



sciendo

BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University
VOLUME 15, NUMBER 4 (2022)
ISSN 2029-0454

Cite: *Baltic Journal of Law & Politics* 15:4 (2022): 1064-1077
DOI: 10.2478/bjlp-2022-004096

A Critical Study on Fashion Design and its Protection under Copyright Act, 1957 and Designs Act, 2000

Raveena. R. Nair

Assistant Professor Saveetha School of law, Saveetha Institute of Medical and Technical sciences (SIMATS), Chennai -77.

Dr, Anju Mohan

Professor Saveetha School of law, Saveetha Institute of Medical and Technical sciences (SIMATS), Chennai -77.

Received: August 8, 2022; reviews: 2; accepted: November 29, 2022.

Abstract

Fashion is defined as "everything that is the current trend in a person's appearance and attire, particularly in clothing, footwear, and accessories." Fashion now pervades our daily lives and workplaces; what we wear serves as a tool to express ourselves rather than only providing shelter from the cold and nakedness. As defined by the Designs Act, a design is an exterior feature, such as a shape, configuration, pattern, decoration, or other feature, that has been applied to any object through an industrial process and can be seen on any article and determined only by the sight.

In this digital era, it is much easier to take a free ride on other fashion designs, with diffusion happening swiftly and broadly via the Internet, often even before the original fashion products hit the market. Designers are effectively left with essentially no means of preventing copying and little redress if their creations are eventually replicated. And also suggested the protection through Trademark, patent and Copyright. Throughout the years there have been constant attempts by the fashion industry to protect designs through copyrights, but all have failed. When a design becomes well-known, the likelihood of it being copied grows, and it is then blatantly copied, leading to a significant loss of market share for the original product. Due to the government's revenue loss, it also poses a huge economic threat. This problem of design threat is more serious and deserves more attention.

Keywords

Fashion Designs, Piracy, Intellectual Property Rights, protection, copied

INTRODUCTION

"Fashion is not necessarily about labels. It's not about brands. It's about something else that comes from within you." – Ralph Lauren

Exponents of IPR protection for fashion design recognize that the fashion sector is one of the most important and innovative businesses in the world. They claim that while designs are complex and expensive to create, they are comparatively easy and inexpensive to replicate. They claim that without IPR protection, copyists will profit from creators' efforts, limiting further investments in fresh innovations and creations. In other

words, imitation suffocates creativity. They argue that IPR protection for fashion designs would drive more creativity by guaranteeing that earnings from a design went to the designer rather than to those who just copied it. People in favor of better protection for fashion design contend that copying technology has transformed so dramatically in recent years—particularly the frequency with which pictures of designs from red carpet events can be sent around the world via the internet—that designers are suffering unexpected harm that must be addressed by IPR protection. They argue that IPR protection is particularly important for new designers and brands since copying curtails their efforts to create a brand. In the Intellectual Property Rights the fashion designs are claimed to be protected under the Copyright Act, 1957, Industrial Designs Act, 2000, Trademark Act, 1999 and so on.

Subject Matter for Protection

- The sketch Design can be protected under the Copyright Act through the registration process.
- Article design can be protected under the Design Act, 2000
- Color combination can be protected under the Copyright Act, 1957
- The fabric or the material used for the purpose of producing article can be claimed protection under the Designs Act, 2000
- Logos can also be claimed protection under the Intellectual property

Evolution of the Fashion Industry In India:

The Indian fashion scene is renowned for its rich cultural heritage, sophistication, and vibrancy. It brings out the nuance and beauty that has lasted for decades. The fashion Industry in India is the aggregation of the dynamic customs that make a remarkable entry into the emerging economy. The fashion field is not a new industry to our economy but it has been existing for years and evolved before a long period. It is not just comfortable, elegant, and aesthetically pleasing.

Ancient Civilization:

“The first preliminary version was discovered in a sculpture of Mother Goddess carrying a piece of fabric around her waist, stretching back to the Mohenjo Daro culture. Her torso was encrusted with precious stones. Apart from this period, the ancient Vedic literature mentions Phataka prepared from plants and barks. The Rig Veda, which was written during 11th century B.C, also says about the clothes and chronicles the evolution of specialized apparel fabrication processes during the Vedic period. The cotton garments created in the southern portion of India were exported to the Roman Emperors by the 2nd century AD. The emergence of sewn and tailored garments in India may be dated back to the start of the 10th century AD, and was again promoted by the Muslim empires of India around the 15th century.”

The 1980s and 1990s:

“This period in which development of fashion schools in India, as well as an outburst of fashion changes in Indian clothes occurred. It also witnessed a massive increase in the number of women entering the workforce. The arrival of certain sparkly and glittering costumes, denim and leather biker jackets, and chiffon sarees in various colors with a mix of Indian and western dress designs marked the beginning of Disco in the 1980s. In the 1980s, women became more active in the Indian fashion industry, and Indian attitudes regarding diversity shifted.”

The 21st Century:

“This period gave rise to a steady and clear picture of the Indian fashion industry. Pants, short skirts, and bold costumes and fashion became more global as women became more empowered. This shift can be understood from the way women wear blouses and sarees nowadays. Women favor halter-neck, back-button blouses, high-neck blouses, Katori style, and puffed sleeve blouses over classic blouse styles. “Sarees

generally worn in Gujarati style, and it is fair to assume that the Indian fashion scene is heavily affected by the country's movie industry".

The Era of Brands

In India, the trade for branded clothing is developing. As branded garments offer quality assurance, a rising number of consumers are gravitating toward them. "During the 1950s, Liberty shirts was the first company to sell shirts in India under its brand name". Since then, the Indian fashion sector has seen a slew of national and international businesses emerge. "Today's leading national brands include Allen Solly, Van Heusen, Louis Philipe, Charagh Din, Raymonds, Arrow, and others." The branded clothing industry is expanding as a result of rising denim demand. "Levi Lee, Seven Jeans, Pepe Jeans, and other multinational brands entered the denim sector in India. Branded garments have made a significant contribution to the field of the Indian fashion sector."

India is a cosmopolitan country, and its vast diversity is represented in the variety of traditional clothes and wearing styles that vary from state to state, something that is uncommon elsewhere in the globe. "It has evolved through the generations from one subculture to the next, and evidence of Indians being fashionable can be found dating back to the Harappa and Mohenjo-Daro periods". The Indian fashion business has undergone significant changes as a result of globalization. In terms of scope and variety, India's fashion sector, particularly for women, is highly lucrative. While the rapid growth of information technology popularized the corporate appearance, the rebirth of the ethical look has grown increasingly popular, resulting in the rising popularity of ancient forms of art and crafts. Fashion houses firms have recently started to focus on the great potential of this industry, which provides in-house fashion designers with a plethora of opportunities. Over time, the Indian fashion industry has grown to the point that it is now on level with the worldwide fashion industry and is one of India's most popular revenue-generating businesses.

Research Questions

- 1) What legal protection does the Copyright Act and the Designs Act provide for Fashion designs?
- 2) What are the challenges in acquiring protection with regard to Designs?
- 3) What is the judicial perspective on the protection of fashion designs?

Research Objectives

1. To understand the concept of Fashion Designs and their protection with regard to Copyright Act, 1957 and Designs Act, 2000
2. To find out the Issues and struggles faced by the designers with regard to the registration of the Fashion Designs.
3. To analyze the Judicial Approach towards the Fashion Designs and its protection.
4. To propose some legal and practical recommendations to prevent design piracy

LITERATURE REVIEW

The author discusses the Haute Couture segmentation in this paper. Despite the substantial profits made by haute couture fashion houses on the international market, the instantaneous copying of high-profile designs infringes on the designer's intellectual property rights. Although the adoption of a new intellectual property protection may encourage unfair competition activity and have some adverse implications. The rule would be strictly restricted to protect only a specific category of designs.

The author in this paper discusses only about the protection of certain categories of fashion designs but this would not prevent the designers from facing the imitation process. Through this paper it can be understood a well-structured protection is needed for the fashion designs from being imitated (Alexandra Manfredi 2012) The author in this paper discusses an unexplored problem at the nexus of fashion and intellectual property law and how "fast fashion" leads to unsustainability of global resources and human rights

issues pertaining to overseas manufacturing facilities. Despite extensive fashion industry lobbying efforts, the intellectual property protections afforded to the industry remain modest. Though the designers are trying to safeguard their designs from being pirated till date it is not successful. (**Cassandra Elrod 2016**) The author in this article mainly focuses on counterfeiting issues. Counterfeiting is one of the most serious issues faced by the luxury goods companies in a globalizing market. This article helps to understand the various types of counterfeiting that occur in the fashion business, as well as the ethical difficulties that arise. The process of counterfeiting is that the exact imitation of the product is made which can defraud the customers and it usually occurs with the luxury goods (**Hilton B 2004**) The author in this paper tries to explain the process of counterfeiting and the problems arises through this method but lacks to explain about the prevention against the counterfeiting. If a design is given proper protection then the counterfeiting problems can be reduced.(**Film .V 2015**) The author in this article clearly explains about the fashion sector and its productions.The fashion industry is rife with copying, but the consequences are particularly severe for budding designers who rely on every sale. The article in this article says that the clothes designer can benefit from legal rights in two ways such as protection and exploitation and also says about registration process (**Adithya Reddy 2015**) The author talks about the types of protection claimed by the designers, but he didn't look into the struggle faced by the designers to claim those protection. The protection method should be a more systematic and speedy procedure, so the designers would not face the copying process.(**Sayali Diwakar 2018**)The author starts with the firm statement that the Indian fashion business has been increasing at a rate of 9.5 percent per year. The market for clothing designed by fashion designers has been steadily increasing. It can be understood from this article that the designers are facing the issue of their design being pirated from the old days itself. And the author opinions that the Indian Legislation should be more stringent with regard to the design protection .Though the author opined that the legislation should be more stringent, he missed out to mention the ways in which the law should be more effective in protecting the designs. A proper protection is the most needed thing to safeguard the designs (**Naman Priyadarshini, 2021**) The author of this article begins by saying that Fast-fashion corporations frequently create fashionable items at low prices by repurposing ideas that others have spent time and money on and partnering with producers in other countries who engage in unfair labor practices. Designers put through many hours and hundreds of dollars to create designs tailored to their clients. Yet, their efforts are never considered by businesses that rely on shooting and copying original ideas. The factories that make the replicas are frequently dangerous, and the workers are low-paid. When the workers try to hold their employer responsible, they discover that the manufacturing company has no assets and cannot recover damages. The author concludes by saying that intellectual property is not very stringent in protecting original fashion designers and their symbols. Though the author says that the intellectual property law should be more stringent he didn't explain about the ways in which the law should be made and also never considered the drawbacks in making these laws more strict.(**Ena Kapur 2020**) Intellectual property rights are a set of rights that give creators and safeguard their work for a fixed length of time. Each year, the fashion business introduces new designs and goods. As a result, it is critical to protect these items and ideas in order to ensure that their original owners receive the recognition and rewards that they deserve.The product's owners play an important role as well, and they must remain vigilant at all times. If their product is being copied, the copyright owner or his chosen agent can notify the Commissioner of Customs, or any other person authorized by the Central Board of Excise and Customs, in writing. The author in this article mainly focuses on the copyright protection to the fashion designs. But he didn't look into the problems in acquiring the copyright protection. And also didn't look into the protection procedures with other IP rights.(**Tina Martin, 2019**) The author in this says about the role of intellectual property protection in the fashion sector He also says about the importance of enacting appropriate legislation to safeguard the heart of the fashion industry, namely, original artistic expressions. And looking into the judicial decisions in India, the author claims that current rules are filled with loopholes, resulting in a

proliferation of low-cost knock-offs that not only stifle a brand's creative process, but also harm its exclusive reputation and revenue. From this article it is clear that to ensure proper implementation in India, legislation must be updated, extended, and strengthened in order to protect the originality of not just huge fashion powerhouses, but also commoners involved in the fashion sector. Though the author says that the legislation should be amended he didn't mention about the method in which the amendment should be made. And also he never looked into the drawbacks that occurred during the process of amendment. (Tanya Manocha 2019)

RESEARCH METHODOLOGY

The research methodology adopted here is doctrinal and critical in nature. In order to obtain necessary conclusions pertaining to research objectives, both primary and secondary data are used here. Primary sources include the study and analysis of the relevant international conventions, treaties, agreements, commissions' reports, laws, rules, case laws, etc. These are studied from critical and analytical perspectives. Secondary sources explain the existing legal system. The secondary sources include legal dictionaries, legal encyclopedias, legal periodicals, treaties, articles, research papers, and journals.

The Problem Of Fakes In The Fashion Industry

Behind this glamorous and inspiring world, there are issues with intellectual property rights that most fashion firms are concerned about. Making replicas or similar goods with the same brand name as original commodities is known as counterfeiting. Counterfeit goods are items that have been illegally fabricated, reproduced, or replicated with the goal to deceive or defraud by presenting them as real. This comprises the creation and sale of an item that features a replica of a genuine trademark, mainly to fool buyers into thinking they are buying genuine goods. When a legitimate brand is used on a counterfeit goods, it is referred to as an "erroneous mark." Another idea is a knockoff, which is a "unauthorized copy of (another's product) for sale at a far cheaper price than the original." Knock-offs don't have the original company's logo or mark on the product.

Fashion Design Piracy

"The term Piracy can be defined as when there occurs an unauthorized and illegal reproduction of works that has already been protected under the copyright, trademark or patent. Piracy is one of the serious issues that occurs almost in every field.

It's when someone makes unauthorized copies of someone else's intellectual property. To put it another way, piracy is the act of duplicating anything without permission. Piracy in the fashion business involves (1) piracy in fashion design and (2) piracy in a fashion brand's logo or label. Unauthorized replication of original fashion designs is known as fashion design piracy

(FDP). ¹And it usually comes into one of the two categories below: (1) knockoffs and (2) counterfeit"

Fashion knockoffs are replicas or different versions of original designs, usually made of the same material, but offered for sale at a lower price. Because of technical advancements and the globalization- related exposure available to copycat designers, creating such knockoffs has never been easier.

For easier understanding, those involved in the counterfeit industry practically hound fashion shows to manufacture startlingly similar, mass-market replicas of the latest designer garments, which then become accessible in showrooms for public consumption — at a comparable low price. Whereas the Counterfeits are goods that are similar to the originals but not identical. 'Prada' bags or 'Vuiton' scarves are examples of unlicensed knockoffs with labels, emblems, or other distinctive aspects. Counterfeit things are made up of replicas of a brand's label, trademark insignia, or marks that are so close to the actual thing that they pass for the real thing. Counterfeits are made to

look and behave like genuine things, infringing on their rights. Counterfeiters try to profit from the goodwill of the original companies by going to great lengths to make their knockoffs look identical to the real product they're attempting to replicate.

The difference Between knockoffs and counterfeits

Counterfeits are goods that are imitated but not identical to the originals. These are unlicensed knockoffs with labels, logos, or other distinguishing features, such as 'Prada' bags or 'Vuiton' scarves. Counterfeit items feature reproductions of a brand's label, signature symbols, or marks that are so similar to the original that they pass for the real thing. Counterfeits are designed to be confusingly similar to genuine goods, infringing on their rights. Counterfeiters aim to capitalize on the original companies' goodwill by going to tremendous measures to make their knockoffs look exactly like the real thing they're attempting to imitate. When these infringement happens the brand owners started to cease these copying by sending legal notices, imposing suits against the copycats and yield damages for the loss they suffer. As the design piracy is one of the serious issues the brand owners try to establish certain organizations to protect their designs from being imitated and these organizations were established on the national and international levels. If the large corporations or the big companies would start to deal with these piracy then it would pave the way for the small scale companies to safeguard their designs from being pirated. And Intellectual property law is one of the best legislations to prevent these piracies.

Knockoffs, on the other hand, are exact replicas of another designer's style, but without the intellectual property infringement. Knockoffs attempt to replicate the design aspects of original garments so closely that the original and copycat are nearly indistinguishable, although knockoffs lack the infringing logos and/or labeling. As a defense against knockoffs and/or knockoff designers, a designer must copyright the sketches from which the concerned dresses were created as much as feasible, and in court, persuade the judge that the aesthetic design is distinct from the dress's utilitarian purpose.

Designers are subjected to unfair competition since fast fashion infringers' items are faster and cheaper to make than those of the fashion designer's original. The outcome is obvious: legitimate fashion designers lose the game, while the infringer profits from the unfair competition. Fast fashion infringers do not create anything, but they profit on the original fashion designers' ingenuity and labor. Such behavior is so unjust that fashion designers will be discouraged from creating new designs. As fashion designers and their new creations are at the center of the fashion industry, it is possible that the entire industry will vanish. As a result, we should consider safeguarding fashion design under intellectual property rights from an economic standpoint in order to encourage fashion designers' originality.

In *Ritika Private Limited vs Biba Apparels Private² Limited* is a boutique apparel designer firm that was the first to copyright a design that was commercially in use by the defendant Biba Apparels Private Limited, a well-known ethnic wear brand. The complaint sought an injunction prohibiting Biba Apparels from producing, selling, printing, publishing, or marketing prints or garments based on the design. To the plaintiff's astonishment, the court ruled in favor of the defendant, claiming that the copyright was given under the Copyrights Act of 1957, which states that if a design is reproduced more than fifty times, the designer loses her copyright on the work.

"Imitation reflects the finest form of flattery," Coco Chanel was the first to believe. Following Chanel, a slew of other well-known fashion designers agreed with this premise, claiming that counterfeit goods fuel demand for genuine goods by bringing fashion names and trends to the public's attention. Whether counterfeiting is a factor that negatively affects fashion product fabrication or the belief that counterfeiting encourages productive rivalry between fashion enterprises, there is one thing that we all agree on: the need to preserve creativity under intellectual property law.

Fashion design, on the other hand, has been unprotected for years because it differs from other standard intellectual property rights subjects. For instance, fashion design has a limited lifespan because each season, a new fashion design replaces the previous one. Fashion design is a profitable production, according to legal and economic analysis, because it is at the heart of the fashion business, which generates hundreds of billions of dollars in revenue each year. Because fashion design now faces the threat of the Internet, the situation is different than it was decades ago. So from these it can be understood that safeguarding these designs from all these threats and piracy is very important.

Intellectual Property View of Fashion Design

Intellectual property rights must be distinguished from other types of property rights. The effort to use a constitutionally formed benefit to address a possible common goods concern is a primary link between physical and intellectual property. However, not all intellectual property has been granted ownership rights. Fashion design is property, but it does not automatically imply that it has intellectual property rights. "Some academics claim that fashion design is an art form that has long been denied intellectual property protection. Others, on the other hand, claim that fashion design does not need to be safeguarded. Does fashion design fall under the umbrella of intellectual property protection"?

Because fashion design falls between the cracks of typical intellectual property protections, it is not appropriately within the purview of the intellectual property law. Although copyright might protect fashion design from being directly reproduced, it only protects the manifestations of creations, not the concepts or functions. In clothes design, the artistic form and usefulness are inextricably linked. As a result, copyright can only protect some aspects of fashion design, not the entire fashion design. Though the Intellectual Property Law tries to protect the Fashion Designs in different aspects through Copyright, Patent, Trademark but none of these grant an appropriate protection to the designs from being imitated. As the fashion industry is considered as the most growing sector in the economy utmost protection is required to safeguard the designs from being pirated or copied. And Intellectual Property only has the authority to protect the designs. Justifications for Intellectual Property Rights Protection for the Fashion Design

Fashion design is a suitable subject matter for IPR protection because it is a product of human knowledge and imagination. However, agreement on the need for fashion design protection under the IPR framework is proving difficult to come by. On this subject, conflicting viewpoints have been expressed, with some confirming the urgent need for IPR protection for fashion design and others denying the existence of such a demand. Opponents of IPR protection for fashion design contend that it is unnecessary because the business is prospering. Instead, they argue that the lack of IPR protection drives fashion designers to create new designs, which adds to the industry's development. Supporters of IPR protection for fashion design realize that the fashion sector is one of the most important creative businesses in the world. They claim that designs, which are at the heart of fashion, are difficult and costly to create, but relatively simple and inexpensive to replicate. They claim that without IPR protection, copyists will profit from creators' efforts, limiting further investments in fresh innovations and creations.

In other words, imitation suffocates creativity. They argue that IPR protection for fashion designs would drive more creativity by assuring that earnings from a design went to the designer rather than to those who just copied it. People in favor of increased protection for fashion design argue that copying technology has changed so dramatically. They contended that IPR protection is particularly important for new designers and brands since copying stymies their efforts to create a brand. How does the law work in reality?

If a popular fashion house designer produces a dress for an important fashion ramp show, what type of protection can be claimed by them for protecting the dress or the designs. To proceed, when the design is reduced from the imagination to the actual reality that is to some material form, which apparently shifts into sketches and drawings

of the dress and these characteristic features of the article qualify it as an artistic work. A work can only claim protection when the work shows sufficient level of creativity and the work should be original.

The most important criteria for claiming protection is that the work should be original, it must not have been copied from the other work and the second is that the work should consist of sufficient levels of creativity. If a work doesn't satisfy these conditions then the protection cannot be claimed.

According to section 13 of the CRA, 1957, copyright would automatically vest in the subject matter without any further formality. They may be subject to Section 15(2), which could result in the loss of copyright for more than 50 industrial creations. As a result, industrial production should be seen as the point at which the copyright owner moves his work from the merely creative to the industrial, thus losing his copyright.

The creator of the design may plan to directly materialize their imagination into a three dimension and straightway stitch the dress. In this case, the three dimension creation that is the dresses created by the designer would also be considered as an artistic work, a subject matter of the copyright

It is argued that a one-of-a-kind gown that is made without the use of a design document and is not aimed to be a forerunner for future productions should be considered a creative work rather than a design. There is no need to apply section 15(2) in this case.

To claim protection for the designs under the Copyright Act or the Designs Act is the most hardest procedure.

Protection of Fashion Designs Under Copyright Act, 1957

Fashion designers use copyright protection as well as other legal protection models to secure their creative creations. The Indian Copyright Act of 1957 establishes the legal framework for copyright in India. Section 15 of the Copyright Act is significant in terms of protecting design in general and fashion design in particular.

Section 15 of the Copyright Act deals with the designs registered or capable of being registered under the Designs Act, 2000

Registration under the Copyright Act

When read in context with the Designs Act, the Copyright Act, notably Section 15, establishes a basic framework for design protection in India as follows:

1) Designs that are capable of being registered under the Designs Act, 2000 and are registered according to the Act's provisions are exclusively protected under the Designs Act.

- A design can claim protection under the Designs Act only when it satisfies the following conditions
- It should fall under the category of designs under section 2(d)³ of the Designs Act,2000

It should satisfy the conditions as said in the section 4 of the Designs Act,2000⁴

2) Designs that are eligible for registration under the Designs Act of 2000 but are not do so are protected under the Copyright Act of 1957.

3) Designs that are not eligible for registration under the Designs Act of 2000 because they are original artistic works are protected under the Copyright Act of 1957.⁵

Fashion design is also considered as a type of design, so the above mentioned protection framework will also apply to the fashion designs.

When a fashion design claims protection under the Designs Act,2000 through registration process then those designs can only claim protection in the Designs Act. If a design is protected under the Copyright Act through registration then the period of protection will be for Fifteen years

As a result, fashion designers in India frequently refer to their creative works, such as fashion designs, as artistic works, which they want to safeguard. However, via a series

of rulings, Indian courts have created reasoning to decide when a design is an "artistic creation" and when it is a "design" in the sense of the Designs Act, 2000. The judgment of the Delhi High Court's Division Bench in *Rajesh Masrani Vs. Tahiliani Design Pvt. Ltd.*⁶ was the first and most important step in establishing that approach. In this instance, the Court held that registration of the work was not required and was not a requirement for initiating a claim for damages for Copyright infringement.

In light of the circumstances, and after comparing the works of plaintiff and defendant, the Court found that defendant infringed on plaintiff's copyright, and that it was a clear instance of copyright piracy. Although this judgment did not make a clear and elaborate difference between "copyright in artistic work" and "copyright in design," its significance for the fashion industry could not be overlooked. This case demonstrates how the Designs Act of 2000 and the Copyright Act of 1957 interact. Because of Section 15 (2) of the copyright act, many designs used to lose their copyright protection. However, this ruling indicates that copyright law can be a significant tool of protection in the case of actual fashion designers who create limited-edition lines with limited replication.

The jurisprudence established in the aforementioned case was further elucidated in *Microfibres Inc. Vs. Girdhar & Co. & Anr.*⁷ by the Division Bench of the Delhi High Court in a comprehensive and logical manner. This case concerned the violation of upholstery fabric design. In this case plaintiff was the manufacturer and seller of the cushion fabrics which are derived from the original and artistic works created by his employees.

Girdhar & Co. & Anr., the defendants (respondents in the appeal), argued that the designs, in respect of which the plaintiff claimed proprietary right and protection under the Copyright Act, 1957, were not artistic works, but rather designs in the sense of the Designs Act, 2000, and thus not capable of protection under Section 14(c) of the Copyright Act. However, the extent of this protection is limited and not worth it for a big number of fashion designers because it only allows them to protect their haute lines, which are restricted to only a few pieces of an exclusive apparel. Because they are made in huge quantities, garments that are part of ready-to-wear and mass market collections are not protected under the Copyright Act of 1957. (at least more than fifty).

It may be considered infringement if a design is replicated in any material form, including portrayal in three dimensions of a two-dimensional work or reproduction in two dimensions of a three-dimensional work (for example, making drawings and sketches of the gown).

Furthermore, the designer would have the only right to preserve it in any format, digital or otherwise. Taking photos or making a movie of the design drawings/gown is thus the sole prerogative of the originator/author/artist. The designer artist has sole authority to transmit the work to the public and to distribute copies of it.

The designer, on the other hand, has little authority over the gown's movement once it has been sold. Section 51 of the Copyright Act, which defines infringement, contains all of these exclusive rights. Even if the designer chooses to license the rights to the fashion design to someone A, the licensee is legally bound to act only within the parameters of the licensing agreement. Any act of dissent on his part would be considered an infringement. It's worth repeating that the designer of the concerned gown will only be protected in India under the CRA 1956 for his conception drawings or gown—if the same was first published in India or the author was a citizen of India at the time of creation. Making the work known to the public by issuing copies or disseminating the work to the public is what publication implies.

Protection of Fashion Designs under Industrial Designs Act, 2000

The most broadly used legal protection model for fashion design is industrial design protection. Fashion design is generally protected as an industrial design in most nations. The Designs Act, 2000, in India, establishes the legal framework for the

protection of industrial designs. And this is the most common law used by fashion designers to safeguard their creations.

The term "design" is defined in Section 2 (d) of the Designs Act as follows:

The section says that the term design fits into the definition only when it satisfies the condition and the process of registration can be acquired. Apparently the design can claim protection under the designs act only when it satisfies the following conditions.

- It should be new and original
- Preceding the date of applying for registration, it must not have been disclosed to the public in India or any other nation by publishing in tangible form, usage, or any other means.
- It must stand out from existing designs or combinations of existing designs in a meaningful way.
- It must not include or contain anything that is scandalous or vulgar.

The owner of a registered design receives copyright in the design under the Act, which means they have the exclusive right to use it on any object in any class in which the design is registered. It signifies that the Act protects against a group of articles rather than a single article.

No Protection to Unregistered Designs

Only registered designs are protected by the Designs Act, not unregistered designs. As a result, fashion designers who have not properly registered their designs are not eligible for the Act's advantages. They are unable to seek damages and an injunction to prevent the unauthorized copying of their designs from occurring again. Given the fast-paced nature of the fashion sector, where fashion design houses release new collections of fashion goods on a regular basis, usually every season, fashion designers require automatic and instant protection for their designs that is not dependent on registration.

The Design Act is unable to provide the same protection since it lacks the concept of unregistered design protection. Furthermore, it denies designers the opportunity to test their unique inventions on the market, observe how they are received, and then decide whether or not the design is worthy of registration.⁸

When compared to the other jurisdictions, India lacks the protection to the fashion designs especially for the unregistered fashion designs. It is extremely necessary to grant protection even to the unregistered designs as the registration process is extremely costly and also time consuming.

Time consuming registration process

Design registration is required to obtain protection against piracy under the Designs Act. This procedure is of limited benefit to fashion designers. The registration process outlined in the Act and the Designs Rules is complicated and time-consuming, making it unsuitable for the fast-paced fashion design business. In India, the entire design registration procedure (from filing an application to receiving a certificate of registration) takes roughly 10 to 12 months. And this is troublesome because a garment's anticipated life in a designer store is limited to one season, or three to four months.⁹

In this situation, a designer is left with just one option: to apply for design registration well ahead of the anticipated date of market debut of his or her works. This leads to a new challenge: maintaining the secrecy behind design elements. During the application's pendency, fashion design is vulnerable to abuse by designers' workers or anybody else whose hands the design may fall. Furthermore, the designer is at risk because the designer has no knowledge of the design's success prior to market demonstration and sale. As a result, once the registered design reaches the consumer market, the designer

may discover that the design is unappreciated and does not meet the predicted demand, rendering the entire time-consuming process of design registration worthless.

Inadequacy of Damages

Although the Designs Act provides for the recovery of damages from anyone who is engaged in the infringement of a registered design, the amount of money that can be collected is minimal (i.e. not exceeding fifty thousand rupees). The grandeur associated with couture designs worth lakhs of rupees is mocked by this damage barrier. The Designs Act, 2000 is not much adequate in giving protection to the fashion designs. The most adopted method of protection used by the designers is registration, which is costly and extremely time consuming and this scope of protection does not include the unregistered designs. And if an infringement occurs to a registered design the damages awarded by the court is also less. So, in this case there is a much need to widen the scope of protection to the fashion designs.¹⁰

The Interaction between the Copyright Act and the Designs Act

Copyright protection is granted automatically, without any procedures or charges, from the moment the design is created, as long as the design is considered "original." The problem with this approach is that "originality" is determined by the Court, whereas the designer is extremely responsible for proving that he or she is the creator. Furthermore, the designer must determine on his or her own whether there is any infringement of his or her designs. However, copyright protection lasts a very long time, as it safeguards the designer both throughout his or her lifetime and for sixty or fifty years after his or her mortality (depending on the national legal system of the country where protection is sought). The first crucial thing to remember is that copyright law may only protect designs that are considered works of art.

Industrial designs, on the other hand, are protected after they have been registered in the country where they are needed. Because the requirements are less stringent than those of copyright law, it can cover a larger range of designs (they must be new and have an individual character thus copyright law requires it to be original). Industrial designs are protected for ten to twenty-five years, but Unregistered Community Designs are only protected for a year (three years). Furthermore, the right provided by the registration of an industrial design is an absolute right, implying that there has been an infringement, regardless of whether the copying was done on intention or by mistake .

Copyright provides a longer protection, but designing legislation provides monopoly protection. Naturally, both systems have advantages and disadvantages, and the choice between the two must be made based on the circumstances.¹¹ The difficulty with fashion designs is that they usually follow a passing trend that only lasts a short time. That means that the protection provided must be adequate and quick, and the protection should be granted on the first day of public appearance and should last till the last day of the existence. Though both these acts tend to protect the fashion designs, it is not very effective as the designers should satisfy many conditions to claim protection under the act which is through the process of registration. And most of the emerging designers find it difficult to claim protection. So it is absolutely necessary to widen the ambit of the design protection.

From the aforementioned, it is obvious that copyright law and industrial design legislation work hand in hand to provide designers with a broader and more secure level of protection. The combination of the two is critical for achieving integrated protection, as the designer benefits from all of the benefits offered by both laws. That means that, in the event of an infringement, the designer can assert his or her rights under both laws, depending on what is appropriate for the given situation. For example, in the case of an unintentional infringement, the designer must advocate the rights provided by

design law, because copyright law is only enforceable if the creator establishes that his/her design has been reproduced directly or indirectly.

CONCLUSION

The ever-changing fashion trends, which are not only symbols of changing times but also of history, energy, and growth, stimulate the history of all cultures. The fashion business has experienced a surge unlike any other in recent years. Fashion is more than just clothes, jewelry, and shoes; it is a form of expression. The very need for the protection of fashion lies in the definition of Intellectual property itself. The global fashion industry is expanding at a tremendous rate. It has grown into a substantial component of the global economy and, consequently, must be protected by intellectual property rights in order to continue flowing. "Fresh and new designs are at the core of the burgeoning fashion business. Fashion design piracy, on the other hand, is stifling the industry's progress. The similar issue is affecting the Indian fashion design sector". Despite this classification, the fashion industry is not as well protected and is frequently plagued by issues of copying, knock-offs, and counterfeits, leading to Fashion Design Piracy. The reason for this is that traditional regulation lacks strict requirements for a better understanding and protection of the fast-paced fashion business. Furthermore, due to the ease with which their designs, patterns, and processes can be copied, the rights of fashion designers are susceptible to infringement. The resulting items are frequently of poor quality and significantly less expensive than the originals. Because these imitations pose a serious threat to a brand's market value and image, the creators' rights should be protected to the full extent as much as possible. Often, fashion designers spend tens of thousands of rupees on the development of their designs alone, even before they are released in front of the public, so it is critical for them that their works of art are secured and their legal rights are upheld.

Most have the opinion that imitation is the sincerest form of flattery, but it is not apt in most of the cases. If we consider the small scale designers, they spent their entire life on producing something new but as the technology develops the designs are being pirated in fraction of seconds, before the owners releasing the designs to the public. Not even the small industrialist developed ones also face the same issue. Though they have sufficient income to protect their designs, the time required is very extreme. Within that period the designs are copied on a huge basis. So, there should be an absolute protection should be given to the fashion designs as they are from the creative minds. The Copyright Act and the Designs Act tries to protect the fashion designs but it is not very effective.

Though both of these laws provide protection for fashion designs, they are not very effective and the registration process is time consuming and expensive. These laws do not apply to unregistered industrial designs. Therefore, taking all these aspects into account, effective protection has not yet been provided.

"India's intellectual property system needs to be improved to further help protect fashion designs from piracy."

First and foremost, the Designs Act of 2000 should incorporate a specific definition of "fashion design." And, in contrast to the current definition under Section 2(d) of the Act, which protects each aspect of a garment individually, the new term should facilitate the complete appearance and overall appearance of a particular piece of apparel or garment. Second, under the Designs Act of 2000, a simpler system for design registration should be created, as the current procedure is cumbersome and does not meet the needs of the dynamic fashion design business.

"Finally, the provision for unregistered design protection should be included. In this case, even short-term protection will address the requirements of the fashion design sector. All of these proposals, if implemented, would make India's current intellectual property regime more effective and efficient in combating the threat of fashion design infringement. Our legislation should undergo amendment procedures to fall in the scope of protecting the designs at the moment when they are born from the designers."

Suggestions

The existing laws' competence has been questioned, and this is worsened in the case of small enterprises and indigenous fashion workers, who find it impossible to obtain legal services to defend their goods, let alone fight for their rights. Registration for protection under the laws is a time-consuming and costly process that discourages many people from seeking help. The necessity of the hour is to take a more strict approach to dealing with such cases and to raise public awareness about the issue of piracy in order to educate both the general public and the designers themselves about the importance of properly protecting their intellectual creations. The definitions of fashion design and fashion design piracy should be included in the fashion design piracy model first. Because fashion design is such a broad term, there should be a more specific definition of the aspects that should be protected. Apparel, ornaments, shoes, bags, belts, accessories, wallets, and so on are examples. Then, what characterizes fashion design infringement must be determined. Whether an upgrade, inspiration, or adaptation to previous designs infringes on the designer's rights is debatable. Because the fashion industry relies on the art of imitation, the fashion design piracy model does not seek to be especially strict. As a result, lesser harsh measures will be required. Before making changes to existing designs, the creator's authorization should be sought. Counterfeit items can be controlled simply by obtaining a license from a high-end designer. When a counterfeit good is manufactured, both the designer and the copyist will benefit if the copyist gives enough credit to the original designer and obtains his consent. Because it is well recognised that counterfeit goods are of poor quality, the credibility of high-end and designer labels will not be harmed, as high-end consumers will still favor good quality clothing over price. Consumers are the ones that start a trend and make a designer renowned. Furthermore, a distinct panel should be established to assess designs that are submitted for registration. The panel should be composed of five members, including two well-known designers, two intellectual property specialists, and one person with extensive knowledge of fashion, economics, and piracy. The time limit for registering should be shortened to fifteen days to a month. In addition, the number of designs that can be registered in a single application should be confined to twenty to thirty. These proposals are based on the present time-consuming registration process and the amount of money spent on each design's registration. There should also be a database that the panel members must keep track of which designs have been registered and which have been denied registration. There should be a distinction between designs that have been registered and those that have been denied registration. Unregistered designs should be able to benefit from protection under the fashion design piracy model, which can continue for up to 11 to 13 months. Unlike current regulations, safeguards should only be granted for a limited period of time, taking into account the brief life span of a fashion trend. This can be for a period of seven to 10 years, but not longer. As a result of technology advancements and modern adaptation, it is critical that our existing laws be applied in a new light. Adaptable laws with certain flexibility are essential to survive in this competitive society.

REFERENCES

- Alexandra Manfredi, *Haute Copyright: Tailoring Copyright Protection to High-Profile Fashion Designs*, 21 *Cardozo J. Int'l & Comp. L.* 111 (2012)
- Cassandra Elrod, *The Domino Effect: How Inadequate Intellectual Property Rights in the Fashion Industry Affect Global Sustainability*. *Indiana Journal of Global Legal Studies*, (2017).
- Hilton, B., Choi, C. J., & Chen, S. *The Ethics of Counterfeiting in the Fashion Industry: Quality, Credence and Profit Issues*. *Journal of Business Ethics*, 128, 324-330 (2004)
- Film.V, *Ipr in Fashion Industry*, Manupatra Intellectual Property Reports, Altacit Global, 329-342 (2015)
- Adithya Reddy & Gowtham Shivshankar, *Legal Protection for Fashion Designs*, 3 *INDIAN J. INTELL. PROP. L.* 85 (2010).

- Sayali Diwadkar, Role Of IPR In The Fashion Industry, Indiana Journal of Global Legal Studies, 744-760, (2018)
- Naman Priyadarshi, Intellectual Property Rights: Crucial for Fashion Industry, International journal of Law Management and Humanities, IV, (2021)
- Ena Kapur, Analysis of Knockoff Culture and the need for IP protection in the Fashion Industry in India, O.P. Jindal Global University, 56- 60 (2021)
- Pankaj Kumar, Fashion and Related Intellectual Property Rights Issues, IIS (deemed to be University), 84- 95 (2019)
- Shishir Tiwari, Intellectual Property Rights Protection of Fashion Design in India: A Panoramic View, North Eastern Hill University, (2016)
- David M. Adler, Fashion Law - Protecting Brands and Designs, 5 Landslide Journal of Law, 21 (2013).
- Tina Martin, Fashion Law Needs Custom Tailored Protection for Designs, 48 U. BALT. L. REV. 453 (2019).
- Deniz Atik, Fashion creation and diffusion: The institution of marketing, Izmir University of Economics, Turkey A. Fuat Firat, University of Texas, USA, (2010) Kristin Sutor, In Fast-Fashion, One Day You're in, and the next Day You're out: Solution to the Fashion Industry's Intellectual Property Issues outside of Intellectual Property Law, MICH. St. L. REV. 853 (2020).
- Nicole Giambarese, The Look for Less: A Survey of Intellectual Property Protections in the Fashion Industry, 26 Touro L. Rev . 243 (2010).
- Tanya Minocha, Copyright Protection in the Fashion Industry, 14 Supremo Amicus 312 (2019).