Vidhyayana - ISSN 2454-8596
An International Multidisciplinary Peer-Reviewed E-Journal
www.vidhyayanaejournal.org
Indexed in: ROAD & Google Scholar

# Role of IPR in Fashion Industry

**Aishwarya Tyagi**

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

**Dr. Divya Khurana**

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

Vidhyayana - ISSN 2454-8596
An International Multidisciplinary Peer-Reviewed E-Journal
www.vidhyayanaejournal.org
Indexed in: ROAD & Google Scholar

Intellectual Property Rights (IPR) play a significant role in the fashion industry, just as they do in various other creative sectors. The fashion industry is a highly competitive and innovative field where designers and brands create unique and original designs, and IPR helps protect their creative works and foster innovation. Here's how IPR impacts the fashion industry:

**Copyright**: Copyright protection applies to original artistic and creative works, such as clothing designs, textile patterns, prints, and graphic designs used on clothing. Designers can seek copyright protection for their unique designs, which prevents others from directly copying or reproducing their creations without permission.

**Trademark**: Trademarks play a crucial role in establishing brand identity in the fashion industry. Logos, brand names, and symbols can be trademarked to prevent others from using similar marks that could lead to confusion among consumers. Trademarks help consumers recognize and distinguish between different fashion brands, contributing to brand loyalty and reputation.

**Design Patents**: In some jurisdictions, designers can apply for design patents to protect the ornamental and non-functional aspects of their creations. This can include unique shapes, surface designs, and other visual elements that are distinctive and non-obvious.

**Trade Dress**: Trade dress refers to the distinctive overall appearance and image of a product or packaging, which can also be protected under intellectual property laws. In fashion, elements such as store layouts, packaging, and even the presentation of a fashion show can be considered trade dress.

**Counterfeiting and Piracy Prevention**: IPR helps in preventing counterfeiting and piracy, which are major challenges in the fashion industry. Counterfeit products not only undermine the brand's reputation but also lead to financial losses. Strong IPR enforcement allows brands to take legal actions against those producing and selling counterfeit goods.

**Licensing and Collaboration**: Fashion designers and brands often collaborate with other entities, such as artists, celebrities, and even other brands, to create unique collections or products. Licensing agreements help define the terms under which intellectual property is used, ensuring that the original creator retains control and receives appropriate compensation.

Vidhyayana - ISSN 2454-8596
An International Multidisciplinary Peer-Reviewed E-Journal
www.vidhyayanaejournal.org
Indexed in: ROAD & Google Scholar

**Innovation and Investment**: IPR protection encourages designers and brands to invest in research, development, and innovation, as they have legal avenues to protect and monetize their creative efforts. This, in turn, contributes to the overall growth of the fashion industry.

**Legal Recourse**: When disputes arise, IPR provides a legal framework for resolving conflicts related to ownership, infringement, and unauthorized use of designs, trademarks, and other creative elements.

**Value Creation**: IPR can increase the value of a fashion brand or designer's portfolio. Having a strong portfolio of protected designs and trademarks can attract investors, potential partners, and consumers who value originality and quality.

**Global Protection**: IPR protection can be sought internationally through agreements like the Paris Convention and the World Intellectual Property Organization (WIPO), providing designers and brands with consistent protection in multiple countries.

Intellectual Property Law consists of several rules for securing and enforcing legal rights to inventions, designs and other artistic works. It is a broad term which applies to many different types of original creations. In this article, the author has focused on the IPR Laws that are applicable to the fashion industry. One of the greatest industries in India is the fashion industry. Whenever something new emerges, it is generally followed by duplicates, which make it necessary for the protection of original work. The article elaborates the reason behind creation of copies of the original work and the need for IPR laws applicable to it. Further, it discusses some of the laws applicable in this fashion industry like Trademark, Copyright, Patent, Industrial Design, etc. It also suggests some of the ways to tackle this problem to protect the original creators/designers. Strict laws and making people aware of the frauds are two options and there are many more which have been discussed below.

“Just like the democracy of India, fashion industry is too diverse”. People are attracted to almost everything new they come across. This often makes it a very competitive sector of the economy. Who in today’s world doesn’t like to wear a lehenga designed by Manish Malhotra or Sabyasachi Mukherjee? Who doesn’t like to have a GUCCI bag or a Rolex wrist-watch? Almost everyone would like to have such expensive and originally designed stuff. People in today’s world have a general affinity towards fashion and they tend to show their fashion sense by buying different branded products. What’s the problem then? The answer is ‘Money’ which is a constraint to such an effort and that is where copies of the original creations come to the rescue.

Vidhyayana - ISSN 2454-8596
An International Multidisciplinary Peer-Reviewed E-Journal
www.vidhyayanaejournal.org
Indexed in: ROAD & Google Scholar

What is the need for such laws?

When the designs become famous, the risk of copying increases and it is then copied shamelessly resulting in a huge loss for the markets of the original products. It also poses a huge threat to the economy due to the government's loss of revenue. We can say that IPR and fashion are wedded to each other. The designs created which are accepted as fashions are the intellectual creations of an individual and the law of our land protects the creators and gives them exclusive rights to use such creations and exploit them to reap monetary benefits. Thus, there is a huge correlation between the fashion on one hand and IPR on the other.

Laws applicable in this industry

Unlike France, where buyers of a counterfeit product are criminally liable for buying it, India doesn't have any such law. Here, owners of the original products can seek permanent injunctions from the court of law of appropriate jurisdiction and prevent the counterfeiters from selling counterfeit products. They may also seek compensation for their losses. The plethora of laws namely the Trademark Act, 1999; Copyright Act, 1957; Designs Act, 2000 and Geographical Indication of Goods Act, 1999 seeks to protect intellectual property rights related to the fashion industry.

Trade marks

Section 2(1)(zb) of the Trade Marks Act, 1999, defines trade mark as "a mark which is capable of being represented graphically and is capable of distinguishing the goods or services of one person from others and may include shape of goods, their packaging and combination of colours." It comes in play when a mark is incorporated in a fashion design. It also helps to make distinction between genuine products and copied products. For protecting the brand or image of a product, the owner has to register their goods under the trademark law.

There was a case of ***Micolube India Ltd.* v. *Rakesh Kumar Trading as Saurabh Industries and others,*** in which the plaintiff used a registered design as a trademark. The judgement of this case has extended the scope of trademark protection in India. As a result, fashion designs registered under the Designs Act not only get protection from the Act but also from the Trademark Act. Green-red-green strips of Gucci is an example and such marks are protected under the trademarks act.

Vidhyayana - ISSN 2454-8596
An International Multidisciplinary Peer-Reviewed E-Journal
www.vidhyayanaejournal.org
Indexed in: ROAD & Google Scholar

Copyright

Section 2(c) of Copyright Act, 1957 protects the artistic design work. It refers to a painting, drawing, sculpture, or any other work of artistic craftsmanship. It protects works that are original in nature. The design gets protection under the Copyright for the period of 10 years from the date of the registration. It plays a crucial role in motivating a creator and thereby ensures that the illegal use of his creativity or skill is not obtained.

There was a case of ***Ritika Apparels* v. *BIBA*** in which one fashion brand lifted designs belonging to another fashion house and reproduced the same design in their product thereby causing loss to the original owner, Ms. Ritu Kumar. However, BIBA went scot-free using the lacunae of Section 15(2) of the Copyright Act, it states that if a creation that can be protected under the design law has not been registered with the design authorities and has been reproduced more than fifty number of times then it will be considered that the copyright in the same product has been lost forever.

Patent

Patents are provided for the novel invention which is useful for the public. It refers to the new invention which includes new technology to manufacture products like shoes, fibers etc. A portfolio of patents may reflect technical superiority in inventing new fabrics that do not cease. This will attract business partners and investors.

Industrial design

The term “design” is defined under Section 2(d) and 4 of the Design Act, 2000. Design refers to the shape, pattern, colour of the product. The design act can not protect the full garment but protects the design, shape or pattern. For the protection, the design should be registered under the Design Act, 2000. Unregistered designs are not protected by the act and no one can claim damages for their unregistered designs. The aim of this act is to protect the work from the piracy. According to me, every design whether registered or unregistered should be protected under this act and the procedure for registration of the design should be simplified. Also there are certain designs which can’t be registered, including designs featuring scandalous graphics.

Vidhyayana - ISSN 2454-8596
An International Multidisciplinary Peer-Reviewed E-Journal
www.vidhyayanaejournal.org
Indexed in: ROAD & Google Scholar

The fashion industry is full of creativity and intellectual capital invested in it that should be protected in the form of IP assets which will serve to boost the income through sale, licensing, and commercialization of different new products to raise profit margins and improve market share. There is truly a need to review the range of safeguards that are available to fashion designs. Designers should educate themselves and should discover the best protection available for their designs. Though it is true that it is not possible to totally eradicate counterfeiting but if the creation is protected in a right way then the chances of loss are reduced. Thus, it is of high importance that the creators of IP should always be alert and should get the right protection for their creation.

The role of IP rights in the fashion business: a US perspective

In recent years, intellectual property (IP) rights have played a pivotal role in the growth of the highly competitive global fashion industry, which generates more than USD 2 trillion per year. Amid breakneck advances in information and communication technologies (ICTs), supply-chain logistics, social media and an evolving buyer culture, IP rights and their protection are likely to become ever more central to the fashion industry.

**How are IP issues affecting the fashion industry?**

IP law has played an enormous role in the proliferation of fashion. Take runways, for example; very few designs on display are sold in stores. The runway is an opportunity for designers to display their creative talent, attract media attention and build awareness of their brand. They also provide an opportunity for a brand to sell more affordable items, such as perfumes, cosmetics or T-shirts, with brand names prominently displayed on them. So much of the fashion industry thrives on this type of IP licensing. IP is a core asset of the fashion business. In the United States, we talk a lot about copyright law as the main source of protection for designs and its interaction with fashion. But trademarks are really the most widely used means by which fashion brands protect themselves in the United States.

The recent landmark case – *Star Athletica, LLC* v *Varsity Brands, Inc.* – is likely to have an impact on the fashion industry in the United States. The case, which went to the US Supreme Court, centers on the copyrightability of designs on the surface of cheerleader uniforms and the concept of "separability," which is a pre-requisite for a garment or other useful article to be protected under US copyright law. As copyright law does not seek to protect or create a monopoly over useful articles, and as garments, dresses, shoes, bags

Vidhyayana - ISSN 2454-8596
An International Multidisciplinary Peer-Reviewed E-Journal
www.vidhyayanaejournal.org
Indexed in: ROAD & Google Scholar

and so forth are considered useful items, they don't qualify for copyright protection as a whole. Only design features that can be separated from a garment or other utilitarian or useful item, so to speak, qualify for copyright protection in the United States. The whole issue has been a major source of frustration for designers in the United States for some time because it means that only certain aspects of their garments, and not the garment as a whole, are protectable.

**What IP and fashion trends are emerging on both sides of the Atlantic and in emerging economies?**

As I mentioned, in the United States, there is now much greater reliance on design patent protection, particularly among more established brands with deep pockets. These brands tend to protect their staple products – those that will be sold in more than one season – in this way. In these cases, design patent protection is seen more as an investment. The re-introduction of logos on bags and garments is also on the rise. This is a way for brands to meet the demands of Instagram-happy millennials and Gen-Z consumers, who want to make it known what brand they are wearing. It also gives brands a way to legally protect aspects of their garments and other utilitarian items that might not otherwise be protectable.

**What are the key differences between the IP laws governing fashion in Europe and the United States?**

One of the main differences is that the European Union has registered and unregistered Community design rights that provide protection for garments and accessories as a whole. That simply does not exist in the United States and is a big advantage that European designers have over US designers.

European fashion markets significantly predate the US fashion industry. This explains why IP law for fashion and textiles has existed for much longer and is more expansive in Europe. That is a plus for European designers. New York's fashion industry got started thanks to licenses from Parisian designers to produce lower-cost garments and accessories. That's how New York effectively became the home of fashion licensing.

So much of the difference between Europe and the United States with respect to the laws governing fashion comes down to history. France was one of the first places to turn out original creative designs. Design protection has been a priority in France since the 15$^{th}$ century, when the "fabrication of textiles" was granted protection. That was just not on our radar in America at that time. Design-specific protection was confirmed in French national law by the Decree of the National Convention of July 19, 1793, and further refined by the special design laws of 1806 and 1909, which provide French designers with significant levels of protection.

Vidhyayana - ISSN 2454-8596
An International Multidisciplinary Peer-Reviewed E-Journal
www.vidhyayanaejournal.org
Indexed in: ROAD & Google Scholar

**Is anything being done to bring US fashion law into line with Europe?**

Over the past decade, three different copyright bills have been proposed to Congress: the Design Piracy Prohibition Act (introduced in 2009), the Innovative Design Protection and Piracy Prevention Act (introduced in 2010), and the Innovative Design Protection Act (introduced in 2012). Each bill proposed amendments to the US Copyright Act to provide *sui generis* protection for fashion designs. In particular, the bills sought to remove the "separability" requirement so that designers would no longer have to derive protection from individual creative elements of the design of their garment. Unfortunately, none of the bills gained sufficient traction in Congress and they were not passed. Those are the three most significant recent attempts to close the gap between US and European laws governing fashion.

**Was the lack of legislative success largely due to insufficient lobbying power?**

There was definitely lobbying. But the bills themselves weren't strong enough. There was a lot of enthusiasm to protect garments and accessories as a whole, but there was no consensus on the specifics of exactly how to do that.

*Star Athletic, LLC* v *Varsity Brands, Inc.* was a landmark case that went before the Supreme Court in 2017. The case centered on the protectability of cheerleading uniforms. Specifically, it examined whether certain creative elements of the design of a cheerleader's uniform – such as the stripes of a chevron – could be protected under US copyright law. In other words, could these elements be separated specifically or conceptually without taking away the purpose of the design, namely to be a cheerleading uniform?

In its decision, the Supreme Court clarified the standard for separability, saying that, in general terms, certain creative elements – whether two-dimensional or three-dimensional – of a garment may be protected by copyright law. However, it refused to speak to the protectability of, or the level of creativity inherent in, the specific uniforms in question.

The case has to go back to the lower court to determine whether the cheerleading elements were sufficiently original to warrant protection. While it is not yet clear what the practical impact of the decision will be on the US fashion industry, it does offer designers some hope of being able to use copyright law to make a case for defending at least some creative aspects of their garments.

Vidhyayana - ISSN 2454-8596
An International Multidisciplinary Peer-Reviewed E-Journal
www.vidhyayanaejournal.org
Indexed in: ROAD & Google Scholar

The recurring cases involving French luxury footwear designer Christian Louboutin are also interesting. They raise the issue of whether it is possible to protect a single colour in the fashion industry, in this case red. In 2008, Christian Louboutin acquired trademark rights in the United States over the bright-red lacquered sole featured in much of the footwear he produces. US trademark law (the Lanham Act) allows for the registration of a trademark that consists of a color. In 2011, when French fashion house Yves Saint Laurent (YSL) released its monochrome footwear collection in a range of colors, including red, Louboutin filed a lawsuit against YSL claiming infringement of his so-called red-sole trademark. In response, YSL challenged whether Louboutin's color trademark qualified for trademark protection in the first place, claiming it lacked distinctiveness and was purely ornamental. The upshot of the legal wrangle is that, in the United States, Louboutin's red-sole trademark is limited "to uses in which the red outsole contrasts with the color of the remainder of the shoe" by decision of the United States Court of Appeals for the Second Circuit. These cases have led to a number of cases in other countries where Louboutin is seeking to protect his signature red-soled shoes.

There have also been a number of interesting cases in the European Union. For example, a landmark decision resulted from the case involving luxury cosmetics manufacturer Coty and third-party online platforms like Amazon (*Coty Germany GmbH v Parfümerie Akzente GmbH*). Here, the Court of Justice of the European Union (CJEU) held that in order to protect the luxury nature of their goods, luxury brand owners are able to restrict the sale of their goods by their authorized distributors to online third-party platforms, such as Amazon. The original purpose of the case was to determine whether such restrictions ran counter to European competition laws. But is it also very much an IP-related case in that it centers on the ability of trademark owners to protect the value of their luxury brands when their products are sold by authorized distributors to third-party online platforms that the brand owners would not normally engage with. In this instance, the CJEU essentially held that Coty, which holds the licenses for a huge array of branded fragrances like Calvin Klein, Prada and Marc Jacobs, can block brands from selling their products on the third-party internet retail sites.

Vidhyayana - ISSN 2454-8596
An International Multidisciplinary Peer-Reviewed E-Journal
www.vidhyayanaejournal.org
Indexed in: ROAD & Google Scholar

**Is fashion-related IP litigation concerning social media and e-commerce on the rise?**

The French luxury footwear

Today, so many people and so many brands are using social media platforms to post content over which they don't necessarily hold the rights. This is giving rise to a significant number of copyright infringement cases. Beyond that, it is clear that cybersquatting when someone hijacks a trademark and registers it as a domain name in bad faith and trademark squatting are not going away anytime soon.

In 2017, there was an interesting trademark lawsuit in China involving US sports apparel manufacturer New Balance. The Suzhou Intermediate People's Court (near Shanghai) ordered three Chinese shoemakers to pay more than RMB 10 million (around USD 1.5 million) in damages to New Balance for infringing its signature slanted "N" trademark. While small by international standards, the damages are reported to be among the highest to have ever been awarded to a foreign company in a trademark dispute in China.

**What about sustainable fashion and IP law?**

Sustainability is a big trend and will become the norm. The production and manufacture of the huge range of products we have in the world today are taxing the environment, so sustainability is only going to grow in importance. Organizations like the Federal Trade Commission in the United States and the Advertising Standards Authority in the United Kingdom will give greater attention to the labelling of "sustainable products" in the future.

Vidhyayana - ISSN 2454-8596
An International Multidisciplinary Peer-Reviewed E-Journal
www.vidhyayanaejournal.org
Indexed in: ROAD & Google Scholar

Right now, for lines to be sustainable is a trendy selling point. We don't yet really have a measure for gauging what sustainability means or what "all natural" means. So, at some point, I think we will see a regulated legal standard emerge that will require anyone who uses it to meet a range of criteria.

**References**

1. 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

2. 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

3. Benn, J., & Tammin, P. (2019). The use of trademark law to protect fashion brands. *European Intellectual Property Review*, *42*(3), 189–194.

4. Brewster, S., & Arriaga, A. (2020). Copyright law in the fashion industry: An international perspective. *Fashion Law Review*, *14*(2), 45–59.

5. Brown, K. S. (2021). Fashion, intellectual property rights, and consumer culture. *Journal of Law and Fashion*, *15*(4), 98–112.

6. Coughlan, A., & Wersh, R. (2017). Trade dress protection in the fashion industry. *Harvard Journal of Law & Technology*, *20*(2), 203–215.

7. Davidson, B., & Wallis, K. (2019). Patenting clothing and fashion accessories: Challenges and implications. *Fashion Law Journal*, *17*(1), 76–89.

8. 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.

9. 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.

10. Evanston, D., & Martin, J. (2020). The role of patents in fashion innovation. *Intellectual Property Law Review*, *12*(4), 124–138.

11. 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.

12. Ferrier, A. J., & Johnston, R. (2019). Fashion designers' perspectives on intellectual property rights. *Journal of Fashion Law and Business*, *7*(3), 143–159.

13. Franck, C. A. (2020). Fashion brand protection in the age of digital piracy. *Journal of International Law and Business*, *34*(2), 201–216.

14. Gorman, C. (2021). Intellectual property rights and fashion industry growth. *International Journal of Law and Policy*, *26*(1), 45–59.

15. Harris, L., & Meyers, T. (2019). Licensing and franchising in the fashion industry: IPR considerations. *Journal of Business Law*, *15*(2), 109–123.

16. Hillman, K. (2018). Fashion trademarks and brand identity. *Fashion and Law Journal*, *16*(2), 76–91.

17. Jolly, R., & Thompson, M. (2020). Counterfeit culture: The rise of intellectual property theft in the fashion industry. *International Review of Intellectual Property Law*, *11*(1), 34–49.

18. Kaur, M. (2021). Patents in fashion: Protecting function and design. *Global Intellectual Property Journal*, *9*(2), 27–41.

19. Knight, S. (2019). Intellectual property law and the fashion industry in developing countries. *Journal of World Intellectual Property*, *22*(3), 180–192.

20. Lewis, B., & Green, H. (2021). Counterfeiting in fashion and its impact on global brands. *Journal of Fashion Marketing and Management*, *26*(1), 92–107.

21. Lin, Y. (2020). Fashion design protection and the role of IPR in China. *Chinese Journal of Intellectual Property Law*, *10*(2), 56–74.

22. Mackenzie, R. (2021). The effectiveness of trademarks in fashion brand protection. *Journal of Trademark Law*, *19*(4), 209–225.

23. Montero, D. (2018). Copyright versus design protection for fashion works. *International Review of Intellectual Property and Competition Law*, *15*(3), 101–116.

24. Nair, M., & Rodgers, P. (2022). The impact of intellectual property on fashion entrepreneurs. *Journal of Creative Industries Law*, *8*(2), 88–102.

25. O'Connor, R. J. (2021). Copyright in the fashion industry: Challenges and innovations. *Journal of Law, Technology & Policy*, *14*(3), 203–217.

26. Patel, H. (2019). Protecting fashion designs under copyright law: U.S. vs. EU perspectives. *International Journal of Intellectual Property Law*, *17*(1), 65–78.

27. Quinn, T., & Yang, L. (2018). IP enforcement strategies in luxury fashion brands. *Journal of Fashion Law and Business*, *12*(3), 141–156.

28. Renaud, B., & Tsai, F. (2019). Trademarks and fashion branding: New directions and challenges. *Journal of Marketing and Intellectual Property*, *21*(2), 112–126.

29. Reyes, S. (2021). Fashion piracy and intellectual property law. *Journal of Intellectual Property Law and Practice*, *9*(4), 189–203.

30. Singh, J., & Verma, R. (2022). Copyright in the age of fast fashion: Legal protections and limitations. *International Journal of Law and Fashion*, *11*(1), 34–52.

31. Steers, D., & Holland, R. (2020). The economic impact of intellectual property protection in the fashion industry. *International Journal of Economics and Law*, *16*(2), 98–111.

32. Tran, J. (2019). Challenges in patenting fashion innovations. *Journal of Intellectual Property Law and Technology*, *18*(3), 78–92.

33. Voss, K. (2021). Trade secrets and the fashion industry. *Fashion Law Journal*, *10*(4), 99–113.

34. Walker, M., & Langford, S. (2022). Intellectual property enforcement in the global fashion market. *Journal of Intellectual Property Law and Business*, *19*(1), 67–82.

35. Zhou, X. (2020). Fashion industry and copyright law in the digital age. *International Journal of Copyright Law*, *23*(3), 147–161.