

Emerging Role Of Ipr In Fashion Industry

¹Aishwarya Tyagi, ²Dr. Divya Khurana

¹Research Scholar, CT University, Ludhiana, Punjab, India

²Associate Professor, CT University, Ludhiana, Punjab, India.

Email: - divya17576@ctuniversity.in

How to cite this article: Aishwarya Tyagi, Divya Khurana (2024) Emerging Role Of Ipr In Fashion Industry *Library Progress International*, 44(3), 27593-27601

Abstract

Fashion is a dynamic global industry that balances creativity with commercial prosperity intensely. The research paper related to the intellectual property rights in fashion design is an effort to describe the legal, economic, and strategic approaches of design protection. This study will also focus on the challenges and opportunities that designers and brands may confront while developing and executing strategies to protect creative innovation through a detailed worldwide framework of IPRs. Combining legal documentation, industry cases, and expert insights as done in the research helps explain intellectual property management in the fashion sector through a mixed-methods approach. Very few differences exist between various kinds of jurisdictions when it comes to IPR protection, and this calls for more adaptable and inclusive legal mechanisms capable of dealing with the relatively fast-changing and innovative nature of fashion designs.

Keywords- Intellectual Property Rights (IPR), Fashion Design, Design Protection, Trademark, Copyright

1.0 Introduction

Fashion is a dynamic fusion of creativity, artistry, and commerce: it is deeply influential in shaping cultural and societal trends around the world. It entails an outstanding variety of artistic products, such as clothing, accessories, footwear, and luxury items, created not only for functional purposes but also to express the identity of the user. A critical issue at the very core of this lively industry is how to protect intellectual creations that drive innovation and help to differentiate brands within an extremely competitive market. Intellectual property rights become a framework with which legal provisions can be derived for protecting creativity while encouraging innovation.

The fashion industry within India is probably one of the fastest-growing sectors for the economy. The industry experiences increased competition along with exposure to international markets and proliferation of counterfeit goods as a result of growing globalization. Fashion designers and brands are increasingly being faced with the pressure of protecting their intellectual assets against unauthorized exploitation. From trademarks that guard brand names and logos to copyrights which protect artistic designs and industrial designs, which safeguards unique product features, IPR has become an asset in ascertaining fair competition and rewarding creativity in the fashion sector.

The Indian legal system has been gradually evolved to respond specifically to the needs of the fashion industry. For example, the Trade Marks Act 1999 and the Designs Act, 2000, offer the most effective structures for safeguarding brand identities and product designs. Likewise, the Copyright Act, 1957, extends protection to all sorts of artistic works, including textile designs and patterns. Recent judgments have added to such developments in the IPR arena in the fashion business, converting newer forms of marks, as far as colors and patterns are concerned, into recognized rights, emphasizing stronger enforcement mechanisms against counterfeiting.

Despite all this, there are considerable gaps in India's legal architecture. The fashion business has a feature of being time-sensitive, where the trend is seen to change very fast, while the life spans of the products may be very short. Classic IPR mechanisms such as copyright registration and design protection are highly ineffective in keeping up with the fast turnover. Piracy and counterfeiting have been further heightened by digital technologies

while also online platforms require IPR rethinking in the context of the digital age.

Another very significant challenge facing India is the protection of its rich heritage of traditional textile and indigenous crafts. GIs like Banarasi silk and Pashmina shawls have succeeded in offering some protection to these traditional products. Yet, flaws in the system, including ignorance of GIs among artisans, incorrect enforcement, and illegal commercialization by fashion brands, have prevented the true benefits of GIs from gaining a foothold in sustainable development.

In any event, IPR in the global realm has been quite interesting to examine since the interplay between IPR and the fashion industry has such a broad spectrum of attractions. The developed jurisdictions-the United States and the European Union-have moved in step with further development by strengthening protection given to fashion designs, including unregistered design rights and special provisions on the copyrightability of designs. These lessons are instructive for India that has to balance competing interests of innovation, accessibility, and enforcement.

This paper will explore the role of IPR in the Indian fashion industry by scrutinizing existing legal frameworks, landmark judicial decisions, and practical challenges at the designer's and brand levels, making an attempt to examine how India may take on global best practices to strengthen IPR protection in the fashion sector. Through this, the paper contributes to the already burgeoning discussion on innovation and creativity while ensuring equity in access and fair competition in the industry.

By detailed analysis of these issues, this paper intends to throw light on the critical role IPR plays in driving the growth and sustainability of the Indian fashion industry. It highlights the need for a solid and dynamic legal framework that guards creativity and innovation at the same time breeds the inclusion of equitable development, especially among traditional artisans and small-scale designers, who constitute the back-bone of the diverse fashion ecosystem in India.

1.1 Research Questions

1. What is the role of Intellectual Property Rights to protect creativity and innovation in the fashion industry?
2. How effective are Intellectual Property Rights frameworks existing to date in dealing with design piracy and counterfeiting?
3. What reforms could tighten the Intellectual Property Rights regime to better fit the changing needs of the fashion industry?

1.2 Hypothesis

IPR effectiveness in the garment industry is limited due to weak enforcement, lack of awareness, and changing trends in design piracy.

2.0 Literature Review

1. "Counterfeiting and Digital Piracy in the Indian Fashion Sector" by M. Das (2022)¹

This paper explores the issues that counterfeit goods and digital piracy present to Indian fashion. It underlines growing online counterfeit sales and goes on to analyze how dynamic injunctions have been innovatively applied in cases like *Louis Vuitton Malletier v. Ashok Kumar*, (2018) where Delhi High Court, through its order, blocked access to an enjoined website wherein the said website was found selling counterfeit goods. Das points out deficiencies in present enforcement mechanisms, especially the lack of monitoring over digital platforms. The paper concludes with a suggestion to revise the Information Technology Act, 2000, implementing concrete provisions to check digital piracy in the fashion industry and utilising blockchain technology for supply chain transparency.

2. "Intellectual Property Rights in Fashion Industry: Protecting the Sparkle of Creativity" by P. Singh (2021)²

This paper deals with how intellectual property rights work as a protective mechanism for the creative output of the fashion industry. Trademarks play a specific role in protecting brand identity. In such a light, this paper talks about how, in *Christian Louboutin SAS v. Nakul Bajaj* (2018), the red sole of Louboutin shoes was protected as a distinctive mark. The article thus describes how non-traditional marks like colors and patterns are gaining wider recognition under the Trade Marks Act, 1999, thereby making major fashion brands retain their exclusivity.

The paper goes on to criticize the enforcement mechanism in India, especially on e-commerce, as rampant

¹ Counterfeiting and Digital Piracy in the Indian Fashion Sector by M. Das (2022)

² Intellectual Property Rights in Fashion Industry: Protecting the Sparkle of Creativity by P. Singh (2021)

counterfeiting still prevails. Singh recommends a stronger regulatory framework and collaboration between platforms and enforcement agencies for effective regulation of such actions.

3. "Digital Piracy and Fashion: A Legal Perspective", V. Jain (2021)

It is observed that the question of digital piracy in fashion is growing rapidly in the medium of social media and e-commerce platforms. This paper examines intermediary liability under the Information Technology Act, 2000. The present paper argues that there is a failure of current jurisprudence to capture the complexities of digital piracy, especially in AI-generated designs and NFTs. Accordingly, the study recommends legislative amendments to handle new challenges and protect digital fashion assets.

4. "Fashion Law: An Emerging Discipline in India", A. Desai (2020)

The paper discusses the still-emerging field of fashion law, now with a focus on the legal landscape of India. Moving on, the paper analyses the protection afforded by the Trade Marks Act, 1999, the Copyright Act, 1957, and the Designs Act, 2000.. Desai advances the argument that even though Indian laws offer strong protection, enforcement mechanisms demand cross-pollination from the fast-flowing nature of the fashion industry. The research, therefore, reflects that there is a need for speedy dispute resolution mechanisms, and perhaps specialized courts dedicated to fashion-related disputes, especially for seasonal collections.

5. "Geographical Indications: Preserving India's Traditional Fashion Heritage" by R. Patel (2020)³

This paper explores the role of Geographical Indications in protecting traditional crafts and textiles, namely Banarasi silk, Kanchipuram sarees, and Pashmina shawls. Patel underlines the economic and cultural relevance that GIs impart for the promotion of sustainable development and the empowerment of local artisans. The author discusses a case such as *The State of Orissa v. R.N. Pattnaik 2000* wherein the High Court of Orissa had pointed out that GIs must be used to protect traditional crafts.

However, Patel identifies several weaknesses by stating that the enforcement and consciousness among the artisans cannot effectively ensure the protection of Indian cultural heritage against misuse of GIs. It recommends the implementation of compulsorily licensed use for GI-tagged products in commerce besides increasing funding on artisan cooperatives to expand their marketing reach.

6. "The Designs Act, 2000: A Tool for Safeguarding Aesthetic Innovation" by S. Chawla (2019)⁴

This paper analyzes deeply how the Designs Act, 2000, protects the aesthetic features of fashion products, including shape, configuration, and ornamentation. Chawla further throws light on the double nature of fashion products with overlap often between functional and aesthetic elements. The author elaborates on the case of *Microfibres Inc. v. Girdhar & Co. (2006)*, in which the Delhi High Court provided that only such designs with aesthetic appeal not by reason of functionality are registrable under the Act.

Chawla identifies some very practical problems: these include public awareness among small-scale designers, and a long registration process that deters most from seeking protection for their designs. The paper advocates the introduction of expedited procedures for registration, as well as targeting awareness campaigns for emerging designers.

7. "Copyright Protection and the Fashion Industry: A Legal Analysis" by A. Mehta (2018)⁵

Copyright protection for artistic works in fashion under the Copyright Act, 1957 Mehta discusses how an original design in terms of a textile pattern, embroidery, or jewelry would qualify as an artistic work. She mentions the case of *Tahiliani Design Pvt. Ltd. v. Rajesh Masrani (2009)* in which the Delhi High Court upheld copyright protection for exclusive embroidery patterns developed by designer Tarun Tahiliani.

Secondly, Mehta critiques the intricacy and slowness of copyright registration in India. It is said to be unsuitable for the fast pace at which the fashion industry operates. Thus, the unregistered copyright protections would be adopted, like European Union members, who provide instantaneous legal protection for those original designs without registries being required.

3.0 Methodology

This paper employs a qualitative research methodology of analysing case studies and judicial precedents worldwide and from India, on international legal frameworks applicable in jurisdictions globally. Best practices through comparative analysis of Intellectual Property Rights mechanisms are discussed. Findings are supported by data on reports of WIPO, Indian government publications, and industry-specific surveys.

³ Geographical Indications: Preserving India's Traditional Fashion Heritage by R. Patel (2020)

⁴ The Designs Act, 2000: A Tool for Safeguarding Aesthetic Innovation by S. Chawla (2019)

⁵ Copyright Protection and the Fashion Industry: A Legal Analysis by A. Mehta (2018)

4.0 Analysis

The fashion industry has always been a rich and fertile field for creativity and innovation, but it also faces constant threats from countering piracy and design theft in the world. Intellectual Property Rights hence represent an important mechanism to protect the creative as well as economic interests of fashion designers, brands, and stakeholders. This section looks into trademarks, copyrights, patents, design rights, and other legal frameworks operating within the Indian fashion industry, keeping in mind important cases that have shaped their applications.

1. Role of Trademarks in Safeguarding Brand Identity

Trademarks are the most effective means for fashion brands to build and safeguard their identity. The Trade Marks Act, 1999 in India accords statutory protection on exclusive rights of a registered owner to use the trademark and prohibit others from doing so. A fashion house often employs a unique name, logo, or symbol as trademarks to create an image recognizable in the minds of the consumer. Trademark infringement continues to thrive despite this practice, especially because of the upsurge of counterfeit products. Delhi High Court has granted trademark protection to Louboutin's signature red sole in *Christian Louboutin SAS v. Nakul Bajaj & Ors.*, 2018 SCC OnLine Del 12228⁶, declaring it as a distinctive mark that has acquired secondary meaning. The court also clarified "well-known trademark" under Indian law while stressing the fact that luxury brands depend very much on the uniqueness of marks to maintain the luxury and build equity through their brands. This case exemplified the Indian judiciary's willingness to extend protection to non-traditional trademarks in the fashion sector.

Although such landmark judgments have been delivered, in practice, the enforcement of trademark rights in India is still challenging. Markets in India are flooded with pirated products sported with fake marks of international and domestic brands. Although Section 29 of the Trade Marks Act penalizes infringement, counterfeiters frequently operate in a manner that eludes identification. To address this, Indian courts have increasingly resorted to dynamic injunctions. In *Louis Vuitton Malletier v. Ashok Kumar*, 2018 SCC OnLine Del 8842⁷, the Delhi High Court issued a dynamic injunction to block access to websites selling counterfeit products. Strengthening the enforcement mechanism calls for cooperation between the enforcers, owners of brands, and e-commerce platforms. In addition to this, raising public awareness on the importance of legitimate trademarks would dishearten the purchase of counterfeit goods.

In *Dabur India Limited v. Emami Limited (2004 (29) PTC1 (Del))*⁸, Although unrelated to the fashion industry at first instance, this case reiterated the law of passing off, which is applicable to the infamous world of counterfeiting in fashion. Again, as confirmed by the court, unregistered trademarks are protected where goodwill and reputation exist. This principle is crucial for promising Indian designers, who may not always register their trademarks, but have distinctive brand images.

Luxury trademarks like Louis Vuitton, Gucci, and Sabyasachi are easily available in markets such as Palika Bazaar in Delhi through counterfeit means. The judgment of *Tata Sons Limited v. Greenpeace International*, reported in 2011 SCC OnLine Del 466⁹, while focussing upon online platforms, has settled the principle that intermediaries hosting such counterfeit products can be held liable. This doctrine of intermediary liability will have vast implications for fashion marketplaces like Myntra or Ajio.

2. Copyrights as a Tool to Protect Creative Works

The copyright is an essential prerogative to protect artistic intentions in fashion designs, such as prints, patterns, and embroidery. According to the Copyright Act, 1957, original artistic works are protected, and the author retains an exclusive right to reproduce and distribute the same. However, the limitations of copyright law arise because most fashion designs fall under functional as well as artistic works. In *Rajesh Masrani v. Tahiliani Design Pvt. Ltd.*, 2009 SCC OnLine Del 2508¹⁰, the Delhi High Court appropriately discussed the question of copyright infringement with regard to the original designs for garments. The court decided that the garment designs themselves are essentially functional, but where the designs contain unique artistic features, such as beautiful embroidery, these elements are eligible for copyrights. This decision was decisive in making it clear that the artistic elements of clothing are copyrightable, though the final product may

⁶ *Christian Louboutin SAS v. Nakul Bajaj & Ors.*, 2018 SCC OnLine Del 12228

⁷ *Louis Vuitton Malletier v. Ashok Kumar*, 2018 SCC OnLine Del 8842

⁸ *Dabur India Limited v. Emami Limited (2004 (29) PTC1 (Del))*

⁹ *Tata Sons Limited v. Greenpeace International*, reported in 2011 SCC OnLine Del 466

¹⁰ *Rajesh Masrani v. Tahiliani Design Pvt. Ltd.*, 2009 SCC OnLine Del 2508

be a utility item. However, the fast pace of this industry poses one big challenge. Fashion designers are launching collections by season, and copyright filing is time-consuming. In addition, originality might be hard to prove in cases where designs are widely shared on the internet. The most common case is digital piracy, when fast fashion brands copy designs that some have showcased on social media.

In *Ritika Pvt. Ltd. v. Biba Apparels Pvt. Ltd.* (2016)¹¹, the case involved the allegations of fabric print copyright infringement. The Delhi High Court decided that although individual design elements might be generic, the unique arrangement and combination constituted an original work worthy of protection. The court reemphasized that copyright law promotes innovation by providing protection for original artistic creations in fashion.

Due to its wide-scale usage, fashion designs have lost a lot of their appeal. E-commerce and social media sites do not remove pirated contents within a reasonable time. In *Myspace Inc. v. Super Cassettes Industries Ltd.* [236 (2017) DLT 478]¹², Delhi High Court held that an online intermediary is obliged to take down contents once notice is received of infringement, which may be applied to the unauthorized linking and sharing of digital portfolios in fashion designs.

One possible solution of this problem is a centralized fashion design registration system in India. Such a registration system would provide designers with an opportunity to register their work under the law quickly and have it protected immediately. Courts should be liberal in determining what makes a work original because the fashion industry is a very different world.

3. Industrial Designs Protection

The Designs Act, 2000 protects aesthetic features of a product in relation to its shape, configuration, and patterns. Here, in the fashion world, registration of industrial designs is relevant to accessories, footwear, and other unique garments. The Act allows for protection of designers' visual appeal and prevents others from copying them. In this regard, in *Microfibres Inc. v. Girdhar and Co.*, (2006) 32 PTC 157 (Del)¹³, the Delhi High Court clarified the distinction between functional and aesthetic designs. Here, the court held that only those designs, which appeal to the eye and are not dictated by function, are eligible for registration. This judgment brought out the restricted scope of industrial design protection in the fashion sector. Indeed, many clothing items serve a dual purpose - aesthetic and functional.

In addition, the long procedure of obtaining a design registration makes it unworkable for fashion designers. By the time a design is registered, it may have already lost its time due to the changing currents. For this purpose, India may consider short-term unregistered rights similar to those in the European Union. These provide immediate protection for designs for some considerable period of time, allowing designers to protect their creations before a procedural registration process. Even the judiciary has taken an active step towards protection of registered designs. In *Carlsberg Breweries v. Som Distilleries and Breweries Ltd.*, 2018 SCC OnLine Del 12908¹⁴, the Delhi High Court provided interim relief to Carlsberg by holding that the right given by registration is an exclusive right to use the protected design. Though the case had no bearings on fashion, this case was a landmark case to show courts were willing to protect design rights.

In *Kamal Trading Co. and Ors. v. Gillette U.K. Ltd.* 1988 (8) PTC 1 (BOM)¹⁵, although involving shaving products, the case made it plain that registered designs cannot be reproduced without permission even in minor variations. The rationale provided by the court directly applies to the fashion industry mainly for unique product shapes, such as a Hermès Birkin bag or Ray-Ban sunglasses.

New technologies such as 3D printing blur the established limitations and boundaries of design protection. For example, digital design files are not under the Designs Act, 2000. The Indian courts need to adapt new technologies by interpreting the law in ways where the medium of fashion innovation finds complete protection.

4. Counterfeiting in the Digital Era

Emergence of e-commerce portals and social media has further fuelled the fire of counterfeiting in the fashion industry. Besides causing huge financial loss, it undermines consumer confidence as well. In India, various types

¹¹ *Ritika Pvt. Ltd. v. Biba Apparels Pvt. Ltd.* (2016)

¹² *Myspace Inc. v. Super Cassettes Industries Ltd.* [236 (2017) DLT 478]

¹³ *Microfibres Inc. v. Girdhar and Co.*, (2006) 32 PTC 157 (Del)

¹⁴ *Carlsberg Breweries v. Som Distilleries and Breweries Ltd.*, 2018 SCC OnLine Del 12908

¹⁵ *Kamal Trading Co. and Ors. v. Gillette U.K. Ltd.* 1988 (8) PTC 1 (BOM)

of high-end fashion products like luxury handbags, accessories, etc. are available today, most of these products sourced from online portals. While the Trade Marks Act, 1999 and the Copyright Act, 1957 speak to counterfeiting, enforcement in the virtual world is still a tall order. The Information Technology Act, 2000 provides Section 79¹⁶ as a safe harbour for intermediaries but requires that notice of infringement be acted upon. The case of *Tata Sons Ltd. v. Greenpeace International*, 2011 SCC OnLine Del 4662¹⁷, highlighted the obligations of intermediaries in preventing the misuse of intellectual property. Although the case involved trademark issues in a non-fashion context, it set important precedents for intermediary liability.

To combat online counterfeiting, Indian courts have begun issuing dynamic injunctions. In *Cartier International AG v. Gaurav Bhatia*, 2016 SCC OnLine Del 4837¹⁸, the Delhi High Court granted a dynamic injunction to prevent the sale of counterfeit Cartier products online. The court also directed intermediaries to take proactive measures to identify and block infringing content. However, this solution requires more stringent measures. It can be seen in stricter regulations for online platforms, better cooperation between brands and law enforcement agencies, and public awareness campaigns to discourage purchasing counterfeit goods.

In *Levi Strauss & Co. v. Imperial Online Services Pvt. Ltd.* (2014)¹⁹, the Delhi High Court ruled in favor of Levi Strauss, restraining the defendants from selling counterfeit Levi's products online. The court held that trademark owners could claim damages and seek injunctions even if the counterfeits are sold through third-party platforms. Legal frameworks notwithstanding, enforcement against counterfeiters is spotty. While the Intellectual Property Rights (Imported Goods) Enforcement Rules 2007 provide the authority for customs to seize counterfeit goods, their activity in the local market is feeble. Brands and the police must collaborate in an initiative like the Sabyasachi Mukherjee Anti-Counterfeiting Initiative as a model.

5. Challenges of Fast Fashion

Fast fashion brands, like Zara and H&M, have directly challenged the traditional fashion industry due to the lower-priced replicas of high-end designs. Even though this business model is highly lucrative, it presents great challenges for intellectual property protection. Fast fashion exploits the limitation in the existing mechanisms of IPR, particularly the delay in obtaining design registrations or trademarks.

In *Ramesh Kumar Gupta v. Vikas Prasad*, 2006 (32) PTC 699 (Del)²⁰, the Delhi High Court highlighted, both in principle and in practice, timely legal action in the context of IPR infringement cases. The case underlined the need for expedited judicial processes to deal with the challenges thrown up by fast-moving industries such as fashion.

Besides, the availability of technologies like 3D printing has made it even more difficult to enforce the IPR in fashion. Precise pattern and design can be easily copied at minute costs, shaking the traditional thought on originality. Blockchain technology could help to create tamper-proof digital records for designs so that the credit goes to the original creators as well as they get paid.

6. Indigenous Traditional Knowledge and Design

An exceptionally rich heritage of traditional textiles and crafts exists in India- Banarasi silk, Pashmina shawls, and Kanchipuram sarees, to mention a few of them-and these are exploited constantly by clothing brands appropriating indigenous designs without due attribution and remuneration. The Geographical Indications of Goods (Registration and Protection) Act, 1999, provides a mechanism to protect this form of traditional knowledge.

In *The State of Orissa v. R.N. Pattnaik*, AIR 2000 Ori 180²¹, the Orissa High Court acknowledged the significance of protecting traditional crafts by providing them with geographical indications. Even though it was an agricultural products case, the principles developed are applicable in equal measure to fashion. Strong protection afforded to traditional cloth may well prevent its abuse and foster sustainable development for local artisans.

Where IPR laws have robust mechanisms to protect the creativity and innovation of the fashion industry, their

¹⁶ Section 79 of Information technology, 2000

¹⁷ *Tata Sons Ltd. v. Greenpeace International*, 2011 SCC OnLine Del 4662

¹⁸ *Cartier International AG v. Gaurav Bhatia*, 2016 SCC OnLine Del 4837

¹⁹ *Levi Strauss & Co. v. Imperial Online Services Pvt. Ltd.* (2014)

²⁰ *Ramesh Kumar Gupta v. Vikas Prasad*, 2006 (32) PTC 699 (Del)

²¹ *The State of Orissa v. R.N. Pattnaik*, AIR 2000 Ori 180

implementation is often marred by practical challenges such as a slow judicial system, lack of effective enforcement, and the rapid acceleration of new technology. Even landmark cases such as Christian Louboutin and Tahiliani Design, where Indian courts demonstrated active intent, still have a lot to be desired in terms of improvement. Strengthened enforcement mechanisms, best practices from around the world, and appropriate use of technology could help smoothen IPR protection for a growing and equitable fashion industry in India.

7. Geographical Indications (GIs) and Traditional Knowledge

The Geographical Indications of Goods (Registration and Protection) Act, 1999 provides protection to traditional Indian textiles such as Banarasi sarees, Pashmina shawls, and Kancheepuram silk. The GIs serve to preserve cultural heritage and yet benefit the economy of artisans.

In *Banarasi Sarees GI Registration Case 2010*²², the registration of Banarasi sarees was achieved successfully by the Varanasi Weavers' Association. It protected them from imitations and ensured that the livelihoods of weavers were not threatened by the sale of cheap, machine-made replicas posing as genuine Banarasi sarees.

In *State of Tamil Nadu v. State of Karnataka (2013)*²³, though it was an agricultural product, this case only reiterated that GI registration prevents the misrepresentation of goods originating outside the registered region. For textiles, similar logic applies to protect traditional textiles as well.

Many GI-registered products are still getting counterfeited. Machine-made Pashmina shawls are chocking the markets, misleading consumers. Mechanism for enforcement needs strengthening to ensure that true trade practices prevail.

8. Emerging Challenges: AI, NFTs, and Digital Piracy

This has ushered into fashion new challenges for IPR, namely new legal concepts for AI-generated designs, NFTs, and digital piracy.

In *Myspace Inc. v. Super Cassettes Industries Ltd. [236 (2017) DLT 478]*²⁴, though the case involved digital piracy in music, its principles can be extended to applying AI and NFTs. The insistence of the court on the principle of intermediary liability creates a basis for regulating platforms hosting infringing fashion NFTs or AI-generated designs.

Under the current Indian copyright law, AI-generated works lack clear ownership. The courts could draw a reference from *eastern book company v. db modak (2008) 1 scc 1*²⁵, wherein originality was upheld to mandate minimal human creativity, when considering the copyrightability of fashion designs created by AI.

Brands like Gucci and Louis Vuitton are now using NFTs to tokenize exclusive designs. Indian copyright and trademark laws may be extended to regulate NFTs, but legislation needs to be clear about such extensions through specific amendments.

5.0 Conclusion

The review of Intellectual Property Rights in the fashion business would unravel a multi-faceted interplay between the protection mechanisms and the dynamic nature of the industry. Through study of various cases and legal frameworks, it seems pretty evident that though India has afforded an all-encompassing IPR regime in itself, major challenges persist with practicality and enforcement. The conventional IPR tools-granted in the form of trademarks, copyrights, and designs-have proven very essential but often become insufficient to quicken the pace of the fashion industry. While landmark cases such as Christian Louboutin and Tahiliani Design have addressed the protection of creative elements, counterfeiting and design piracy remain rampant in the industry, especially in the digital media.

IPR Protection-Effectiveness Differs Significantly Across Fashion Aspects. While the traditional protection of established brands has been fairly strong, as noted in cases such as *Louis Vuitton Malletier v. Ashok Kumar (2018)*²⁶, the digital transformation of fashion retail has introduced a host of new threats to design protection. The seasonality of the industry and the long delays caused by the registration procedure has hindered effective design protection. Furthermore, digital retailing and social media have empowered counterfeiters due to increased visibility, thereby demanding more sophisticated legal responses and international cooperation. The emergence of new technologies such as AI-generated designs and NFTs complicates the traditional IPR framework.

²² Banarasi Sarees GI Registration Case 2010

²³ State of Tamil Nadu v. State of Karnataka (2013)

²⁴ Myspace Inc. v. Super Cassettes Industries Ltd. [236 (2017) DLT 478]

²⁵ eastern book company v. db modak (2008) 1 scc 1

²⁶ Louis Vuitton Malletier v. Ashok Kumar (2018)

The report of protection of traditional knowledge and indigenous designs by the Geographical Indications is good, though more robust implementation is required. Both the success stories of Banarasi sarees and Pashmina shawls reflect both the GI protection potential and its limitation towards the preservation of India's rich textile heritage. This only tells that there is a need for an enhanced system for better protection of traditional craftsmanship, where economic benefits accrue to artisan communities.

Then, in the research conducted here, IPR effectiveness is considered to be limited by weak enforcement, lack of awareness, and changing trends in design piracy. However, recent judicial decisions and technological advancements indicate paths and windows for improvement. Clearly, reform measures are needed, such as streamlined processes for registration of designs and trademarks; enforcement is strengthened-with added particularity given to the digital space-but in particular, specific provisions will be made for emerging technologies. This would further improve the current framework more by enhancing protection for traditional textiles and crafts with better GI implementation along with international cooperation to fight the international network of counterfeiting.

Summarizing, the IPR structure of India indeed furnishes a basis for protecting the ingenuity of fashion; however, the issue of its effectiveness will depend on continuous adaptation and amendments to the industrial change with stronger mechanisms of enforcement. Innovation, in balance, with expressions of traditional knowledge checked by technological innovations and international cooperation, will be the future of IPR in fashion. This evolution is key, not only for the growth of the industry itself but also for the sustenance of the creative ecosystem that propels the development of fashion innovation forward. The same way the fashion industry changes with new technologies and changing behaviours by its consumers, so must the law evolve in order to effectively protect both old-time and newer-era fashion innovations.

6.0 References

1. Vaishnavi Parate, *10 Important Cases of Fashion Law*, LEGAL BITES (July 05, 2024, 01:10 PM), <https://www.legalbites.in/fashion-law/10-important-cases-of-fashion-law975691>
2. Trisha Varaiya, *10 Landmark Cases in The Fashion Industry*, FASHION & LAW JOURNAL (July 05, 2024, 07:20 PM), <https://fashionlawjournal.com/10-landmarkcases-in-the-fashion-industry/>
3. Kanishka Singh, *An Overview of Fashion Laws in India*, IPLEADERS (06 July, 2024, 11:05 AM), <https://blog.ipleaders.in/an-overview-of-fashion-laws-in-india/>
4. Naresh Kumar, *Fashion Laws in India*, LAWNOTES4U (05 July, 2024, 01:30 PM), <https://www.lawnotes4u.in/fashion-laws-in-india/>
5. Amani, M., & Di Benedetto, C. A. (2019). Intellectual property rights and innovation in the fashion industry. *Journal of Business Research*, 96, 53–64. <https://doi.org/10.1016/j.jbusres.2018.10.012>
6. Barnes, L., & Lea-Greenwood, G. (2018). Fast fashion and the fashion industry's intellectual property issues. *Journal of Fashion Marketing and Management*, 22(2), 120-133. <https://doi.org/10.1108/JFMM-01-2018-0003>
7. Benn, J., & Tammin, P. (2019). The use of trademark law to protect fashion brands. *European Intellectual Property Review*, 42(3), 189–194.
8. Brewster, S., & Arriaga, A. (2020). Copyright law in the fashion industry: An international perspective. *Fashion Law Review*, 14(2), 45–59.
9. Brown, K. S. (2021). Fashion, intellectual property rights, and consumer culture. *Journal of Law and Fashion*, 15(4), 98–112.
10. Coughlan, A., & Wersh, R. (2017). Trade dress protection in the fashion industry. *Harvard Journal of Law & Technology*, 20(2), 203–215.
11. Davidson, B., & Wallis, K. (2019). Patenting clothing and fashion accessories: Challenges and implications. *Fashion Law Journal*, 17(1), 76–89.
12. Drechsel, A. (2018). Protecting creative design in the fashion industry: Comparative analysis between the U.S. and the EU. *Journal of Intellectual Property Law*, 25(1), 109–126.
13. Elms, S., & Field, L. (2022). Fast fashion, copyright, and design piracy: Legal responses and industry impacts. *Journal of Business and Intellectual Property*, 18(3), 45–64.
14. Evanston, D., & Martin, J. (2020). The role of patents in fashion innovation. *Intellectual Property Law Review*, 12(4), 124–138.

16. Fang, H., & Li, X. (2018). The protection of fashion design through IPR: A comparative study. *Asian Journal of Law and Society*, 5(2), 98–114.
17. Ferrier, A. J., & Johnston, R. (2019). Fashion designers' perspectives on intellectual property rights. *Journal of Fashion Law and Business*, 7(3), 143–159.
18. Franck, C. A. (2020). Fashion brand protection in the age of digital piracy. *Journal of International Law and Business*, 34(2), 201–216.
19. Gorman, C. (2021). Intellectual property rights and fashion industry growth. *International Journal of Law and Policy*, 26(1), 45–59.
20. Harris, L., & Meyers, T. (2019). Licensing and franchising in the fashion industry: IPR considerations. *Journal of Business Law*, 15(2), 109–123.