
INTELLECTUAL PROPERTY RIGHTS IN THE SECTOR OF THE FASHION INDUSTRY IN INDIA

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ABSTRACT

If we look back to time immemorial human beings used to cover their bodies with leaves to protect their dignity and modesty. As time passed lifestyle of human beings changed and we can see the continued evolution of apparel, accessories, and footwear. Etc. came into the picture. At present human beings give utmost importance to clothing, accessories, and footwear it is because it not only protects them with dignity, modesty, or physical safeguards but to showcase their status, identification, or for adornment that is why the fashion industry is boosting to the sky in the market. It is indeed the fashion industry and related business will never decline but it is dynamic one can never expect what fashion prevails in the market in the future. That is the reason why fashion designers in the market apply their intellectual minds to create unique designs, and patterns for apparel, accessories, and footwear to be different from others in the market which helps them to attract high profits as well as to sustain in the market. Every coin will have both sides similarly the fashion industry in India is shooting up day by day meeting unexpected results, standing as the backbone in increasing the Indian economy, representing the country worldwide, and dominating all the rest of the countries on the other side malicious activities such as knockoff and counterfeit are taking place. This paper traces the notion of Knockoffs and counterfeits in the fashion industry, the applicability of IPR laws along with the few case laws regarding the fashion industry.

Keywords: Fashion industry, Intellectual Property Rights, Knockoff, Counterfeits.

Introduction

The term fashion industry comprises individuals, micro small, and medium enterprises, and vast organizations connecting their network worldwide with their innovative and creative designs in the aspects of fashion. It is to be noted that the fashion industry is not just restricted to the designs of apparel but it also takes in the designs of footwear, accessories, and beauty products. It embodies all the stages of activities right from the first design to the final product which is ready to push out in the market. The vital difference between human beings and other living beings in this world is humans apply their intellect and mind in day-to-day activities. Human beings with the help of this intellectual capacity come out with innovative and creative ideas in all industries. Similarly, Human beings innovate and create designs in the aspects of the fashion industry which ultimately lead to the need for law, for the protection of their innovations and creations. That is the reason why we need Intellectual property rights (IPR) to protect the innovation and creations of human beings. IPR plays a substantial role in protecting the rights of those who innovate, create and release the latest designs into the world of fashion. Unlike the other industries, there will be a dynamic change in the fashion industry because the industry itself runs based on consumer demands and have the impact of multiple factors such as religion, culture, geographical locations, social, and economic trends. As we all know India is known for its diversity, we can see many religions, people from different cultures, and different living styles at different geographical locations so it's impossible to stick with one fashion throughout the country for a much longer time. That makes the fashion designers come up with the latest trends and designs for the market regularly so that they can survive in the market and run their business, it shows the level of competition in the fashion industry. One to survive in the fashion industry should come with the latest designs and quality materials. Etc. Due to that Fashion designers differentiate themselves from the others in the industry with the help of unique and latest designs, material, and brand logo and for that, they need IPR to protect their differentiated designs and brand logos. Intellectual property rights encompass patents, industrial designs, trademarks, copyrights, and trade secrets. All these branches of IPR help one or in another way to protect innovations and creations. In the fashion industry designs are protected by copyrights, brand logos are protected by trademarks, the secrets of the manufacturing process or strategies of marketing are protected by the trade secrets, and product designs are protected by the design patent. In this way, it also motivates and encourages individuals to put out their complete efforts in innovating and creating the latest designs. The fashion industry plays a pivotal role in the growth of the Indian economy with the help of

employment generation for different designations such as helper, support staff, designers, and maintenance staff. Etc. Indian apparel is given utmost value in foreign countries due to the demand India is exporting the apparel and gaining much profits with the help of foreign exchange earnings. Many textile and garment factories in India are MSME which is creating jobs in rural areas and helping to boost the economy of the country. Silk, cotton, and khadi are produced in large quantities and the fashion industry with the help of the government promotes the same worldwide to gain much more value. The fashion industry is reflecting 2% of the country's GDP, share of textile apparel and handicrafts exports is 11.4% in 2020-2021, India is also the 2nd largest producer of silk and 1st largest producer of cotton worldwide, fashion industry stands second within the country in generating a greater number of employments almost 45 million directly employed and 100 million people in allied industries, India has 5% share in global trade in textiles and apparel, 12% of export earnings are contributed by domestic apparel and textile industry in India¹. The drawbacks of IPR in the sector of the fashion industry are that the registration of designs, and brand logos take a minimum of 18 to 24 months but the fashion will not be stable for a much longer time, fashion keeps changing irrespective of time so appropriate authorities should work on this drawback to protect the innovations and creations and another drawback is IPR dilemma which means that there are many tailors and shoemakers who customize the cloths and products according to the whims and fancies of customers, but these customers demand to wear the copy of original designed cloths or products which are of high cost and it is not affordable for every individual in the society if IPR protects the rights rigidly then it would adversely effect on the livelihood of those tailors and shoemakers and also it would affect the individuals who cannot afford to satisfy their whims and fancies.

Literature Review

Vishaka Agarwal in her paper attempted to identify the reasons for the lack of registration of patents, copyrights, trademarks, and designs regarding the fashion industry, field survey was conducted to know the awareness of IPR registration and its benefits². Shishir Tiwari in his paper attempted to study the distinction between fashion and fashion design, fashion piracy, intellectual property rights protection for fashion design, and the time-consuming registration

¹ Invest India, <https://www.investindia.gov.in/sector/textiles-apparel> (last visited May 13, 2023).

² Vishaka Agarwal, IPR Registration in Fashion Industry of India, 24, *Journal of Intellectual Property Rights (JIPR)* 35, 35-40, (2019).

process³. Pankaj Kumar in his paper attempted to study Intellectual property Rights concerning the fashion industry, fashion design success in South Africa, and brimful designs in Pakistan⁴. Shruti Mulgund in her paper attempted to study the role of IPR in the fashion industry⁵

Knockoff and Counterfeits

Piracy in the fashion industry can be done to any fashion design or any brand logo or label. The piracy of the fashion design can be executed in two ways a knockoff and another one is counterfeit. The term Knockoff means “A very similar looking product copy of a patented, trademarked, or copyrighted product or work that is cheaper as an illegal version” or “A cheaper version of a high-priced material or product as competitor functionally and qualitatively equivalent”⁶. In a simple sense, knockoff products are products that are very close to the original product but not the exact version of the original product. Knockoff products will have slight changes in the brand name they just copy the design and execute the same designed version with different material and a different brand or logo name. Generally, knockoff products will not be considered to be infringing on the original products because they sell their products with their branding unless the original owner can prove the knockoff products are the exact copy. For example, Products of Adidas are termed abidas, and the designs of Nike such as Jordan or Air can see similar designs in multiple stores and brands. Local tailors stitch similarly designed clothes on different materials. The locution Counterfeits is defined as “To forge; to copy or imitate, without authority or right, and to deceive or defraud, bypassing the copy or tilling forged for that which is original or genuine”⁷ which means that counterfeit products are the exact copy products of the original it will be very much difficult to identify whether it is the counterfeit product or the original product. A normal prudent man cannot find the difference between a counterfeit product and the original product only that person who is skilled in that particular field or has immense knowledge in that field will be able to pick out the difference. Counterfeit products are made to defraud the original owners who invested a lot in research and development and to release such products in the market. For example, Exact copies of Nike, Puma, Gucci, and Armani Exchange. Etc. People make counterfeit products of

³ Shishir Tiwari, Intellectual Property Rights Protection of Fashion Design in India: A Panoramic View, Social Science Research Network (SSRN), 1, 1-29, (2016).

⁴ Pankaj Kumar, Fashion and related intellectual property rights issues, Social Science Research Network (SSRN), 1, 1-10, (2019).

⁵ Shruti Mulgund, Applicability of Intellectual Property Rights in the Realm of Fashion Industry, 4, INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION, (IJLSI), 312, 312-322, 2022.

⁶ Black’s Law Dictionary, <https://thelawdictionary.org/knock-off/> (last visited May 13, 2023).

⁷ Black’s Law Dictionary, <https://thelawdictionary.org/counterfeit/> (last visited May 13, 2023).

such brands because such brand appeal in the market is much higher compared to other brands. Both knockoff and counterfeit products will damage customer loyalty and decrease the sales of the original product.

Intellectual Property Rights Protection to Fashion Industry

Copyrights Acts 1957

The protection of copyrights can be made available to any music, original literary, or artistic work which is tangible. The owner of such protected works has the right to reproduce the same or delegate such work to anyone. “Artistic work means any painting, drawing, sculpture, engraving, or photograph, irrespective of such work possesses an artistic quality, work of architecture and any other work of artistic craftsmanship”⁸. According to section 2(d) of the Designs Act 2000, the artistic work defined under section 2(c) of the Copyrights Act 1957 doesn’t come within the ambit of the word “Design”⁹. If any design is registered under Designs Act 2000 then it cannot be registered under the Copyrights Act 1957 additionally if any design is capable of being registered under the Designs Act, 2000 but not so registered then such design only claims the protection under the head of Copyrights Act if such design is produced less than fifty times in any industrial process by the owner of such design¹⁰. Now the question arises whether the designs or artistic work comes under the Copyrights Act or Designs Act. In the landmark Judgement “Rajesh Masrani versus Tahiliani Design Pvt. Ltd” the facts of the case where the defendant Mr. Rajesh Masrani copied the design and artistic work of the plaintiff Mr. Tarun owner of the Tahiliani Design Pvt. Ltd. Mr. Tharun and his firm created and developed a handful of at least 20 models having a unique design and artistic work which has been printed or embroidered on the material/cloth/fabric. The plaintiff alleged that the same work was reproduced by the defendant without any authorization. Following are the issues or questions that arose in Infront of the Delhi HC. Whether the pattern made by the plaintiff falls under the ambit of artistic work or design? Whether registration is mandatory to claim protection under the Copyrights Act 1957? The court held that any product which is capable of being copied and making profits out of such copied product should fall within the ambit of copyrights and the owner of such product can claim the protection under the copyrights act. section 44 of the copyrights act states the register of copyrights but nowhere it is restricting the

⁸ The Copyright Act, 1957, § 2 (c), No. 14, Acts of Parliament, 1957, (India).

⁹The Designs Act, 2000, § 2 (d), No. 16, Acts of Parliament, 2000 (India).

¹⁰ The Copyright Act, 1957, § 15, No. 14, Acts of Parliament, 1957, (India).

original to claim protection under copyrights without registration, therefore the original owner can claim protection under the copyrights act without any registration. Registration for the copyrights is only a presumption of the ownership but it is not conclusive. As per the language of the bare act, the original owner plaintiff can claim protection under the copyrights act the work of the plaintiff falls within the ambit of artistic work, and according to the section the limit produced by the plaintiff was less than fifty¹¹. We can conclude that Copyrights in the field of the Fashion industry only protect the design or artistic work of fashion to a certain limit but not beyond the such limit. Copyrights only protect the design, pattern, or art on any cloth/garments/apparel/textiles but not the whole material or product.

The Design Act, 2000

Designs are the soul of any fashion apparel or ornaments or accessories. One will purchase the product only if they like the design it is secondary which brand the product is from that shows what role the designs play in the minds of consumers as well as in the market. As we discussed above the Copyright Act helps in protecting the design only to a certain limit but cannot protect beyond the limit but Designs Act protects the original designs which will be used in the industrial process. Goods manufactured by the fashion industry will fall within the ambit of the following classes 2, 3, 5, 10, and 11. As per the definition provided in the Design Act, the term Design means “the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye” but it does not include any trade work or artistic work which have been defined under Trade Marks Act and Copy Rights Act¹². It is to be noted that to claim protection under Designs Act the person should duly register accordingly if not he cannot claim the protection. In the “Ritika Private Limited v. Biba Apparels Private Limited” case the plaintiff couldn’t claim protection under both Copy Rights Act and Designs Act it is because the plaintiff did not register the design under Designs Act and produced goods of more than fifty for which the protection cannot be claimed under Copy Rights Act¹³. The protection under Designs Act will be for ten years once registered and an extension can be given for five more years. The registration process under the Designs Act is lengthy and time-consuming it is one of the biggest

¹¹ Rajesh Masrani v. Tahiliani Design Pvt. Ltd AIR 2009 Del 44.

¹² The Designs Act, 2000, § 2 (d), No. 16, Acts of Parliament, 2000 (India).

¹³ Ritika Private Limited v. Biba Apparels Private Limited (2016) SCC OnLine Del 1979.

disadvantages to the fashion designers in our country, even if the fashion designers obtain protection by registration if the product doesn't hit success or that particular trend of design is no more in the market then the registration and the time for waiting will be of no use.

Trade Marks Act 1999

A trademark identifies the goods and services from a particular source with the help of unique and differentiated logos, symbols, words, slogans, designs, or product packaging with different color combinations or trade colors. The protection of registered trademarks under the Trade Marks Act 1999 is for ten years thereafter it can be renewed. "Trade Mark means a mark being capable of distinguishing the goods or services from one another the mark can be a geographical representation or it may include packing and combination of goods or shape of the goods"¹⁴. For example, The Slogan of Apple is "Think Different" and the slogan of Nike is "Just Do it". People just by looking at the logo will be ready to pay the extra money because the logos of certain brands are affixed and created a permanent place in the minds of the consumers. For example, H&M, ROLEX, ZARA, etc. Trademarks play a significant role in the fashion industry because ultimately the value of any product stands in the market based upon the brand name or logo so it is determining factor for the consumer whether to purchase a certain product or not. In the recent case of "Tommy Hilfiger Europe B.V vs M/S Taqua Textiles & Ors", the facts of the case are the plaintiff is the company which is duly established under the laws of the Netherlands. The company involves in multiple business activities such as apparel, accessories, footwear, fragrances, etc. for men, women, and children with the brand name of the registered trademark which is "TOMMY HILFIGER". Defendants used the plaintiff trademark on the facemasks and also T-shirts with a similar trademark which they have been selling on multiple platforms without any authorization. Delhi High Court ordered the permanent injunction order against the defendants and their distributors, agents, stockists, etc. and the said amount of Rs 6,59,995.76/- should be deposited by the defendant within four weeks¹⁵.

The Patent Act, 1970

A patent can be granted for any invention which has new technology for commercial utility. The term invention includes process, art, method of manufacturing, or any machine or other article or substances produced by the manufacturer including any new or useful improvements.

¹⁴ The Trade Mark Act, 1999, § 2 (zb), No. 47, Acts of Parliament, 1999 (India).

¹⁵ Tommy Hilfiger Europe B.V v. M/S Taqua Textiles & Ors (2020) Del 160.

“Invention means a new product or process involving an inventive step and capable of industrial application”¹⁶. Patents don’t play many roles in the fashion industry because apparel generally doesn’t link with any technologies but patent protection can be claimed for those apparel that are linked with technology. For example, Eyewear changing the tint of shades with a touch button usually works with the help of a battery, wrinkle-free fabric, and fabrics that don’t catch fire. Nike recently obtained a patent for its sneakers developed with block-chain technology called “Cryptokicks” which provides a digital token for the buyers immediately at the time of purchase. Buyers in the future can sell or transfer the ownership of their shoes either physically or virtually.

The Geographical Indication of Goods Act, 1999

India is known for its skilled handicrafts. People from different locations in the country possess unique skills and talents. Such handicrafts with excellent skills and talent produce various kinds of goods in the fashion industry. Products rooted in geographical origin will be protected by the Geographical Indication of Goods Act, of 1999. For example, Gadwal sarees, Kanchipuram Sarees, Kolhapuri chappal, Assam Kullu shawls, Mysore Silk, and Pochampally Ikat Design. Etc.

Limitations and Future Scope of the Study

The study has certain limitations. The study is solely based on secondary data. The study only focused on the IPR laws protection of the fashion industry. Furthermore, the study restricted only to the inclusion of a few case laws of both landmark and recent which are specially decided in India. In the future, many studies can be conducted within the country and outside the country. Implementation of IPR laws in the fashion sector is often weak because of two reasons one is the period for registration is more and the trends and fashion in the market are dynamic and the other is lack of awareness among people.

Suggestions for IPR in Fashion Industry Sector

1. Legal awareness programs should be conducted across the country
2. IP offices should be increased
3. Employees should maintain complete confidentiality
4. Registration costs should be decreased

¹⁶ The Patent Act, 1970, § 2(j), No. 39, Acts of Parliament, 1949 (India).

5. Offices and employees should grant the registrations without any delay

Conclusion

The fashion industry in India is unleashing unexpected growth in recent times. The fashion industry is playing a crucial role in increasing the Indian economy. Every invention, original design, art or pattern, slogan, or brand name comes into existence with a lot of human intellectual efforts. Today the particular design, pattern or original work is standing in the market gaining the utmost profits implying the amount of hard work that was put forth by the creators, artists, and fashion designers. Intellectual Property Rights play a key role in protecting those original works and motivate humans to put extra effort as their work is protected. India is spread with multiple cultures, languages, and people from different geographical locations have their unique backgrounds and way of living style including fashion. Fashion evolves day to day there is no guarantee which fashion will rule the market tomorrow so it is important for fashion designers to apply their intellectual minds and come out with the latest designs, patterns, and inventions to sustain in the market. Knock off and counterfeits are the evils in the fashion industry they should be protected by the IPR laws. From the author's point of view, IPR should be known to everyone in the fashion industry to derive benefit from it and the time for registration should be reduced.

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