
THE IMPACT OF INTELLECTUAL PROPERTY RIGHTS IN THE FASHION INDUSTRY

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ABSTRACT

If we go back to ancient times, humans have used leaves as a piece of clothing to cover their bodies. Human lifestyles have evolved with time and it can be seen in the ongoing development of clothing, footwear, accessories, and cosmetics. The fashion industry is expanding rapidly because clothing, jewellery, handbags, footwear and cosmetics are extremely important to people nowadays as it allows them to flaunt their status, identity or personal style. Fashion in general is dynamic, thus one can never predict what will be in style in the future and that is the sole reason why fashion designers use their creativity to come up with unique designs or different patterns for clothing, footwear, accessories, handbags and jewellery that sets them apart from other fashion entities in the industry. This research paper points out the importance of protecting the fashion sector through Intellectual Property Rights (IPR)

Keywords: Intellectual property rights, fashion design, fashion industry.

INTRODUCTION

Fashion or fashion design is a form of art that focuses on the creation of clothes and accessories. As a designer, one must be artistic, imaginative and creative. Fashion designers have a strong visual imagination and put their mind and their ideas in creating trendy garments or clothing pieces. Fashion designers should not only limit their knowledge to reading fashion books, journals, magazines and keeping up with the new trends and designs but should also broaden their interests in learning and being aware of their rights that is to protect their brand and their unique designs from being copied by others, and this is by comprehending Intellectual Property.

The fashion industry is continuously changing because of the new trends and styles that its contributors consistently create. The manufacturing, marketing and distribution of apparel, accessories, footwear, cosmetics make up the majority of this business, which has made a significant contribution to the gross domestic product of the world economy.

By 2025, the value of the apparel global market is expected to have increased from its current level of USD 1.5 trillion to almost USD 2.25 trillion.¹ This expected increase in revenue simply indicates that the demand for clothing, footwear and accessories are increasing across the globe. Based on this perspective, it is extremely important to protect the fashion industry through intellectual property rights (IPR).

In the fashion industry, intellectual property rights are mainly regulated by laws that include trademark, copyright, patents, designs, trade secret, counterfeit, knockoffs, advertising and marketing. Trademark protects the identity of a brand name, sign, logo or any other mark or symbol that distinguishes the goods and services from other creators. Copyright on the other hand protects the literary, artistic and creative works, expression of an idea, pattern, cinematic and musical works. Patents protects unique inventions and innovations that relies on technologies to manufacture products like materials and shoes. Trade secret protects software tools for fashion designs, customer lists and undisclosed designs and materials from theft and copying. Whereas, the designs act protects unique, aesthetic and new products or designs which is original and has not been available previously.

¹ <http://www.statista.com/outlook/cmo/apparel/wprldwide>

Thus, intellectual property is essential for not only defending the fashion sector but also for preventing knockoffs and copying of fashion products. The fashion industry cannot truly flourish until creators and inventors are granted protection for their work of art and are safeguarded from plagiarism.

WHAT IS FASHION?

Fashion is a way of expressing who you are. It is a reflection of life. It can be expressed through different signs, symbols, images and icons that describe specific kinds of people or groups. It is a way of communicating that makes one's personality stand out. Fashion is a common phrase that describes different styles of clothing during a specific period of time or among a group of people. The best way to define is by looking at different people wear different kind of clothes and accessories on a daily basis which includes handbags, shoes, and jewellery.

Fashion has different meaning for everyone as for some people they see it as a symbol of attractiveness whereas for some it is what they are comfortable in. Fashion is subjective and it can differ greatly from one person to another based on their age, gender, occupation, social economic class and generation. For instance, when it comes to fashion, the youth of today put extra efforts and go above and beyond by buying expensive designer clothing which has the latest design and is trending. The world of fashion is evolving at a rapid pace and the clothing or fashion industry is one of the fastest growing industries in the world. The growth of this industry is massive and is just not restricted to clothes but it expands to luxury products as well. These industries heavily invest in making new and aesthetic fashion products which is why IPR becomes essential and plays a huge role in protecting fashion pieces from being copied or duplicated.

Fashion design refers to a creative element that is unique and aesthetic and which is applied to fashion products like apparel, purses, footwear, accessories, jewellery, etc. Its emphasis on the craftsmanship and creation of garments and other accessories. Cultural and societal perspectives have influenced the fashion business over time and place.

PROBLEMS FACED BY THE FASHION INDUSTRY

Fashion Piracy

Piracy is the illegal and unauthorised use of someone else's work. In simple terms it means copying a person's work without their knowledge or permission. It is defined as the unauthorized reproduction of products that are shielded by intellectual property laws like trademark, patent, copyright laws. In intellectual property, illegal copying amounts to privacy or plagiarism. Fashion piracy comprises the following:

- a.) stealing fashion designs or copying them from some fashion designers or anyone for that matter.
- b.) copying someone's brand logo or label.

Piracy in fashion design is the unauthorized copying of unique and aesthetic designs from famous designers without their knowledge. It can further be classified into types and they are as follows:

- **Knockoffs**

Knockoffs in the fashion industry are an unauthorised duplication of trending designs or popular works that is used without permission with the intention to sell the original design or work for a price lower than the original work. It is an attempt to copy or replicate the original design, style, appearances, pattern and other aspects and it is marketed under a different brand or label that is completely different from the original. As far as the costing is concerned, it costs cheaper and is far less than the actual design. If a person demonstrates or proves that the particular design is the same or similar and that it is very close to deceiving the public then, a legal action may be taken. Few examples of fashion knockoffs may be found in stores like ZARA, Steve Madden, H&M, forever 21, etc.

- **Counterfeit**

Counterfeit is an unauthorized copy or replica of a fashion brand, their logo and their design. It mimics well-known fashion designers or luxury brands and sell it in an inferior quality and a cheaper price with the intention to mislead the purchasers about the product's genuine quality and origin. It is nothing but a scam, that seeks to deceive the consumers into believing that they are purchasing the authentic products.

IPR AND FASHION

Intellectual Property Rights is a fundamental concept that lies at the very heart of the fashion industry. It acts as a protector of the fashion Industry in the sense that it protects and preserves the originality of the fashion products and helps in the growth of the industry and helps in pushing the fashion industry forward.

In the 21st century, there is a thin line between inspiration and imitation and Intellectual Property Rights acts a protector protecting the originality of the products and preventing unauthorised replication. Intellectual Property Rights safeguards intellectual creations of Individuals and organisations through Patent, Trademark, Design, Copyright, etc. with respect to the Fashion Industry, it helps in the protection of original design, brand identities, etc and helps in differentiating the product of one brand with the product of another. Intellectual Property Rights helps in preventing unauthorised replication and helps in creating an industry where innovation prospers.

The evolution of Intellectual Property Rights within the fashion industry helps to analyse the present scenario of the fashion industry and also helps to anticipate the future growth of the fashion industry. It has also helped in the transformation of the Fashion Industry from the early days of couturiers carving their niche to globalisation of the fashion brands.

Fashion Industry is an industry which is growing at a rapid pace and is one of the fastest growing industries in the world and therefore it requires intellectual property rights to provide protection for it to grow even further. These intellectual property rights are not mere legal rights, they are the foundations upon which designers and inventors of the fashion industry build their creation and products and these legal rights safeguards those creations and products and helps inventors and innovators to enjoy the rewards of their creation and vision.

IMPORTANCE OF PROTECTING THE FASHION SECTOR

Intellectual Property Rights can be considered as the backbone of the fashion industry as it helps in shaping the competitive landscape of the fashion industry. It also promotes innovation and helps the fashion brands in increasing their brand value. IPR plays an important role in ensuring the economic vitality and creative sustainability of the fashion industry.

The world of fashion is dynamic and competitive and in this dynamic and competitive industry trademark acts as a formidable asset assisting the fashion brands in protect their originality and uniqueness and also helping to distinguish the products and services of one fashion brand from those of the others. The protection provided by trademarks extends far beyond logos and names, encompassing unique features that resonates the consumers. Trademark plays a key role in brand recognition and differentiation, providing fashion brands with a competitive edge in dynamic and competitive industry.

Copyright plays an important role in protecting and preserving the creative essence of the fashion designs. Copyright acts as a guardian of original artistic expressions. Other than providing legal protection, copyright helps in encouraging designers to extend their creative boundaries thereby creating a culture of continuous innovation within the fashion industry.

The Industrial designs plays an integral role in preserving the creative essence of fashion designs and also helps in shaping the market perception.

The role of Intellectual Property Rights in fashion can also be linked to the industry's economic ecosystem. Different types of intellectual property like trademark, copyright and industrial designs enable the fashion brands to generate income from their creative assets by forming the basis for licensing and merchandising agreements. Therefore, it can be said that Intellectual Property acts as a strategic tool for fashion brands in generating revenue and expanding their business.

When these fashion brands decide to expand their business globally, the significance of intellectual property rights in the world of fashion increases ten times as IPR helps to facilitate seamless global expansion and also protects the originality and uniqueness of the said brands when the said brands decide to venture into the international markets.

Intellectual Property Rights encourages creative expression of the fashion entities. It also makes a contribution to the cultural and social aspect of the fashion industry. Symbols of fashion brands which are protected through trademark bring a sense of association and connection between the brand and the consumers.

In the everchanging world of fashion where the preferences of the consumers change from time to time, where the industry is growing at a rapid pace, the significance of intellectual

property rights in the fashion industry remains constant.

The importance of intellectual property rights in the fashion industry is beyond just providing legal protection to the fashion brands. Innovation is the main force driving the fashion industry forward and intellectual property rights provides the necessary framework to nurture and protect creative endeavours.

Since fashion design is an invention and creation of the human brain, it is protected by intellectual property. Protection of fashion designs through IPR is becoming increasingly important with numerous articles and blogs in support of it. However, a significant proportion of people believe that protection through IPR is unnecessary and not needed. Whereas, on the other hand the opponents contend that the fashion business can thrive without IPR protection. They claim that lack protection encourages fashion creators or designers to produce various unique designs which leads in the development of fashion business. Some people believe that piracy in the fashion industry is beneficial. The authors claim that lack of protection of original and unique designs results in rapid increase and fading away of fashion designs. The fashion industry is evolving faster with the widespread of copying the uniqueness of the fashion products. In response to that, designers create fresh designs in accordance with the obsolescence, which in a way is encouraging them to produce unique ideas. Ironically, piracy benefits the designers by generating faster turnover and increased revenues and it also promotes industry growth. Therefore, according to some IPR protection should be evaded at all costs.

The heart of fashion mainly lies in fashion designs, making the fashion sector one of the biggest creative sectors. Fashion designs are very costly to produce, but it is low-cost to duplicate. Thus, the people who copy designs takes advantage from other designers, preventing them from developing novel and unique designs in the not-so distant future. Hence, copying reduces novelty and inventiveness. IPR protects the fashion designs of the creator and discourages piracy, promoting entrepreneurship among designers. The internet and social media make it simple for anyone to acquire designs, putting the creators and designers at risk. Therefore, this emphasises the importance of protection in the fashion sector through IPR.

IP RIGHTS IN THE FASHION SECTOR

TRADEMARK

Trademarks play a very crucial role in differentiating a company's goods or services from other competitors in the industry. However, in the fashion business, trademark is of special importance as it is one of the most commonly used means to safeguard fashion brands and fashion designs.

Trademark protects both, companies and consumers by suggesting that a particular product comes from a trusted company and that the company adheres to strict quality standards, and thus is harmless to use. The general public can recognise a particular brand by their logo or a certain mark that is associated with that brand. Trademark may consist of a wide variety of elements, like the brand, or their logo, or pattern, or a particular colour. These elements can add an extra meaning to a product and make a product extraordinary from other competitors. For example, Christian Louboutin is a luxury brand that uses a red sole in their footwear, making them unique and distinguishable from other footwear brands. Therefore, it is essential for fashion brands to focus on the detailing of their products so that they stand out in the market, making them desirable among the purchasers.

Trademarks are no longer just about distinguishing oneself from others, but also have a psychological impact. Consumer purchases are now heavily influenced by a brand's values therefore, any dishonest action or incorrect statement will harm the reputation of the company and reduce the sales. Furthermore, a group typically associates itself with a particular brand. For example, the brand Vans are typically linked with skaters and Nike is associated with basketball. Hence, each brand caters to a certain type of consumers or purchasers. In this context, trademark protection becomes essential for any fashion company to succeed.

Protection in trademark is not restricted to only brand's name or logo but it also includes other aspects like word marks, colour marks, shape marks, sound marks, product marks, service marks, figurative marks, collective marks, position marks, certification marks, hologram marks, pattern marks and many more. However, every country has different protection for different kind of trademarks.

A fashion trademark can be registered in different classes based on the Nice Classification which is a global system that classifies goods and services for registration purposes. To put it briefly, it gives a person an option to choose the industries that a particular trademark would

target. Therefore, the extent of protection that trademark guarantees will be impacted by this decision. Filing in multiple classes is a standard practice in this field.

This list of applicable classes for trademark applications in the fashion sector is not exhaustive:

Class 3 includes cosmetics and fragrances

Class 9 includes fragrances

Class 14 includes watches and jewellery

Class 18 includes leather goods, handbags, luggage bags, purses, umbrella and clothing for animals

Class 23 includes threads and yarns for textile use

Class 24 includes textiles or any substitute for textiles, plastic, and household linen

Class 25 includes clothing, headgear and footwear

Class 26 includes embroidery, laces, ribbons, bows, buttons, pins, needles, hooks, eye, hair decoration, fake hair, and artificial flowers

Class 35 consist of services which involves advertising and business management

Class 40 consist of services which is related to treatment of materials like recycling of waste and printing services.

Gaining recognition and goodwill for a trademark takes time and work. To establish goodwill in any industry, additional intellectual property rights like trade secret, designs, patents and copyright are necessary to prevent competitors from replicating products that are unique.

In conclusion, having a registered trademark enables a person to:

- Prohibit third parties from unfairly taking benefit from their reputation that is by using a similar or identical mark in a manner that will damage their brand's image and value or

cause a downfall in the business.

- Protect their identity of a brand by preventing confusion among related brands.
- Prohibits and takes action against counterfeiters who misuse a person's trademark without their consent.
- Permits to do business using their mark regardless of whether it is done by means of licensing or transmitting or even lending of their trademark.

DESIGN

Design safeguards the physical appearance of products or specific features or parts that make them, such as a coat's unique pocket design or detailing in the collar or sleeves. Colours, fine lines, textures, blend of features, and materials are some of the elements that work together to create designs.

Design is very significant in the fashion business for a variety of reasons. They allow designers to express themselves in a very creative manner, setting fashion trends and impacting the needs of the consumers. Design also helps brands stand out and be extraordinary in a competitive market by establishing their identity that is very distinct and unique from others. Furthermore, attractive designs pique customer's interests which boosts revenue and foster brand loyalty. In general, designs are mostly responsible for influencing the way fashion business appears and it also protects the structure and overall appearance of key items which includes garments, purses, accessories and footwear.

A design is what we see in a product like a pattern of decoration in a piece of garment. A design can be registered only if it is very unique and distinct, something that no one has come across. This means that particular design cannot be similar to an already existing design, it has to stand out. This provides the artist protection for the product's outward appearance and not for its texture, composition or functionality. However, there are a few designs that cannot be registered such as any designs that has obscene or inappropriate visuals.

The fashion industry is primarily interested in protecting the design among the several IP procedures available. Registering a design enables the owner to prohibit others from using it, creating or manufacturing products with the registered designs or market it like importing it,

or selling the goods that is a replica of the original design. Therefore, in conclusion design plays a major role in the fashion hub as it prevents opponents from duplicating it for only a brief period.

COPYRIGHT

Author's and creator's rights to their literary and creative works are outlined by Copyright. Copyright protects a wide range of works which includes, books, magazines, films, paintings, database, computer programmes, maps, sculpture, music, technical drawings and many more.

Copyright in fashion refers to works that are two-dimensional and is often used alongside with other forms of intellectual property rights. Few examples from the fashion sector that copyright protects are novel and unique prints, images or pictures that appear on clothes materials or textiles and graphic images. Copyright also protects various other components such as the customer's database, materials on fashion, lookbooks, drawing books, brochures, website content and many other.

Copyright protection is automatic requiring no registration or payments in countries that have ratified the berne convention. But, in a few countries like the US, registration is mandatory before filing an action for infringement.

The following are not protected by copyright and they are as follows:

- Titles or names, however they may be able to receive protection from trademark
- Creator's thoughts or any ideas or concepts that he/she is thinking in their mind
- Any sort of innovations, however it can be protected through patents.

Any work that satisfies the following two criteria can be granted protection in copyright:

The first and foremost the work must reflect the intellectual creation of the creator or the author. This means the work should be the author's original work and not someone else's creation.

The second is that the work ought to be an expression of such creativity, meaning that the work must be precisely and accurately be identified to the outside world.

Copyright immediately grants a person exclusive right after producing their work, and the rights are as follows:

Economic Rights: These rights allow a person to benefit financially from the usage of their work. This implies that only those people can decide on the amount of work to be reproduced so that they protect their work from unauthorised replicas. Translation of the creator's work is also included. They can also prevent copies from being distributed to the public. Further, the creators also get to decide on the performance and broadcasting and other methods of communication to the general public.

Moral Rights: These rights of the creator preserve and safeguard their work. The rights to be acknowledged as an author or creator, to uphold the originality of the work and contest to fraudulent attributions are all included in moral rights.

PATENTS

When one thinks about the fashion industry, patents might not automatically come to mind initially. Nevertheless, technological innovation can provide an edge over others in the fashion businesses. Having a portfolio of patents for materials or textiles that are crease-free, smoother, less harsh, soft, or climate-resistant can attract possible business inventors or sponsorships. Products with innovative features can also gain popularity among buyers.

Patents provide exclusive rights to an innovation, a process or a product or a technique that introduces a new way of doing certain things or solves a problem. Patentable inventions have to satisfy certain requirements, such as it has to be new or should possess unique traits and should not be already existing in the particular field, it should contain a step that is creative and inventive and that it cannot be easily attained by someone with skills that are ordinary in the particular field and it should be used and applied in the industrial sector.

The fashion industry has seen numerous innovations in the recent years, including fabrics that give on demand light and smart textiles which give revolutionary benefits like thermal energy regulation, clothing that are heated, and management of technological moisture. New fabrics have also been introduced, such as those that are well insulated, soft, less harmful, thin and fabrics that are water resistant. There are endless opportunities and possibilities for patenting prospects when smart fabrics and technology combine together. Innovation in fashion may

minimise environmental effect by developing innovative dyeing procedures and promoting textiles of green chemistry.

In the sports business, for example, this brand called speedo had developed and patented a material which was known as fastskin, which was heavily inspired from sharkskin. This fabric in particular, increases gliding in the water by decreasing resistance, giving swimmers the opportunity to secure the crucial seconds in events.

Another illustration is beyond the surface technology in which a textile-based chemical manufacturer with headquarters in Switzerland whose mission is to enhance ecologically friendly chemistry in finishing textile applications without sacrificing functionality. This company reduces the greenhouse gas emissions and the potential hazards associated with textile-based chemicals by utilising sustainable resources such as oils that has plant seeds, algae oils and bio streams of waste.

A person called Molga Kasia designed a sensor for humans, which is a garment that changes shades of colour to demonstrate levels of pollution based on the person's inhaled air.

However, major businesses are not the only ones using protection in the fashion sector through patents. Small and medium sized companies are adaptable and can rapidly develop in the specific markets. Innovators can protect their discoveries for an appropriate return on investment. Partnerships between the big and the small organizations is very crucial for growth in a competitive market. This allows large companies to benefit from the specific expertise of smaller players in areas outside of their core industry.

After obtaining a patent, a person has the authority to forbid unauthorised commercial use of their patented work. This indicates that third parties cannot produce, market, use, distribute, import or sell the innovation without the rightful owner's consent.

TRADE SECRETS

Trade secrets have a wide variety consisting from the use of fashion software for designing tools to a list of important vendors and clients to the logistical management of the whole value chain. Vital trade secrets in fashion enterprises secure computer software-based models that enable a stealthy and speedy distribution of scarce fashion goods.

Protecting trade secrets applies to any information that satisfies the following:

- Where the information is secret or private and which gives a corporation a competitive advantage.
- Where such information is not widely acknowledged or quickly accessed (for instance through reverse engineering)
- Where the owner of such information takes adequate precautions and measures to protect the data.

There is no definite list of what constitutes a trade secret. For example, it may include procedures, formulas, patterns, the compilation of information, client lists, specific kind of design, process, tactics, approaches and pricing techniques.

Protecting trade secrets is of utmost importance when sharing information's pertaining to new projects, technology, or approaches to research or company partnership. During discussions with possible business, economic or research partners, a person might share information that is very confidential, expertise or know how and project plans. A person has to verify that everyone involved signs an NDA, either one-sided or mutual, to safeguard sensitive and private information that is shared during meetings. This provides a legal foundation for defending the rights of a person in case if prospective partners violate confidential commitments.

Trade secrets may be more valuable to some organisation than patents in some circumstances. However, this could be the case where an innovation has not satisfied the requirements of patents or if the hidden information could provide an advantage over others for a period longer than twenty years.

Trade secrets are not obliged to be registered, keeping them as a secret is the sole requirement. Implementing a protection plan demonstrates commitment to safeguarding confidentiality. The plan of action should include to improve effectiveness of NDAs, execute procedures to ensure company regulations are adhered to, control both physical and digital availability of information, discover trade secret shortcomings, set up proper diligence and external procedures for management, establish a security team, and provide ongoing training to

workers and outside people, potential rectification steps as well as ongoing policy and process improvements.

Trade secret protection only exists for innovations that rivals cannot discover based on public knowledge about the company or a particular product.

For example, the brand 'ZARA' uses an in-house information technology system to speed up their manufacturing cycle, reducing the time between identifying what are the new fashion trends and shipping the final products to thirty days. Majority of their opponents seem to take between four to twelve months to complete the task. The company generates daily emails from managers at stores indicating the new fashion trends, or a certain type of cloth or material which helps the designers swiftly put together new items. The fabrics are automatically selected and cut and dispatched to factory outlets. A technologically advanced transportation system guarantees the finished products to be dispatched and delivered to retail outlets under a period of fortyeight hours.

GEOGRAPHICAL INDICATION

A geographical indicator is a unique symbol or a mark that is used to distinguish products that have a connection to a particular place of origin in terms of a particular goods quality, goodwill or other additional factors.

By safeguarding a GI, producers are guaranteed fair competition and customers are given trustworthy information about a product's specific features or the location of production. Further, the protection provided by GIs aids in the preservation of excellent quality, conventional goods and expertise, alongside the employment opportunities that are linked to them.

One might think that the fashion sector has got nothing to do with GI, but that is not true. In fact, there are numerous textile items with unique traits and characteristics resulting from their geographic location are produced using indigenous knowledge and production techniques, deeply ingrained in the historical and social legacy of a particular place. Thus, establishing sui generis right in GI is to highlight the connection between a product's attributes and its region of production could be beneficial, even if its geographical origin is acknowledged.

CASE LAWS RELATED TO FASHION INFRINGEMENT

The following case studies sheds light on the obstacles and accomplishments faced by well-known fashion firms as well as other individuals in attempting to claim ownership of their distinctive creations. From legendary logos and signature designs to revolutionary clothing designs, the present study of IP in the clothing sector promises to reveal the dense tapestry of artistic work concerns and legal issues that form one of the oldest and most vibrant and creative arenas of business and artistic endeavour.

1. **Puma SE vs. Forever 21**²

Puma clothing initiated a lawsuit against Forever 21, which is a fast fashion retailer, alleging that the designs in the shoes created by forever 21 was almost the same and identical to that of Puma's Fenty collection, consisting the fur slide, creeper sneakers and the bow slide, which was developed and sold in collaboration with the world's famous singer, Rihanna. Puma contended that defendant had intentionally copied the designs from the Fenty collection with the aim to profit from the brands and popstar's reputation. On the other hand, forever 21, in defence contended that the designs were not original and new and that the designs were originated during the 1940s. The court denied the plaintiff's claim because it was unable to establish non-functionality. However, the court was found in favour of puma on the grounds of design patent infringement in the creeper designers by the defendant.

In addition, under the Lanham Act and the California Business and Professions Code, it was held that plaintiff's claims involved false identification of origin and unjust competition. Nonetheless, the court gave an opportunity to Puman to revise and reaffirm some portions of the claim.

Subsequently, upon completing two years of litigation, it was announced in 2018, November that both the plaintiff and the defendant had reached an agreement to end the matter.

2. **Star Athletica vs. Varsity Brands**³

In this lawsuit, the brand star atletica began creating cheerleading uniforms with certain

² CV17-2523 PSG Ex, 2017 U.S. Dist. LEXIS 211140 (C.D. Cal. June 29, 2017)

³ Star Athletica, LLC vs. Varsity Brands, Inc., Case no. 15-866, 580 U.S. (2017)

designs like stripes, zig zag and other patterns and started selling them at a very reduced price, which was very similar to the varsity brand. The varsity brand features over 200 copyrighted designs, which comprises of variety of patterns, colours and forms. Star Athletica printed one of these designs on their cheerleader uniforms which then was accused of copyright infringement. The district court ruled that because designs are unable to be physically or mentally detached from things, they are not entitled to protection under copyright. On the other hand, the sixth circuit decided that any form of images and goods can be easily distinguishable from each other and subsist independently. It further stipulates that any artwork can be protected by copyright when it is detached from the products, and if it is represented in graphic and sculptural form.

3. Louis Vuitton vs. my other bag⁴

My other bag is a firm which started marketing canvas totes with cartoon depictions of numerous high-end company logos, particularly Louis Vuitton's distinctive monogram. Louis Vuitton alleged that the items in question violated their trademark by diminishing their brand's unique quality. In response, my other bag claimed that their items were a type of a parody and thus qualified for the fair use theory, which permits the usage of copyrighted goods for comments, critiques or parody. They also stated that their items were not the source of customer confusion, which is a prerequisite for trademark infringement. In 2016, the dispute was taken to court in New York where the federal judge decided in favour of my other bag, denying Louis Vuitton's allegations. The court concluded that my other bag's items were a type of parody which was protected by the first amendment of the constitution of US. It also determined that my other bag's merchandise did not appear to confuse the consumers and also did not negatively impact the brand, Louis Vuitton.

4. Ritika Pvt. Ltd. vs Biba Apparels Pvt. Ltd.⁵

This lawsuit concerns copyright violation and the design that is registered. Ritika accused Biba Apparels alleging that they had plagiarised the design of the plaintiff and their craftsmanship, in which the plaintiff sold it under the trademark Ritu Kumar. The former

⁴ Louis Vuitton Malletier, S.A. v. My other bag, Inc., No. 1:2014cv03419. (S.D.N.Y. 2016)

⁵ Ritika Private Limited vs Biba Apparels Private Limited on 23rd March, 2016, CS(OS) No. 182/2011

alleged that they were the original owner and also stated that the accused made money by marketing the designs using their name with no consent.

On the other hand, the defendant denied the plaintiff's allegations and statements saying that the disputed design had not been registered by the plaintiff. They contended that since it was repeatedly produced over fifty times, it would prevent the lawsuit and would not be considered as copyright infringement.⁶

The court held that in order to maintain copyright protection, the design is required to be registered under the designs act. If not, then the design could lose that protection after being replicated over 50 times using an industrial process.

Considering the clothing items were created in factories utilising the pattern or drawing, the court was determined that the defendant was not infringing any copyright. There existed no evidence that the defendant had attached an illustration from the plaintiff's artwork to the garments.

5. Chanel vs Amazon Sellers

Chanel, a major participant in the luxury market, filed a lawsuit against 30 amazon sellers, in the district court of California, US, alleging that they were selling counterfeits and knockoffs and other products on amazon website which includes purses, t-shirt, mobile covers and other items bearing the company's name. In addition, it claimed that the vendors were utilising the company's name in web optimisation strategies, which constitutes illegal and unlawful business practices. The plaintiff requested a sum of two million dollars in damages from each and every accused seller, as well as the permanent elimination of these businesses from amazon's online shopping platform.

The court awarded channel's requested remedy, but reduced the sum to one hundred thousand dollars from every defendant, for a total payout of around three million dollars to the plaintiff. Amazon was also required to eliminate any photos or products infringing channel goods and ban such merchants from its official website. Chanel was pleased with the judgement stating

⁶ Section 15(2) of Copyright Act, 1957

that the actions did not pertain with regard to obtaining damages but rather about preserving the Channel company's name, reputation and goodwill.

6. Gucci vs Guess

The well recognised battle for the trademark 'G' originated in the year 2009, between two fashion brands, Gucci and Guess. Gucci being a sophisticated fashion brand accused an American apparel business, Guess indicating forgery of the green red and green stripes, trademark violation and dilution and unlawful competition.

Considering all the aforementioned offences, Gucci requested for eliminating Guess's 4G square recurring logo, a total of 221 million dollars in damages and a permanent injunction banning the brand, Guess from implementing the infringing trademarks.

Subsequently, in 2012, the court bestowed Gucci only 4.7 million dollars in relief for all the losses, prompting the brand to pursue other claims in other countries such as France, China, and Italy, expressing disappointment. Ultimately, in 2018, the nine-year battle was resolved with an agreement whose particulars were not publishes.

Thus, these battles highlight how difficult and complex the field of fashion law may appear to be, particularly in terms of brand recognition and IP rights.

CONCLUSION

It is evident to say that fashion is an art, which is similar to paintings, sculpting or music, and those who create it, like artists, sculptors, musicians, and composers, should be granted legal protection for what they produce. Fashion designers differ from other artistic endeavours like music, literature, visual art which is partly because of the industry's periodic nature and fast changing trends. Subsequently, it is vital to recognise that such categories of work have unique qualities that necessitate distinct and additional adaptable legal procedures than generic standards.

Ensuring that all the legal requirements are taken care of is the first step towards safeguarding any fashion brand and taking action against counterfeiters. No legal action against the counterfeiters may be taken in the absence of registered intellectual property rights, for

instance designs or trademarks, which are the cornerstones of any accomplished fashion company.

Fashion is a highly competitive sector with limited legal protection under the law for its innovative designs. The fashion sector has a huge impact on the economy as well as the society, despite the fact that numerous individuals consider it trivial and fleeting. It is a global industry which is worth 2 trillion dollars and which is extremely sophisticated. Fashion serves as a global language, allowing thousands of people to communicate without using words. To secure their fashion design, the designers must understand the intellectual property rights. The effective handling of IP rights enables a fashion designer or a fashion house to efficiently safeguard and market its concepts, associations and expertise. This allows designers in the fashion industry to get into or extend the market, gain a larger portion, and increase revenue.