

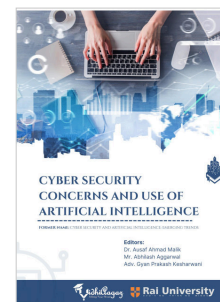
CHAPTER 26

Application of IPR in Today's Fashion Industry and its Flaws

Kusuma Rajashekharaiiah and Ananya S.B.

in *Cyber Security Concerns and Use of Artificial Intelligence*, edited by Ausaf Ahmad Malik, Abhilash Aggarwal and Gyan Prakash Kesharwani (VidhiAagaz 2024), pp. 219–225

ISBN 978-81-947620-5-8



CITATIONS

BLUEBOOK (21ST ED.)

Kusuma Rajashekharaiiah & Ananya S.B., *Application of IPR in Today's Fashion Industry and its Flaws*, in *CYBER SECURITY CONCERNS AND USE OF ARTIFICIAL INTELLIGENCE* 219 (Ausaf Ahmad Malik, Abhilash Aggarwal & Gyan Prakash Kesharwani eds., VidhiAagaz 2024).

OSCOLA (4TH ED.)

Kusuma Rajashekharaiiah and Ananya S.B., 'Application of IPR in Today's Fashion Industry and its Flaws' in Ausaf Ahmad Malik, Abhilash Aggarwal and Gyan Prakash Kesharwani (eds), *Cyber Security Concerns and Use of Artificial Intelligence* (VidhiAagaz 2024) 219.

CHICAGO (17TH ED.)

Rajashekharaiiah, Kusuma, and Ananya S.B. "Application of IPR in Today's Fashion Industry and its Flaws." In *Cyber Security Concerns and Use of Artificial Intelligence*, edited by Ausaf Ahmad Malik, Abhilash Aggarwal and Gyan Prakash Kesharwani, 219–225. Maihar: VidhiAagaz, 2024. <https://vidhiaagaz.com/books/cyber-security-concerns-and-use-of-artificial-intelligence/chapter-26/>.

APA (7TH ED.)

Rajashekharaiiah, K., & Ananya, S. B. (2024). Application of IPR in today's fashion industry and its flaws. In A. A. Malik & A. Aggarwal & G. P. Kesharwani (Eds.), *Cyber security concerns and use of artificial intelligence* (pp. 219–225). VidhiAagaz. <https://vidhiaagaz.com/books/cyber-security-concerns-and-use-of-artificial-intelligence/chapter-26/>

SOURCE

<https://vidhiaagaz.com/books/cyber-security-concerns-and-use-of-artificial-intelligence/chapter-26/>

RIGHTS

Free to read online. © VidhiAagaz 2024. All rights reserved: no part of this publication may be copied, reproduced, adapted or transmitted in any form or by any means without the prior written permission of the publisher.

Citations are given as a guide; check them against the style manual you follow. This page was added by VidhiAagaz to the downloaded file. The chapter follows, with the page numbers of the printed book.

APPLICATION OF IPR IN TODAY'S FASHION INDUSTRY AND ITS FLAWS

Kusuma Rajashekharai³⁵ and Ananya S.B.³⁶

ABSTRACT

Style embodies originality, particularly in the realm of fashion, where it represents a distinctive look achieved through cosmetics, accessories, apparel, or other mediums. The fashion industry has grown into one of the most significant industries globally, driven by fierce competition and the desire to stand out. In today's fast-paced world, individuals often use fashion as a tool to express their individuality and differentiate themselves from the crowd. The unique nature of fashion, rooted in human creativity and imagination, demands protection from potential exploitation. Given the rapid evolution of the industry, safeguarding these innovations is essential. The fashion industry is growing daily, with endless possibilities for designers. India, in particular, has emerged as a key global market for fashion merchandise, reflecting its expanding consumer base and creative potential. However, despite the industry's importance, India lacks specific legal provisions that offer comprehensive protection for fashion. Intellectual Property Rights (IPRs) provide some level of security for a designer's original creations, but they often fall short of providing sufficient protection in this dynamic and diverse sector. While IPRs can help shield designs from theft or unauthorized use, the fashion industry faces unique challenges that these laws do not fully address. Designers frequently encounter issues such as copying, counterfeiting, and a lack of enforcement, making it difficult to protect their intellectual property adequately. This article will explore the necessity of stronger protections for India's fashion industry and provide a detailed analysis of the current intellectual protection for original fashion sketches and designs, ensuring that creativity is not compromised in the fast-paced world of fashion.

Keywords: Copyrights; Fashion Industry; Fast Fashion; IP rights

INTRODUCTION

The fashion business is expanding quickly and has seen notable advances in design. Global recognition has been attained by numerous brands and designers, and the industry has a significant financial influence that significantly boosts the growth of the economy of the country. Due to this expansion, there are now a lot of work prospects and a sizable income from the export of fashion items. With people becoming more aware of style globally, fashion now has a significant influence on society. In the era of social media, being stylish has taken precedence. This trend has increased people's desire to buy luxury goods like Christian Louboutin heels or a Prada handbag. Luxury clothes has seen a major increase in appeal thanks to social media.

Many Indian brides dream of owning a Sabyasachi Banarasi saree or donning a Manish Malhotra lehenga for their nuptials. But many people find these expensive things unaffordable, which encourages the creation of knockoffs. Fashion designers are often frustrated by the ease with which knockoffs of their designs can be found everywhere. These knockoffs come in a range of pricing points, from luxury to low-cost.

³⁵ Student at KLE Society's Law College, Bengaluru, India.

³⁶ Student at KLE Society's Law College, Bengaluru, India.

The purpose of this research paper is to analyse and study about the enforceability of IPR in Indian Fashion market; also outlining its flaws as well as suggesting recommendations and providing solutions for the problems being faced

THE FAST FASHION INDUSTRY'S PROBLEM WITH DESIGN PLAGIARISM

Plagiarism in design is the act of replicating or mimicking the creative output of another individual. This behaviour is commonly referred to by terms such as "counterfeit," "knockoff," and "piracy". Generating inferior duplicates of clothing that closely mimic high-end designers' or companies' products is known as counterfeiting. This is obviously a violation of intellectual property rights because it copies not just the design but also the brand name.

Adidas sneakers are a common target for counterfeiting. Counterfeit versions are available for as little as ₹1,200 in local marketplaces, despite the fact that an authentic pair may cost up to ₹12,000 there. Since so many sellers are involved, it is difficult to enforce laws against counterfeiting even if it is unlawful. Regulation of this kind appears to be impossible.

People are always on the move in today's fast-paced world, especially in metropolitan regions. Life moves quickly, and this has an impact on the fashion business as well, which has to adapt to new trends. One of the most well-liked business strategies these days is fast fashion, which focuses on mass-producing stylish apparel for profit. Inspired by haute couture, or high fashion, fast fashion manufacturers quickly copy these designs and sell them to the general public at much reduced prices.

Simplified reproductions of designer designs are quickly produced by companies like Zara, H&M, Forever 21, and Mango, frequently before the original designers are aware that their work has been copied. Fashion trends change so quickly that products are often off the shelf by the time designers notice the infringement. Because they operate too quickly for standard regulatory procedures to catch up with, fast fashion firms are challenging to monitor and manage.

RANGE OF THE INDIAN FASHION INDUSTRY

There's an endless scope in the Indian Fashion Industry. From intricate traditional wear for various traditions to casual western wear, The Indian market is diverse enabling brands from all over the globe to pierce through the Fashion market. India's economy is among the fastest-growing in the world, and the country's textile sector has grown significantly over the years. 2012 saw a valuation of ₹720 crores for the Indian fashion sector. According to research, by 2025, the Indian fashion market is expected to develop at a compound annual growth rate (CAGR) of 11–12% and reach \$115–125 billion.

Only China has a larger textile industry than India. In addition to bringing in a sizable sum of money, the Indian fashion business employs a sizable number of people in both urban and rural regions. The textile industry's export earnings increased by ₹382 crores in 2018 and 2019. Indian designer clothes made up 1.7% of all fashion exports worldwide in 2020, while traditional handicrafts are exported on a large scale. It is important to remember that the high fashion business offers a substantial number of work prospects, despite the seemingly modest percentage.

Even though it may not be as large as other industries, the high fashion market in India is expanding quickly. The absence of protection for creative designs, however, has drawn criticism. As a result of their work being stolen or replicated, many designers have expressed dissatisfaction that their creative efforts are being undermined. Considering the industry's economic impact and the jobs it creates; it is imperative that the government take action to preserve intellectual property rights and prevent plagiarism in the fashion business. Not only will this help designers, but it will also help the fashion sector in India keep expanding and developing.

INDIAN FASHION DESIGNER'S PROTECTIONS AGAINST INTELLECTUAL PROPERTY

Since intellectual property law was first introduced, India has established a number of intellectual property rights. To protect the fashion business, not all of these rights are applicable, though. Since fashion has a strong creative foundation, preserving this industry requires the use of certain intellectual property rights. They are as follows:

Copyrights

In India, the fashion industry is one of the sectors that is protected under the Copyright Act of 1957. Fashion designers have the sole authority to prevent unlawful use of their original designs in this context thanks to copyright protection. The creative, dramatic, musical, and literary works as well as sound recordings and motion pictures are among the media that are protected by copyright under Section 13 of the Act. Although fashion design is not specifically mentioned in the Act, artistic works are covered, which can include fashion articles. The Act defines artistic works as drawings, paintings, sculptures, photos, and architectural designs. Fashion designs are protected by copyright laws since they are regarded as artistic endeavours.

Under the Act, fashion designers have complete ownership rights over their creations and can forbid unauthorized duplication or modification of their designs. As long as a design is original, designers are still entitled to copyright protection for their works, regardless of registration status. Unauthorized duplication, modification, or use of a design in any format—two- or three-dimensional—without the designer's permission is considered copyright infringement. These rights belong to designers and are retained for 60 years following their passing. It is illegal to import, export, trade, or reproduce pirated fashion items without the designer's consent in accordance with copyright laws.

Trademark Protection

India's Trademark Act of 1999 offers crucial protection for fashion labels, allowing them to differentiate their products from others in the market. According to the Act, a trademark can be any mark—be it a name, design, word, symbol, or combination of colours—that distinguishes one brand's products from those of another. In the fashion industry, trademarks serve as the label or logo that identifies a design or brand. This enables consumers to recognize and separate a specific designer's goods from competing offerings. By creating a unique trademark, fashion designers establish a market identity and build brand recognition, allowing their work to stand out in an increasingly competitive industry.

Trademarks are essential for protecting a fashion designer's brand identity and securing their place in the market. They help consumers associate specific qualities or attributes with a particular designer or fashion house, preventing the unauthorized use of brand names or designs. The Trademark Act of 1999 provides designers with a legal mechanism to safeguard their brand, though challenges may still arise in achieving the highest level of protection. Even with the Act's comprehensive definition, intellectual property owners may face hurdles in securing their rights against potential infringement. This means that while trademarks are a powerful tool for protecting a designer's investment, there can still be limitations in fully protecting a brand from unauthorized use or replication.

For major fashion brands, trademarks are integral to their identity and reputation. Well-known logos such as the tiger symbol for Sabyasachi, the horse and chariot for Hermes, or Gucci's double "GG" are instantly recognizable and help maintain each brand's premium status. Trademarks protect this brand equity by preventing others from copying or misusing these iconic symbols. Additionally, trade dress—which covers the size, shape, colour combination, and packaging of a product—also receives protection under trademark law. However, the scope of trade dress protection is largely determined by the courts. A notable case illustrating the complexity of trade dress enforcement is *Christian Louboutin v. Abu Baker*, in which the court ruled that Louboutin's famous red sole was not protected under trademark law, as a single colour could not constitute a trademark. This ruling highlights the challenges of trademark enforcement, even for globally recognized luxury brands, and underscores the need for vigilance in protecting brand identity.

IPR CHALLENGES AND OPPORTUNITIES IN THE INDIAN FASHION AND APPAREL SECTOR

International luxury fashion brands such as Burberry, H&M, and Richemont made headlines globally when they opted to destroy unsold products valued in the millions. This drastic measure was taken to protect their intellectual property rights and combat the rising tide of counterfeiting. The Indian fashion industry, in contrast, has experienced significant growth and transformation, propelled by the extraordinary creativity and commitment of its designers.

Indian designers are increasingly utilizing local materials, employing traditional coloring techniques, and showcasing distinctive manual design aesthetics, all of which require robust intellectual property protection to ensure their work is not copied or misappropriated. The Indian fashion landscape is diverse, encompassing both established luxury brands and emerging designers who bring fresh perspectives and innovation to the market.

However, the situation varies markedly between these established players and the newer entrants. While many well-known designers and brands have been proactive in registering their creations under IPR laws, the challenges are more pronounced for emerging designers, fashion startups, and traditional textile handicraft sectors. These segments often lack the resources and awareness necessary to navigate the complex intellectual property landscape effectively.

This discussion will specifically explore the intellectual property rights challenges faced by fashion entrepreneurs and traditional textile craft units in India, examining the barriers to IPR registration, the

impact of counterfeiting on their businesses, and potential strategies for fostering a more supportive environment for innovation and creativity within the industry. By addressing these challenges, we can better understand how to protect and promote the unique contributions of India's vibrant fashion ecosystem. International luxury fashion brands such as Burberry, H&M, and Richemont made headlines globally when they opted to destroy unsold products valued in the millions. This drastic measure was taken to protect their intellectual property rights and combat the rising tide of counterfeiting. The Indian fashion industry, in contrast, has experienced significant growth and transformation, propelled by the extraordinary creativity and commitment of its designers.

Indian designers are increasingly utilizing local materials, employing traditional coloring techniques, and showcasing distinctive manual design aesthetics, all of which require robust intellectual property protection to ensure their work is not copied or misappropriated. The Indian fashion landscape is diverse, encompassing both established luxury brands and emerging designers who bring fresh perspectives and innovation to the market.

However, the situation varies markedly between these established players and the newer entrants. While many well-known designers and brands have been proactive in registering their creations under IPR laws, the challenges are more pronounced for emerging designers, fashion startups, and traditional textile handicraft sectors. These segments often lack the resources and awareness necessary to navigate the complex intellectual property landscape effectively.

INDIAN IPR POLICY: THE PATH FORWARD FOR THE FASHION INDUSTRY

India has made steady yet impactful progress in the global fashion landscape over the past three decades, blending the richness of Indian culture with fashion and apparel. Indian fashion remains deeply rooted in its cultural heritage, marked by textiles featuring intricate craftsmanship, delicate designs, and traditional dyeing and printing techniques. These attributes are shaped by the country's distinctive topography and its abundance of skilled artisans, combined with innovative design practices. As a result, Indian fashion has developed a unique identity that distinguishes it on the international stage.

Despite its vibrancy, this industry is highly vulnerable to piracy. While the concept of fashion law is gaining momentum in India, there is still no central law specifically addressing the fashion industry. Nevertheless, the sector's activities, along with its significant environmental and economic implications, have captured the attention of India's legal community.

Current fashion laws in India are inadequate and fail to offer comprehensive protection for stakeholders. In contrast to countries like the USA and France, where fashion law is more advanced, India's regulatory framework is still in its early stages. Consequently, existing laws are expected to evolve, with amendments and new legislation being shaped by input from fashion creators and industry stakeholders. The Fashion Design Council of India (FDCI) plays a key role in advocating for stronger legal protections and is actively working to elevate the reputation of the Indian fashion industry both domestically and internationally, with a focus on sustainability. It collaborates closely with the Ministry of Textiles and the Ministry of Commerce and Industry.

However, enforcing intellectual property rights (IPR) laws to combat fashion piracy is complicated by the rapid expansion of digital media, which poses additional challenges for policymakers in addressing plagiarism. Both established and emerging designers are increasingly dealing with design theft, exacerbated by the visibility social media platforms provide.

Looking ahead, the Indian fashion industry faces numerous challenges, highlighting the need for a robust IPR framework and a standardized code of conduct to address and resolve these issues. Emerging designers and local artisans should be encouraged and guided from the outset to effectively safeguard their intellectual property. By fostering a supportive environment, India can enhance the resilience and sustainability of its fashion sector while protecting the creativity that defines it.

CONCLUSION

The intellectual property rights (IPR) held by a country play a crucial role in shaping its global standing and economic stability. The Indian fashion industry is increasingly capturing the interest of international partners due to its rich and unique textile heritage. However, the current landscape of IPR is facing significant challenges from design piracy and copying, which have been exacerbated by the rise of digital media.

To support the interests of emerging designers, traditional artisans, and established businesses alike, existing fashion laws require essential amendments to enhance their effectiveness. The growing awareness among designers and manufacturers regarding their legal rights demonstrates that IPR laws are beginning to make an impact. Nevertheless, these laws need to be reimaged, ensuring that the process is user-friendly for legitimate creators while being stringent against infringement. By doing so, India can better protect its vibrant fashion sector and foster a more innovative and sustainable environment.

REFERENCES

1. Priyadarshi N, Intellectual property rights: Crucial for fashion industry, International Journal of Law Management & Humanities, 4 (2) (2021) 1545-1549.
2. Chaturvedi S, India: Fashion Industry and Challenges for IP Protection, 2021, <https://www.mondaq.com/india/trademark/1024232/fashion-industry-and-challenges-for-ip-protection> (accessed 8 April 2022).
3. Kumar P, Fashion and Related Intellectual Property Rights, 2019, <https://ssrn.com/abstract=3322320> or <http://dx.doi.org/10.2139/ssrn.3322320> (accessed on 31 March 2022).
4. Chopra A & Biswas R, IPR laws applicable to fashion industry in India, 2018, <https://blog.ipleaders.in/ipr-lawsapplicable-to-fashion-industry/> (accessed on 12 April 2022)
5. Karmakar S & Tewari M, Using IPRs to Protect Niches? Evidence from the Indian Textile and Apparel Industry, Indian Council for Research on International Economic Relations, 2014, https://icrier.org/pdf/working_paper_270.pdf (accessed on 10 April 2022).
6. Diwadkar S, India: Role of IPR in The Fashion Industry, 2018, <https://www.mondaq.com/india/trademark/704378/role-ofipr-in-the-fashion-industry> (accessed on 13 April 2022).

7. Shirwaikar P, Fashion Copying and Design of the Law, *Journal of Intellectual Property Rights*, 14 (2009) 113-121.
8. Basu R, Fashion, IPR & the emerging designer: IP protection and contractual Safeguards for emerging designers and small fashion firms, 2015, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2635087 (accessed on 11 April 2022).
9. Borkar S, Fashion Law in India, 2018, <https://www.khuranaandkhurana.com/2018/12/14/fashion-law-in-india> (accessed on 10 April 2022).
10. Agarwal V, IPR registration in fashion industry of India, *Journal of Intellectual Property Rights*, 24 (2019) 35-40.
11. Bharti S, Legal Protection of Fashion Design in Apparels in India: A Dilemma under the Copyright and Design Law, *The Delhi University Journal of the Humanities and the Social Sciences*, 3 (2016) 139- 154.
12. Swarup S K & Rastogi S, Fashion Design and Intellectual Property Rights: An Indian Perspective, *Journal of Intellectual Property Rights*, 26 (2021) 127-135.
13. Sahny P, The Designs Act, 2000: A fashion faux pas, 2012, <http://dx.doi.org/10.2139/ssrn.2185519> (accessed on 12 April 2022).
14. Bhatt D, Intellectual Property Law for fashion designers, 2014, <https://selvams.com/blog/intellectual-property-law-for-fashion-designers/> (accessed on 10 April 2022).
15. Shah A, Registration of shape of goods as Design, 2021, <http://www.legalservicesindia.com/article/1348/Registration-of-shape-of-goods-as-Design.html> (accessed on 13 April 2022).
16. iGERENT, Intellectual Property in the Fashion Industry, 2021, <https://igerent.com/intellectual-property-fashionindustry> (accessed on 11 April 2022).
17. Hilton B, Choi C J & Chen S, The ethics of counterfeiting in the fashion industry: Quality, credence and profit issues, *Journal of Business Ethics*, 55 (4) (2004) 345-354.
18. Nigam A, India: Significance and challenges of protection to traditional fashion under geographical indications, 2017, <https://www.mondaq.com/india/indigenouspeoples/611106/significance-and-challenges-of-protection-to-traditional-fashion-under-geographical-indications> (accessed on 13 April 2022).
19. Chavan R, Geographical indications registration system in India, *Journal of Legal Studies and Research*, 5 (2) (2019) 103-115.
20. Hirwade M & Hirwade A W, Geographical Indications: Indian Scenario, 2006, <http://eprints.rclis.org/7878/1/EF6C0C53.pdf> (accessed on 10 April 2022).
21. Press Information Bureau, Ministry of textiles, Government of India, 2019, <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1594198> (accessed on 12 April 2022)
