



# IJRASET

International Journal For Research in  
Applied Science and Engineering Technology



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# INTERNATIONAL JOURNAL FOR RESEARCH

IN APPLIED SCIENCE & ENGINEERING TECHNOLOGY

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**Volume:** 10    **Issue:** I    **Month of publication:** January 2022

**DOI:** <https://doi.org/10.22214/ijraset.2022.40117>

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# The Role of IPR in Fashion Industry

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## I. INTRODUCTION

Intellectual Property Law is a set of laws that govern the protection and enforcement of legal rights to inventions, designs, and other artistic works. It is a broad word that encompasses a wide range of creative and original inventions. The author has concentrated on the IPR laws that apply to the fashion sector in this essay. The fashion industry is one of India's most important sectors. Whenever something new appears, it is usually followed by duplicates, necessitating the need for original work protection. The fashion industry is expanding across the globe. Designs, innovation, and one-of-a-kind trends are at the heart of fashion. Fashion isn't only about clothes; it also encompasses a wide range of high-end goods and services. Every year, the fashion hub creates a new collection of designs that must be protected and regulated by a competent legal forum. The manufacturer is protected against its usage, aesthetic elements, and product features or a print through IPR protection. The IPR plays a critical function in protecting products from plagiarism and copying, as well as safeguarding the fashion industry. Only when inventors or artists are given protection for their work and are protected from being duplicated can the fashion business prosper in its real meaning. There are three types of intellectual property rights that can and have shown to be extremely beneficial to the clothing industry. Copyrights, trademarks, and patents are all types of intellectual property rights.

Fashion piracy is one of the most frequent activities in the business. It entails unlawful copying of a fashion designer's original work or producing an imitation of the same<sup>1</sup>. Fashion design piracy is divided into two categories:

- 1) A knockoff is a near duplicate or copycat of an original fashion design that isn't quite similar and is marketed under a different label than the original designer's at a lower price. It is not unlawful because it is not an effort to pass off the genuine product; nevertheless, if a person shows that the similarity is near to deceiving a person, legal action can be taken against it. Knock off items may be found at stores like Forever 21 and Zara<sup>2</sup>.
- 2) A counterfeit article is an exact replica or imitation of the original product sold at a lower price than the original product with the purpose of infringing on the original designer's trademark. Counterfeiting is unlawful, and the government and designers have spent millions of dollars on lawsuits to limit the sale of these items. Chanel, Coach, Cartier, Tory Burch, and Gucci have all won multi-million-dollar lawsuits against counterfeiters of their unique designs and goods<sup>3</sup>.

## II. FASHION INDUSTRY AND COPYRIGHT

The legal right of ownership of intellectual property is referred to as copyright. To put it another way, copyright is the legal right to copy anything<sup>4</sup>. This helps to ensure that only the true producers of goods and to those whom they grant permission have the sole right to recreate the work. Copyright covers all artistic, pattern, musical, and literary work<sup>5</sup>. The artistic design work is protected by Section 2(c) of the Copyright Act of 1957. It might be a painting, a sketch, a sculpture, or any other artistic creation. It safeguards works that are unique in nature. From the date of registration, the design is protected under the Copyright for a term of ten years<sup>6</sup>. The fashion business is one in which an artist's work is highly valued and for which the artist gets compensated for his or her efforts. As a result, it is critical that the artist's creativity is protected, and therefore his or her work is protected by copyright rules. However, in the case of the fashion industry, only the artistic design or architecture can be guarded under this act, not the clothes, shoes, or any other product related to the fashion market.

<sup>1</sup> 'Role Of Intellectual Property In The Fashion Industry - Lexforti Legal News & Journal' (*LexForti Legal News & Journal*, 2021) <<https://lexforti.com/legal-news/role-of-intellectual-property-in-the-fashion-industry/>> accessed 7 October 2021.

<sup>2</sup> 'Role Of Intellectual Property In The Fashion Industry - Lexforti Legal News & Journal' (*LexForti Legal News & Journal*, 2021) <<https://lexforti.com/legal-news/role-of-intellectual-property-in-the-fashion-industry/>> accessed 7 October 2021.

<sup>3</sup> 'Role Of Intellectual Property In The Fashion Industry - Lexforti Legal News & Journal' (*LexForti Legal News & Journal*, 2021) <<https://lexforti.com/legal-news/role-of-intellectual-property-in-the-fashion-industry/>> accessed 7 October 2021.

<sup>4</sup> 'Copyright Definition' (*Investopedia*, 2021) <<https://www.investopedia.com/terms/c/copyright.asp>> accessed 7 October 2021.

<sup>5</sup> The Copyright (Amendment) Act 1992.

<sup>6</sup> The Copyright (Amendment) Act 1992.

In the case of *Unicolor, Inc. v. Urban Outfitters, Inc.*<sup>7</sup> the court ruled that According to the court, the print pattern of a woman's dress can be copyrighted, and any firm that duplicates the design or pattern will be sued for infringement. This means that a print pattern on clothing or certain shoe designs can only be copied<sup>8</sup>. In most cases, the length of copyright is the author's or artist's lifetime, plus 60 years from the year of the author's death<sup>9</sup>. Also, in the case of *Ritika Apparels v. BIBA*<sup>10</sup>, a fashion brand lifted designs from another fashion house and reproduced the same design in their product, causing Ms. Ritu Kumar to suffer financial loss. BIBA, on the other hand, got 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 has not been registered with the design authorities and has been reproduced more than fifty times, the copyright in the same product will be considered lost forever.

### III. FASHION INDUSTRY AND PATENTS

Patents are granted for innovative inventions that benefit the general population. It refers to an innovation that incorporates new technologies for producing items such as shoes and textiles. A patent portfolio may indicate technical superiority in developing new fabrics that do not go out of style. This will attract investors and business partners. A patent is a government-issued property right that grants the holder exclusive rights to an invention for a certain length of time. Utility patents, plant patents, and design patents are the three categories of patents. For a set length of time, this grant gives the inventor the legal right to prevent others from selling, manufacturing, or utilizing the innovation. Patent innovation provides protection for 14 years for design patents and 20 years for utility patents from the date of filing, after which it enters the public domain and can be economically used by anyone without violating the patent. Though patent inventions are expensive and time-consuming, they may be used to secure an innovation that can be utilized in the Fashion sector for a long time and will not become obsolete if the idea is original and the procedure can be repeated every year. In 2016, Louis Vuitton was awarded six Design Patents, Bottega Venetta was awarded three, and Balenciaga was awarded two<sup>11</sup>. However, when we try to combine the fashion business with the patent industry, it turns out that they are incompatible since creative works are not inventions, but rather new creations. A pair of shoes can't be patented if we've never had one before, but the design in the shoes isn't a unique innovation, therefore it won't be counted as a patent. Furthermore, patents are commonly provided in the industrial and technological sectors because of extensive research and investment, making patents costly.

### IV. FASHION INDUSTRY AND TRADEMARKS

Section 2(zb) of the Trademark Act of 1999 defines a trademark as a mark capable of being graphically expressed and distinguishing one person's products and services from another, and may include the shape of items, their packaging, and color combinations. A trademark is any term, name, symbol, design, or colour combination that is used to differentiate and identify products in commerce. For example, the "distinctive Gucci GG Logo" and the "Gucci Trademark" differentiate Gucci bags and clothes from those manufactured by other firms. A trademark can assist to preserve a brand's prestige premium and can be extremely valuable. Large fashion businesses place a high value on their brand equity. Trade dress, such as size, form, colour, packaging, and even sales method, is also protected under trademark law<sup>12</sup>. A trademark is any term, name, symbol, design, or colour combination that is used to differentiate and identify products in commerce. For example, the "distinctive Gucci GG Logo" and the "Gucci Trademark" differentiate Gucci bags and clothes from those manufactured by other firms. A trademark can assist to preserve a brand's prestige premium and can be extremely valuable. Large fashion businesses place a high value on their brand equity. Trade dress, such as size, form, color, packaging, and even sales method, is also protected under trademark law. The case of *Romag Fasteners, Inc. v. Fossil, Inc.*<sup>13</sup> is one of the most well-known examples.

<sup>7</sup> *Unicolors, Inc v Urban Outfitters, Inc* [2017] US Court of Appeals for the Ninth Circuit (US Court of Appeals for the Ninth Circuit).

<sup>8</sup> *Intellectual Property Rights: Crucial For Fashion Industry* (2021) <<https://www.ijlmh.com/paper/intellectual-property-rights-crucial-for-fashion-industry/>> accessed 7 October 2021.

<sup>9</sup> 'Copyright Law In India - Intellectual Property - India' (*Mondaq.com*, 2021) <<https://www.mondaq.com/india/licensing-syndication/406982/copyright-law-in-india>> accessed 7 October 2021.

<sup>10</sup> *Ritika Private Limited vs Biba Apparels Private Limited* [2016] Delhi High Court (Delhi High Court).

<sup>11</sup> *Intellectual Property Rights: Crucial For Fashion Industry* (2021) <<https://www.ijlmh.com/paper/intellectual-property-rights-crucial-for-fashion-industry/>> accessed 7 October 2021.

<sup>12</sup> 'Role Of Intellectual Property In The Fashion Industry - Lexforti Legal News & Journal' (*LexForti Legal News & Journal*, 2021) <<https://lexforti.com/legal-news/role-of-intellectual-property-in-the-fashion-industry/>> accessed 7 October 2021.

<sup>13</sup> *Romag Fasteners, Inc v Fossil, Inc* [2017] Dyk, Circuit Judge (Dyk, Circuit Judge).



Romag, a small firm based in the United States, achieved notoriety in a short period of time after filing a trademark and patent infringement lawsuit against Fossil, a well-known watch manufacturer. Because the items are distinctive and innovative in idea, a trademark is commonly utilized to gauge client interest and attention. Even though trademarks have a little part in logos and symbols, many Indian artists and designers prefer to utilize trademark protection over designs and patents. The reason for this is that fashion patents are difficult to come by, and businesses will go to any length to preserve their brand. Furthermore, trademarks are less expensive, easier, and save time for innovators and fashion designers.

## V. CONCLUSION

Following globalization and liberalization, the fashion sector has continued to develop and is anticipated to become a major contributor to the economy all over the world. The fashion innovators might utilize registration to prevent the misappropriation or exploitation of their original ideas or features of any items. A significant amount of money is invested in designs and trends, which are subsequently shared with the public to improve their popularity and commercial operations. Although the registration procedure is costly and time-consuming, it is necessary to follow it to prevent unscrupulous rivals from stealing some of the most inventive ideas and to secure future security. As a result, the birth of an idea heralds the arrival of a distinct trait that must be safeguarded by intellectual property to avoid plagiarizing. India is likely to acquire more outsourcing and brand-owned outlets with Indian partners in the next years. Strong economic development, a developing manufacturing sector, and a booming tech population are projected to combine to make the country the next big global fashion and clothing opportunity. That is to say, the Indian market might be the next big thing.

As a result, the government and legislation now need even more protection and assurance. Plagiarism is tough to eradicate, but it is not impossible. Violation of IPR will be close to impossible if it is properly secured.



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