

The Serve of Intellectual Property Rights in the World of fashion

Ms. Sushree Devashrita¹, Dr. Archana Sharma²

^{1,2}*Department of law, Vivekananda Global University, Jaipur*

Abstract- One of the most serious issues confronting luxury goods companies in a globalizing industry is cloning. The goal of this article is to examine the various types of counterfeiting that occur in the fashion business, as well as the ethical difficulties raised. We contend that the industry is part of the problem. Design piracy is widespread and tolerated, posing various ethical quandaries in judging the act of copying. We investigate the ethical issues raised by various types of copying in the fashion business. We end with some broad thoughts on the ethical implications of intellectual property rights.

Intellectual property law is a body of laws that governs the preservation and implementation of basic protections for innovations, creations, and other artistic creations. It is a broad term that embraces a diverse variety of inventive and unique creations. One of India's most important industries is fashion. When anything new debuts, it is generally followed by a flood of replicas, demanding the necessity for creative work security. The fashion market is expanding throughout the world.

Keywords: - Fashion Industry, Intellectual Property Rights, Design Piracy, Piracy Paradox, Globalization

INTRODUCTION

Fashion is defined by its designs, inventiveness, and one-of-a-kind trends. Fashion is more than just clothes; it also includes a wide range of high-end goods and services. Each year, the fashion center creates a fresh series of designs that must be safeguarded and governed by an appropriate legal authority. Through IPR protection, the manufacturer is protected against its utilization, company brand, product specifications, or print. The IPR serves an important role in protecting items from infringement and counterfeiting while also protecting the fashion sector.

Fashion counterfeiting is one of the most common actions in the industry. It implies illegally duplicating or making a replica of a garment creator's original

creation. Fashion design piracy is classified into two types:

- a) A knockoff is a nearly identical replica of an authentic fashion design that isn't exactly identical and is commercialized at a lesser price under a new brand name than the actual creator's. It is not illegal because there is no attempt to pass off the actual goods; but, if an individual demonstrates that the connection is close to fooling a person, judicial action may be taken against that. Fake products can be found in stores such as Forever 21 and Zara.
- b) A knockoff item is an identical replica or imitation of the actual brand that is marketed at a cheaper rate than the actual product in order to infringe on the genuine creator's trademark. Counterfeiting is illegal, and the administration and creators have spent a lot of money on lawsuits to keep these things from being sold. Chanel, Coach, Cartier, Tory Burch, and Gucci have all won multi-million dollar lawsuits against forgers of their distinctive designs and merchandise.

The idea that duplication results in new creativity were widely circulated in 2006. The "Piracy Paradox" was coined by Kal Raustiala and Christopher Sprigman to describe this phenomenon. Unlike counterfeits, which are extremely identical to genuine items and seek to deceive the customer by capitalizing on the popularity of the real good's trademarks, counterfeits do not bear any unlawful marks or badges and are manufactured solely on the acknowledged technique of duplicating. The great Indian wedding season brings the first replicas of the latest bridal apparel, from Sabyasachi Mukherjee to Anita Dongre, to India. Street marketplaces around the country, such as Chandni Chowk in New Delhi, rely on the concept of copying designs and selling at low costs in order to make revenue and preserve their market position. Internationally, Chinese online shopping portals such

as Alibaba-owned TaoBao and Shoppe Lazada receive a major portion of their revenue from producing knockoffs.

Thus, the knockoff business not only promotes business and competition but also strives to reduce the formation of monopolies in the market, which might potentially lead to abuse of dominance and anticompetitive behavior. According to Kal Raustiala and Christopher Sprigman, this benefits both enterprises that replicate original ideas and original fashion houses. They contend that creativity not only coexists with copying but also stimulates invention.

Duplication is beneficial for fashion is a "tired, old argument" based on an "antiquated, well before the depiction of the business." From my perspective, the "Piracy Paradox" is a weak reason for the constant duplication that occurs in the fashion apparel sector all over the world. It is a well-thought-out defense of imitation, which must be recognized by everybody as a viable business model inside the industry.

RESEARCH METHODOLOGY

This is a Doctrinal study design that intended research activity. Doctrinal research entails an analytical and thorough investigation of statutes, instruments, judicial pronouncements, and other documents.

COPYRIGHT AND THE FASHION INDUSTRY

Copyright refers to the legal right of ownership of intellectual property. In other words, copyright is the legal right to copy anything. This helps to ensure that only the original creators of the goods and those to whom they provide authorization have the sole right to replicate the work. All creative, pattern, musical, and literary work is protected by copyright. Section 2(c) of the Copyright Act of 1957 protects artistic design work. It could be a painting, a sketch, a sculpture, or any other form of artistic expression. It protects works that are one-of-a-kind. The design is protected under the Copyright for ten years from the date of registration.

The fashion industry is one in which an artist's work is highly regarded and for which the artist is compensated. As a result, it is vital that the artist's creativity, and hence his or her work, is protected by copyright restrictions. However, in the case of the fashion sector, only artistic design or architecture can

be protected under this statute, not garments, shoes, or any other fashion-related product.

According to the court in the case of Unicolor, Inc. v. Urban Outfitters, Inc, the print pattern of a woman's garment can be copyrighted, and any corporation that mimics the design or pattern will be sued for infringement. This means that a clothes print pattern or specific shoe design can only be copied. In most circumstances, copyright lasts for the author's or artist's lifetime plus 60 years from the year of death. In the case of Ritika Apparels v. BIBA, a fashion firm stole designs from another fashion house and copied the identical design in their product, incurring financial harm to Ms. Ritu Kumar. BIBA, on the other hand, was able to get away with it thanks to a loophole in Section 15(2) of the Copyright Act, which states that if a creation that can be protected under design law is not registered with the design authorities and is reproduced more than fifty times, the copyright in the same product is considered lost forever.

FASHION INDUSTRY AND PATENTS

Patents are issued for novel innovations that benefit the general public. It refers to a new technology that is used to manufacture things such as shoes and textiles. A patent portfolio may demonstrate technical proficiency in manufacturing long-lasting fabrics. This will entice investors and business partners to join you. A patent is a property right granted by the government that grants the holder exclusive rights to an invention for a set period of time. Patents are classified into three types: utility patents, plant patents, and design patents. This grant gives the inventor the legal right to prevent others from selling, manufacturing, or employing the innovation for a fixed period of time. Patent innovation offers 14 years of protection for design patents and 20 years of protection for utility patents from the date of filing, after which it enters the public domain and can be utilised economically by anyone without breaking the patent. Though patent inventions are costly and time-consuming, they can be used to safeguard an innovation that will be used in the Fashion industry for a long time and will not become obsolete if the idea is original and the technique can be repeated year after year. In 2016, Louis Vuitton received six Design Patents, Bottega Venetta received three, and Balenciaga received two.

When we try to connect the fashion industry with the patent sector, we find that they are incompatible since creative works are not innovations, but rather fresh creations. A pair of shoes cannot be patented until we have never had one before, but the design in the shoes is not a new creation, so it will not be counted as a patent. Furthermore, because of substantial research and investment, patents are widely issued in the industrial and technological sectors, making patents expensive.

FASHION INDUSTRY AND TRADEMARKS

A trademark is defined as a mark capable of being visually expressed and differentiating one person's products and services from another, and may include the shape of objects, their packaging, and color combinations, according to Section 2(zb) of the Trademark Act of 1999. A trademark is any term, name, symbol, design, or color combination that is used in commerce to distinguish and identify products. The "distinctive Gucci GG Logo" and the "Gucci Trademark," for example, distinguish Gucci bags and clothing from those made by other companies. A trademark can help to maintain a brand's prestige premium and is incredibly valuable. Large fashion companies place a great emphasis on brand equity. Trade dress, including size, shape, color packaging, and even sales manner, is likewise protected under the law. A trademark is any term, name, symbol, design, or colour combination that is used in commerce to distinguish and identify products. The "distinctive Gucci GG Logo" and the "Gucci Trademark," for example, distinguish Gucci bags and clothing from those made by other companies. A trademark can help to maintain a brand's prestige premium and is incredibly valuable. Large fashion companies place a great emphasis on brand equity. Size, form, colour, packaging, and even sales strategy are all protected under trademark law. One of the most well-known cases is Romag Fasteners, Inc. v. Fossil, Inc. Romag, a modest company based in the United States, rose to prominence quickly after bringing a trademark and patent infringement action against Fossil, a well-known watch manufacturer. Because the products are unique and inventive in concept, a trademark is typically used to evaluate customer interest and attention. Even though trademarks play a minor role in logos and symbols, many Indian artists and designers

prefer trademark protection over design and patent protection. This is because fashion patents are difficult to get, and corporations will go to any length to protect their brand. Furthermore, for innovators and fashion designers, trademarks are less expensive, simpler, and save time.

CONCLUSION

Following globalization and deregulation, the fashion industry has continued to grow and is expected to become a key contributor to the global economy. Fashion designers may use the registration to prevent the misuse or exploitation of their original ideas or product features. A substantial amount of money is invested in designs and trends, which are then shared with the public in order to increase their popularity and commercial activities. Although the registration procedure is costly and time-consuming, it is required to follow it in order to prevent unscrupulous competitors from stealing some of the most innovative ideas and to ensure future security.

As a result, the birth of an idea signals the entrance of a distinguishing trait that, in order to avoid plagiarism, must be protected by intellectual property. In the coming years, India is projected to acquire more outsourcing and brand-owned stores with Indian partners. Strong economic growth, a growing manufacturing sector, and a thriving IT populace are expected to combine to make the country the next big global fashion and clothing opportunity. In other words, the Indian market could be the next big thing. As a result, the government and legislation now require even greater safeguards and guarantees. Plagiarism is difficult to eradicate, but not impossible. If IPR is effectively protected, it will be nearly hard to violate it.

REFERENCE

- [1] Barrère, C., & Delabuyère, S. (2011). Intellectual property rights on creativity and heritage: the case of the fashion industry. *European Journal of Law and Economics*, 32(3), 305-339.
- [2] Priyadarshi, N. (2021). Intellectual Property Rights: Crucial for Fashion Industry. *Issue 2 Int'l JL Mgmt. & Human.*, 4, 1545.
- [3] Zarocostas, J. (2018). The role of IP rights in the fashion business: A US perspective. *WIPO MAGAZINE*, (4), 33-38.

- [4] Ferrill, E., & Tanhehco, T. (2010). Protecting the material world: The role of design patents in the fashion industry. *NCJL & Tech.*, 12, 251.
- [5] Kumar, P. (2019). Fashion and Related Intellectual Property Rights Issues. Available at SSRN 3322320.
- [6] Hilton, B., Choi, C. J., & Millar, C. (2000). Quality, Counterfeits and Strategy in the Fashion Industry. *Security Journal*, 13(4), 53-70.
- [7] Hilton, B., Choi, C. J., & Chen, S. (2004). The ethics of counterfeiting in the fashion industry: quality, credence and profit issues. *Journal of business Ethics*, 55(4), 343-352.
- [8] Elrod, C. (2017). The domino effect: How inadequate intellectual property rights in the fashion industry affect global sustainability. *Indiana Journal of Global Legal Studies*, 24(2), 575-596.