

COUNTERFEIT COUTURE: BATTLING INFRINGEMENT IN THE FASHION INDUSTRY

Janvi*

ABSTRACT

This abstract investigates the relationship between intellectual property rights and fashion, with a particular emphasis on copyright protection and trademarks in the ever-changing fashion industry. The conversation is set against the backdrop of Jonathan Anderson's insight, which highlights the creative force of fashion when it defies convention and takes chances. Fashion is a kind of art that can be used for economic gain, societal criticism, and self-expression. A profitable market is created by the always-changing trends and the ongoing need for stylish goods, drawing in both genuine brands and profit-seeking counterfeiters. The study explores the legal aspects of fashion trademarks, highlighting their function in protecting brand identity. Examples of counterfeiting techniques, such as copying logos and subtly changing product names to confuse consumers, are used to illustrate trademark infringement. This article outlines the development of trademark laws in India over time, starting with the Trademark Act of 1940 and ending with more recent changes that comply with the Madrid Protocol. The Copyright Act of 1957 governs copyright protection in the fashion sector, which is another topic covered in this study. The protection of creators' rights is the main topic of discussion when discussing copyright's covering of artistic works, including fashion designs.

“I’ve realized that when fashion is really good and really challenges and takes a risk; it is incredibly artistically powerful. It makes people dream.”¹

~Jonathan Anderson

Fashion is regarded as a form of art that provides a display of one’s personality, taste etc. It gives people the chance to judge one another. It can be their societal status, economic well-being, fashion taste, mood, etc. Fashion includes the style of clothing, accessories, etc., and holds great relevance in the contemporary world. Social media is filled with videos and posts educating and spreading awareness about the current trends in fashion in the market. From

*BA LLB, FIRST YEAR, SYMBIOSIS LAW SCHOOL NOIDA.

¹ Naomi Pike, ‘51 Inspirational Fashion Quotes To Live By’ (29 September 2020) BRITISH VOGUE <<https://www.vogue.co.uk/gallery/best-fashion-quotes>> accessed 16 February 2024

skinny jeans to high-waist jeans to flare and wide-length jeans, from body hugging to baggy clothes, trends keep on changing, and so does the fashion point. But one thing that remains constant is the urge of people to keep on following and matching their steps with the current fashion trends. This urge of people creates what is called demand for the specific trendy fashion items in the market. The fashion market is a huge, profit-making industry. From brands like Gucci, Sketchers, and Adidas to local selling shops, sometimes selling first and copies or dupes of the products, everybody is on to make maximum profits out of it. But not everybody has the potential to make a mark in this industry. The fashion industry requires high creative and artistic skills to make a mark in this industry. Considering it as an art dedicated to clothes, accessories, etc, requires one to have good visual skills to be put into the garment.

Fashion has now become a part of our daily life and has been generating a lot of employment and thus, contributing a significant amount to the economy. It has created a separate and independent industry out of itself. It has been a part of the evolution of the economic pattern since its inception.² Thus, fashion is not just about clothes and accessories; it is also an art, a representation, an output of intellect. And just like other outputs of intellect, they are protected by intellectual property rights.³ The importance of intellectual property rights has grown tremendously in recent years. They are a set of rights for the protection of the creations by intellect for a certain period of time. It consists of various rights like trademarks, copyrights, patents, etc. The high demand for fashion products and the high risk of duplicating and counterfeiting those products make it important to have some laws for their protection.⁴ IPR creates a safe environment for the creators because the designs of products are protected. It is to be noted that only the designs and not the whole product get the protection under intellectual property rights. Some provisions for the protection of fashion in India include the Indian Copyright Act, 1957; Designs Act, 2000; Geographical Indication Act, 1991; and The Trademarks Act, 1999.⁵

² Vedanti Wanjari, 'Need and Scope of Fashion Law in India and Role of Intellectual Property in Fashion Industry' (2021) 3 Indian JL & Legal Rsch 1

³ Chakshu Singh, 'Role Of Intellectual Property Rights In Fashion Industry' 2 LEXFORTI LEGAL JOURNAL

⁴ Naman Priyadarshi, 'Intellectual Property Rights: Crucial for Fashion Industry' (2021) 4 Int'l JL Mgmt & Human 1545

⁵ Reya Dutta, 'Fashion Law: Piracy, IPR and Other Legal Aspects' (2022) 4 Indian JL & Legal Rsch 1

LEGAL DIMENSIONS OF FASHION TRADEMARKS

Logos, symbols, and marks help a person differentiate between different products and brands. Such a mark can either be a geographical indication or it can include the shape or design that makes it unique. Big brands have a very classic and popular logo or symbols that a customer identifies with. For example, the slogan of Nike is “Just Do It”.⁶ Similarly, the slogan for De Beers is “A diamond is forever”. Not just slogans, logos also catch the attention of customers like H&M, Zara, Rolex, etc. One way of counterfeiting fashion products is by duplicating the logo of these brands by making minor changes, as a common man would rarely pay a lot of attention to counting the no. of a dash or focusing on the color with which the logo has been designed. A lot of times, the brand name is changed, but the product with the same color, design, and shape is kept, which gives a clear prima facie impression that it is the same product of that particular brand that we were keen on buying. For example, the packing of a lip balm named “Baby Lips” is in Pink and white with the name of the brand written on the pink side of the product. If a lip balm with the same packaging, shape, and design product is kept with the name “Sugar Lips,” the focus of the customer will either not go upon the name, or he might think that if the packaging is so similar, then it must be a product of Baby Lips only. Though, the packaging is the same but the quality is very different. So, when the customer comes to know about the huge difference in the quality of the product compared to what he expected it to be, he dissents, and thus, the company loses its brand as well as reputation. This is the reason why, trademark rights are provided to save the brands.

The inception of trademark rights dates back to the Trademark Act of 1940. It gave rights related to the infringements, penalties, etc. It was similar to the UK Trade Marks Act of 1938. The developments kept on coming in this act with the Trade and Merchandise Marks Act, which was later replaced by the Trade Marks Act of 1999. Recently, the Trademarks (Amendment) Act of 2010 and then the Trademarks (Amendment) Rules of 2013, were passed and enforced. With the enforcement of these amendments, the trademark regulations of India became ready to be in compliance with the Madrid Protocol.⁷ As per the Madrid protocol, the filing for trademark process becomes very easy and convenient as though only a single

⁶ Seguri Akash, 'Intellectual Property Rights in the Sector of the Fashion Industry in India' (2023) 3 Indian J Integrated Rsch L 1

⁷ Reya Dutta, 'Fashion Law: Piracy, IPR and Other Legal Aspects' (2022) 4 Indian JL & Legal Rsch 1

international filing of trademark application and fee payment; you get protection in up to 130 countries.⁸

In *Tommy Hilfiger Europe B.V vs MIS Taqua Textiles & Ors*⁹, In this case, the plaintiff pleads that the defendant has been infringing the trademark rights of the plaintiff by using the name of the plaintiff's brand in selling face masks and other clothing stuff. The defendant counterfeited the trademark of the plaintiff's brand and several other brands as well. He has been making huge loads of money by selling the items on multiple platforms without authorization. Thus, the Delhi High Court ordered in favor of the plaintiff and ordered a permanent injunction against the defendant with costs.¹⁰

COPYRIGHT PROTECTION IN THE WORLD OF FASHION

The Copyright Act of 1957 governs authorship rights, the right to one's original expression, the right to reproduce the work, etc. Copyright act covers all the music, artistic, and literary work which is tangible. The owner of such works only can reproduce and designate to. "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." Specifically, section 13,14,15,22 deals with the protection of fashion-related stuff in India. The copyright provides certain exclusive rights to its owner. Such as :

Journal of Legal Research and Juridical Sciences
"To reproduce the work in any material form including:

- (i) the storing of it in any medium by electronic or other means; or
- (ii) depiction in the three dimensions of a two-dimensional work; or
- (iii) depiction in two dimensions of a three-dimensional work.
 - a) to communicate the work to the public;
 - b) to issue the copies of the work to the public;
 - c) to include the work in cinematographic films;

⁸ 'Madrid System – The International Trademark System' WIPO < [WIPO Madrid System – International Trademark Protection](#)> accessed 16 Februray 2024

⁹ *Tommy Hilfiger Europe B.V vs MIS Taqua Textiles & Ors* (2020) Del 160

¹⁰ Seguri Akash, 'Intellectual Property Rights in the Sector of the Fashion Industry in India' (2023) 3 Indian J Integrated Rsch L 1

d) to make any adaptation of the work”¹¹

As per section 14 of the Indian Copyright Act, 1957, the author will also have exclusive rights over the initial designs he made for the original, complete work. This is to avoid the infringement of their right by developing a three-dimensional object from a two-dimensional one.¹²

The inception of Copyright dates back to 1847. At this time, the British East India Company was in power, and it provided protection for the lifetime of the author and for seven years after the death of the same. Since then, several amendments have been made in 1983, 1984, 1992, 1994, and 1999, and then in 2012 came the Copyright Amendment Bill, 2012, which is the latest amendment in the act.

THE PATENTED THREADS OF THE FASHION INDUSTRY

Patents are closely related to inventions. Inventions involve either a new product or their process involves an inventive step that could also have an application in the industry. The Patents are granted for those inventions which can have a commercial utility.¹³ Thus, the patents are given for different things. For an invention to get patented, it must fulfill essentials like new, non-obvious, having an industrial application, etc. Patents in India can be granted at the Patents Office under the Patents Act of 1970.¹⁴

For example, if the process is patented, only the process is protected and not the outcome. If the product is patented, nobody can produce the product except the one having the authorization over the product.¹⁵ A very famous case related to patent rights that grabbed a lot of attention was that of two NRIs of the USA who were granted patents over the use of turmeric and turmeric as a wound healing agent. This patent was opposed by India. After using manuscripts and journal papers as evidence, the patent was canceled. It was contended by India that turmeric was devised and used in India a thousand years ago and therefore USA cannot have a patent over it.¹⁶

¹¹ Indian Copyright Act 1957, s 14

¹² Sameer Kumar Swarup and Sachin Rastogi, 'Fashion Design and Intellectual Property Rights: An Indian Perspective' (2021) 26 Journal of Intellectual Property Rights 127-135

¹³ Seguri Akash, 'Intellectual Property Rights in the Sector of the Fashion Industry in India' (2023) 3 Indian J Integrated Rsch L 1

¹⁴ Chakshu Singh, 'Role of Intellectual Property Rights in the Fashion Industry', Lex Forti Legal Journal

¹⁵ Ibid

¹⁶ Reya Dutta, 'Fashion Law: Piracy, IPR and Other Legal Aspects' (2022) 4 Indian JL & Legal Rsch 1

Another famous case is that of NIKE, Inc. v. SKECHERS USA¹⁷; in this case, Nike had filed a lawsuit for infringement against its patented right. They claimed that some of the products of the Nike brand have been copied by the Sketchers, like the VaporMax, AirMax270, etc. Though Sketchers has won many lawsuits against such infringements. These kinds of grave accusations and claims have become a common thing in the fashion industry.¹⁷

Because the fashion industry is worldwide, designers and companies need to take different jurisdictions' patent rules into account. To ensure full protection for unique fashion features, it becomes imperative to comprehend the variations in patent legislation and enforcement methods across different countries. Fashion is driven by trends and inspiration, which makes it difficult to distinguish between the necessity for intellectual property protection and open innovation. Maintaining a delicate yet crucial balance between protecting inventions through patents and encouraging creativity is crucial for the industry's long-term prosperity. Because the fashion industry is worldwide, designers and companies need to take different jurisdictions' patent rules into account. To ensure full protection for unique fashion features, it becomes imperative to comprehend the variations in patent legislation and enforcement methods across different countries. Fashion is driven by trends and inspiration, which makes it difficult to distinguish between the necessity for intellectual property protection and open innovation. Maintaining a delicate yet crucial balance between protecting inventions through patents and encouraging creativity is crucial for the industry's long-term prosperity.

Journal of Legal Research and Juridical Sciences

To sum up, this research explores the complex interrelationships between intellectual property rights and the dynamic fashion sector, with particular attention to trademarks, copyright protection, and the growing significance of patents. The background is set by Jonathan Anderson's insightful insight, which highlights the transforming potential of fashion when it defies expectations and takes chances. Fashion has a complex function in society as a kind of art and as a business. It acts as a platform for social criticism, a vehicle for self-expression, and a catalyst for economic activity. The constant changes in fashion trends generate a profitable market that draws genuine brands as well as ruthless counterfeiters looking to take advantage of the consumer need for fashionable products.

¹⁷ Naman Priyadarshi, 'Intellectual Property Rights: Crucial for Fashion Industry' (2021) 4 Int'l JL Mgmt & Human 1545