www.researchgate.net/publication/277746699_Geographical_Indication_and_Knowledge_Capital_in_Evidence-Based_Society> accessed 22 November 2021.

^v Binay Singh, "Banarasi Silk gets GI Recognition", *The Times of India City*, September 17, 2009.

<<https://timesofindia.indiatimes.com/city/varanasi/banarasi-silk-gets-gi-recognition/articleshow/5023601.cms>> accessed 22 November 2021.

^{vi} Government of India, *Geographical Indications Journal*, No. 55, November 29, 2013, p. 9
<https://ipindia.gov.in/writereaddata/Portal/Images/pdf/Journal_55.pdf> accessed 22 November 2021.

^{vii} Dwijen Rangnekar, "The socio-economics of geographical indications – A Review of Empirical Evidence from Europe, May 2004,
<http://www.iprsonline.org/unctadictsd/docs/CS_Rangnekar2.pdf> accessed 22 November 2021.

^{viii} Sec. 20, The Geographical Indications of Goods (Registration and Protection) Act, 1999.

^{ix} Art. 5, Lisbon Agreement for the Protection of Appellations of Origin and their International Registration as amended on September 28, 1979.

^x Rule 5, Regulations under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (as in force on January 1, 2016).

FASHION PIRACY: BANE TO THE FASHION INDUSTRY

- Sahana R

Introduction

The Indian Fashion industry currently is a mix of both Indian cultural clothes and Western designs and garments. India's domestic clothing and the textile sector produces 5% of the country's GDP, 7% of industry output in value terms, and 12% of the country's export revenues. India is the world's sixth-largest exporter of textiles and apparel.ⁱ To protect each design made by these manufacturers, Intellectual property rights plays an important role. However, the Fashion Industry is very similar to the other entertainment industries such as music, art, theatre etc on the lines of piracy. Piracy exists in every nook and corner of the fashion industry.

Protection to Fashion Design in India.

The fashion designs in India can be protected by way of copyright, design, and patent. New and unique designs emerge in the fashion industry by various brands daily. The design owner can use the registration to prohibit others from exploiting its new or unique ornamental or aesthetic qualities, which can be a three-dimensional characteristic like the shape of a hat or a two-dimensional feature like a textile print.ⁱⁱ Registering a design should help prevent others from copying it and combat unethical competitors who do so.ⁱⁱⁱ Similarly, the creator can get a copyright for the original art. However, in the case of *Rithika Private Ltd v. Biba Apparels private Ltd*^{iv}, a suit was brought

against the defendants where the main issue was whether the particular designs would come under the Copyright Act or the Design Act. It was decided that copyright protects the original expression of a "arts work" and provides limited protection for its commercial exploitation, but the Designs Act is the primary tool for protecting industrial applications of a design, however the design does not have to be unique.

The various protection given to the fashion industry include sketch designs which can be protected under the Copyright Act as it is a piece of art; color combinations can also be protected under the Copyright Act, and the fabric and design material used can be protected under the Design Act.

Judiciary's standpoint on piracy in the fashion Industry

The prominent form of piracy in the Fashion industry would be Knockoffs and Counterfeit goods. Knockoffs are a product's copy produced without a license from the brand. On the other hand, counterfeits are those products that are a copy of the original artwork and look very similar to the original product. Buyers tend to buy counterfeit goods because of the pricing. Usually, original branded items are expensive, thus in order to save money, especially in India, the buyers buy these goods. Counterfeit products cost India's economy more than Rs. 1 lakh crore every year.^v In the landmark case of *Hermes v Da Milano*^{vi}, The Delhi High Court permitted an injunction against the respondent

because the respondent used to sell Birkin bags which were protected by the French company Hermes. This shows that the courts have taken a strict approach when it comes to counterfeiting or similar goods. Another landmark judgement would be the *Christian Louboutin Sas v. Nakul Bajaj & Ors*^{vii} where the defendants sold shoes online and claimed to be a part of the Louboutin family. However, the plaintiff stated that they were not associated with the defendants and thus the defendants could not use their mark on the website. Thus, the court held in favour of the plaintiffs and against knockoff products.

In the case of *Louis Vuitton Malletier v. Plastic Cottage Trading Co*, the defendant is an importer of counterfeit Louis Vuitton products. The defendant imported Vuitton counterfeit bags to India, which the concerned authorities seized. The court fined the defendants with a penalty of INR 140,000.

Impact of Piracy in the Fashion Industry

The estimated value of international and domestic trade in counterfeit and pirated goods in 2013 was \$710 - \$917 billion.^{viii} Fashion Piracy in the 90's was very much prevalent in the United Kingdom. UK customs officers busted a £4.25 million counterfeit designer label operation in 1997, it revealed significant proof of the pattern. Ralph Lauren, Calvin Klein, and Timberland were among the brands represented in the batches.^{ix} Thus, we can see that the economic impact of fashion piracy is enormous. The objective of the Intellectual property rights law that is

to create a space for more invention will be lost in case these piracy activities continue.

Conclusion

IP owners are concerned about applying the legal provisions and procedural delays in India, which are strong legislation to fight the pirate problem. However, one way to deal with counterfeit fashion is

through the National IP Policy, which has a dedicated cell (CIPAM) to achieve several objectives, including improving enforcement and adjudication.^x Thus, those companies or persons dealing with counterfeit goods must be punished, which would act as a deterrent to other such companies making it clear that counterfeiting is not an easy way out.

ⁱ “Textile Industry in India - Garment & Apparels Market in India” (*Textile Industry in India - Garment & Apparels Market in India*) <<https://www.investindia.gov.in/sector/textiles-apparel>> accessed November 20, 2021.

ⁱⁱ *IP and Business: Intellectual Property in the fashion Industry* May 2005 <https://www.wipo.int/wipo_magazine/en/2005/03/article_0009.html> accessed November 18, 2021

ⁱⁱⁱ *IP and Business: Intellectual Property in the fashion Industry* May 2005 <https://www.wipo.int/wipo_magazine/en/2005/03/article_0009.html> accessed November 18, 2021

^{iv} *Rithika Private Ltd v. Biba Apparels private Ltd* (2016) 230 DLT 109

^v P JJ, “Counterfeiting Costs India ₹1 Lakh Crore Every Year: Ennoventure CEO” (@*businessline* August 14, 2020) <<https://www.thehindubusinessline.com/info-tech/counterfeiting-costs-india-1-lakh-crore-every-year-ennoventure-ceo/article32358558.ece>> accessed November 20, 2021.

^{vi} Ranjan Narula, Mayur Varshney, ‘Countering Counterfeits’, 25th December

2017 <https://www.legaleraonline.com/article-detail?newsname=countering-counterfeits>

^{vii} *Christian Louboutin SAS v. Nakul Bajaj & Ors.*, CS (COMM) 344/2018.

^{viii} “The Economic Impacts of Counterfeiting and Piracy” (ICCMarch 10, 2021) <<https://iccwbo.org/publication/economic-impacts-counterfeiting-piracy-report-prepared-bascap-inta/>> accessed November 20, 2021.

^{ix} “The Economic Impact of Counterfeiting - OECD” (*Organisation for Economic Co-operation and Development*) <<https://www.oecd.org/sti/ind/2090589.pdf>> accessed November 20, 2021.

^x “Official Website of Cell for IPR Promotion and Management (CIPAM), Ministry of Commerce and Industries, Government of India” (*Department of Industrial Policy*) <<https://cipam.gov.in/>> accessed November 20, 2021.

