

LAWFOYER INTERNATIONAL
JOURNAL OF DOCTRINAL LEGAL
RESEARCH
(ISSN: 2583-7753)

Volume 2 | Issue 2

2024

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FASHION FORTIFICATION: DEFENDING DESIGN WITH PATENTS, COPYRIGHTS, AND TRADEMARKS

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I. ABSTRACT

Fashion is a sector heavily dependent on intellectual property rights (IPR) to safeguard its ideas, designs, and brands, with an annual valuation reaching USD 2 trillion. This study explores the complex terrain of intellectual property rights (IPR), examining its varied implications, historical foundations, and current issues through a methodical blending of primary and secondary research approaches. This paper first clarifies the pros and cons of intellectual property rights (IPR) in the fashion industry before navigating the complex mechanics of IPR protection, cultural heritage preservation, and economic growth catalysis. The article outlines the legal framework supporting IPR in fashion by closely examining important case laws and significant legal frameworks, such as trademark statutes, copyright laws, and design patents. The report clarifies several IPR categories that are important for fashion companies, including trade dress, patents, designs, trade secrets, trademarks, and copyrights. Fashion firms' legal entanglements and enforcement obstacles in protecting their intellectual property are carefully examined through carefully chosen case studies like *Louis Vuitton vs. My Other Bag* and *Puma vs. Forever 21*. In order to tackle enduring issues like counterfeiting, ineffective enforcement, and inadequate design protection, this study promotes proactive intellectual property rights management tactics and the use of innovative technology. The study emphasizes the critical role that strategic IPR enforcement plays in protecting the integrity of fashion brands and creating an atmosphere that is favorable to innovation and growth by extrapolating legal precedents shown in cases such as *Gucci v. Guess*.

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In short, the legal research provides a sophisticated comprehension of the dynamic interaction between intellectual property rights (IPR) and the global fashion industry. It highlights the necessity of strong legal frameworks, proactive management approaches, and cooperative efforts between stakeholders to strengthen the fashion industry's creative ecosystem against new threats.

II. KEYWORDS:

IPR, Fashion, Patent, Copyright, Trademark.

III. INTRODUCTION

"I don't design clothes. I design dreams." Ralph Lauren³

In later years, intellectual property (IP) rights have served a crucial role in the growth of the highly competitive global design sector, which produces nearly USD 2 trillion yearly. The legal rights to inventions, designs, and other creative works are ensured and enforced by a body of laws known as intellectual property law. It's a broad umbrella that includes a lot of unique and innovative creations. The law regarding intellectual property has played an important influence in the growth of fashion. Take runways, for example; very few of the designs on exhibit are available in stores. The runway allows designers to demonstrate their creative abilities, attract media attention, and increase brand awareness. This type of intellectual property licensing is very significant for the fashion business.

IP is a vital asset of the fashion industry. One of the most significant industries in India is the fashion industry. Duplicates frequently replicate everything new, thus original work protection is required. The global fashion sector is growing. Fashion is primarily about designs, originality, and unique trends. Fashion includes a vast array of upscale products and services in addition to clothing.

³ American fashion designer

Every year, fashion hub develops a new collection of designs, and these need to be governed and safeguarded by an appropriate legal body. With IPR protection, the manufacturer is shielded from its use, design components, and product attributes, or a print. In order to secure original ideas, trademarks, and creative expressions, intellectual property rights are essential for safeguarding the interests of designers, firms, and other players in the fashion ecosystem.

In this research paper titled "**Fashion Fortification: Defending Design with Patents, Copyrights, and Trademarks**," we will delve into the intricate relationship between intellectual property rights (IPR) and the fashion industry. This study aims to illuminate the significance of IPR in safeguarding the creativity and innovation inherent in fashion designs, trademarks, and brands. We will explore the various types of intellectual property rights crucial for the fashion sector, including trade dress, copyrights, patents, trade secrets, and geographical indications. By examining key case laws and historical contexts, we aim to provide a comprehensive understanding of the legal frameworks that protect fashion designs. Furthermore, this paper will discuss the challenges and enforcement issues faced by fashion companies in defending their intellectual property, highlighting notable cases such as Louis Vuitton vs. My Other Bag and Gucci vs. Guess. Finally, the study will propose proactive strategies and innovative technologies for better IPR management, ensuring the integrity and growth of the fashion industry in the face of evolving threats like counterfeiting and inadequate design protection.

IV. RESEARCH OBJECTIVES

The aim of this paper is to analyze intellectual property rights (IPR) in the fashion industry through various perspectives, including:

1. To study the implications of intellectual property rights (IPR) on the fashion industry, taking note of both present-day problems and historical basis.

2. To identify and categorize trade dress, patents, designs, trade secrets, trademarks, and copyrights, among other IPR categories that are pertinent to fashion companies.
3. Address the legal basis for intellectual property rights (IPR) in the fashion industry, emphasizing copyright, trademark, and design patent laws.
4. For an understanding of the legal entanglements and enforcement issues in defending fashion firms' intellectual property, one need examine particular case studies like *Louis Vuitton vs. My Other Bag* and *Puma vs. Forever 21*.
5. To make ideas to enhance legal structures and enforcement strategies in order to better safeguard the intellectual property rights of fashion firms.
6. A summary of information and understanding gained from the examination of intellectual property rights (IPR) in the fashion sector, offering a definitive evaluation of the performance of existing tactics and suggesting potential avenues to enhance IPR use and protection.

V. RESEARCH METHODOLOGY

The study titled “**Fashion Fortification: Defending Design with Patents, Copyrights, and Trademarks**” is based on descriptive doctrinal and secondary research methodologies. Doctrinal research involves the analysis, interpretation, and referencing of primary legal sources such as statutes and case law. Specifically, the research examines key statutes like the Copyright Act of 1957, the Design Act of 2000, and the Trademark Act of 1999. Case laws analyzed include landmark cases such as *Louis Vuitton vs. My Other Bag* and *Puma vs. Forever 21*. Secondary research methodologies involve information from internet websites, articles, blogs, and other relevant sources. By integrating these research approaches, the researcher has endeavored to produce a comprehensive and well-founded study.

VI. FASHION AND ITS INTELLECTUAL RIGHTS

Copying is endemic in the fashion industry, but the effects are particularly acute for emerging designers, for whom every sale counts. “*The damage actioned by knock-offs is twofold*”⁴, partner and intellectual property specialist at London law firm Shoosmiths. “Firstly, it robs the designer of the proceeds from the sale of their product, often the result of considerable research and development investment. Secondly, it denies the designer the rightful recognition as the original creator.”

Legal rights assist fashion designers in two main ways: **Protection and Exploitation**. Protection stops others from benefiting from their hard work by copying or using their designs without permission. Exploitation allows designers to generate revenue through licensing agreements with third parties. Intellectual property (IP) rights are not just about protection against copying; they also identify the creator of content. By adopting strategies similar to those in the media and entertainment industries, fashion brands can manage their IP rights more strategically, distinguishing them from commercial operations.

Intellectual property law offers various rights to fashion designers. Some arise automatically, such as copyright, while others, like trademarks, require registration. By leveraging these rights, designers can safeguard their creations and enhance their brand's value.

VII. HISTORICAL CONTEXT

The history of intellectual property rights in the fashion industry dates back to the 19th century, when European couture houses first appeared. The notion of exclusive designs was first introduced by designers like Charles Frederick Worth in Paris, who laid the groundwork for the defense of artistic expression in the fashion industry. The need to safeguard unique designs and brand identities grew as the industry developed, which prompted the creation of statutes involving copyright protection and trademark registration.

⁴ Gary Assim(2023).

Over the span of the 20th century, norms pertaining to intellectual property underwent alterations to suit the distinct attributes of the fashion sector. Historical legal rulings, such as the famous *Chanel v. World Marketing Group*⁵ ruling in 1984, set the standard for fashion designs' copyright protection. Moreover, the growth of international trade and the prevalence of counterfeit goods led to efforts to fortify intellectual property enforcement systems globally, which resulted in accords like the WTO's Agreement on **Trade-Related Aspects of Intellectual Property Rights (TRIPS)**.

Fast fashion, social media, e-commerce, and other advancements have brought new opportunities and difficulties for intellectual property rights in the fashion sector in the digital age. Modern strategies for enforcement and trademark protection are now required due to issues including design piracy, counterfeiting, and brand dilution. Additionally, the democratization of fashion and the growth of collaborative consumption through platforms like Instagram and Youtube have changed brand interaction and consumer behavior, raising new issues for marketing tactics and intellectual property management.

VIII. TYPES OF INTELLECTUAL PROPERTY RIGHTS IN FASHION

- a. **TRADEMARKS:** Trademarks are recognizable signs, symbols, or logos that are used to identify and set one party's goods and services apart from another. Trademarks are vital for fashion branding and recognition since they are hallmarks of authenticity, style, and quality. To guard against infringement, counterfeiting, and brand dilution, fashion firms often register their names, logos, and distinctive symbols as trademarks.

In the fashion industry Trademark law plays a pivotal role by helping distinguish brands and their products in the marketplace. A trademark can be a word, phrase, symbol, design, or a combination thereof, associated with a product or service. This association serves as a market differentiator, setting one brand apart from its

⁵ 18 Civ. 2253(LLS).

competitors. In fashion, every product—from clothing and shoes to accessories and fabrics—is identified by a unique name and logo, which can be trademarked. These identifiers help consumers recognize and differentiate one brand's designs from another's.

- b. Fashion labels use trademarks to protect their unique logos, names, and even advertising slogans, ensuring their distinctiveness in a crowded market. Additionally, trademarks extend beyond conventional identifiers to include non-traditional marks such as colors, shapes, moving images, and holograms. These marks can also cover non-visible signs like sounds and scents, further broadening the scope of trademark protection. For instance, perfumes and other aromatic products, which are significant in the fashion world, can be trademarked for their unique scents. Example of Trademark: the "Swoosh" logo of Nike is a globally recognized trademark that signifies the brand's products
- c. **TRADE DRESS:** Trade dress is the overall look and packaging of a good or service that is used to convey where it came from. Trade dress protection in the fashion industry includes unique features like product packaging, uniform designs, and store layouts that are either intrinsically unique or have taken on extra meaning in the marketplace. Trade dress rights prohibit rivals from copying a fashion brand's visual identity in a way that could mislead customers. Example for trade dress: Burberry's tartan pattern, which is instantly recognizable and associated with the brand.
- d. **COPYRIGHTS AND DESIGN:** Copyright and Designs is essential element for protecting and securing products' literary, dramatic, artistic, and musical works which is often used as for enhancing the products' image and make it more presentable in the market.

Copyright and fashion design are intricately linked, primarily through the protection of original artistic works. Copyright law safeguards artistic expressions, which can include graphic works such as paintings or drawings. In fashion, textile

designs might be eligible for copyright protection, but the actual garment typically falls under the purview of design law, such as the Designs Act 2003. This distinction is crucial because while one-off fashion garments and jewelry may be protected as works of artistic craftsmanship, mass-produced items require design law for protection.

The concept of separability is essential in determining what qualifies for copyright protection. According to this rule, artistic features that can be recognized distinctly from the utilitarian aspects of an item can be copyrighted. This principle was established in the 1954 Supreme Court case **Mazer v. Stein**⁶, where Balinese statues used as lamp bases were deemed copyrightable due to their artistic value independent of their functional purpose.

In the fashion industry, the application of copyright can be complex. For instance, in 2008, Marc Jacobs faced accusations of copying a design by Swedish artist⁷. The dispute was resolved with monetary compensation, highlighting that Olofsson's painting, separate from the functional scarf, was protected by copyright. However, many cases in fashion aren't as straightforward. For example, designs on Givenchy t-shirts or sequined motifs on Chanel dresses may be considered aesthetic works separate from their functional purpose. Yet, the courts often find that the creative elements in fashion are inseparably tied to the garment's functionality, limiting the application of the separability rule. Thus, while artistic elements in fashion can sometimes be copyrighted, design law generally offers more comprehensive protection for the fashion industry.

Example : Chanel's minimal black dress design is protected under copyright law for its artistic value

- e. **PATENTS:** Patents are very vital and essentially important in the fashion industry in order to protect and safeguard the new inventions and innovations, such as new

⁶347 U.S. 201 (1954).

⁷ Gösta Olofsson.

fabrics, materials, or manufacturing processes or any other new and different idea or notion from the rest which makes the company better. Patents play a crucial role in fashion design by protecting innovative technologies integrated into products. Notable examples include the manufacturing technology behind CROCS shoes, wrinkle-free fabrics, UV-filtering textiles, and water-repellent materials.

These patents are vital for the successful commercialization of inventions, especially those requiring substantial investments for development. While artistic creations themselves cannot be patented, the incorporation of technology into fashion is increasingly popular. For instance, American designer Lauren Scott is adding radio frequency identification (RFID) tags to children's clothing. Originally used for tracking freight shipments, these tags can store medical information or prevent abductions by triggering alarms if a child leaves a designated area. This technological integration illustrates the growing intersection between fashion design and patented innovations, enhancing both functionality and safety.

Example - Nike's air cushioning technology, which provides comfort and support in the midsoles of shoes, is a notable example of a patented innovation in the fashion industry.

- f. **TRADE SECRETS** - Trade secrets in the fashion business include a wide range of proprietary information, including names of major suppliers and customers as well as complex design and logistics management software. These secrets are critical for defending business strategies that rely on speed and secrecy to rapidly provide limited quantities of popular items. For example, the Spanish retail behemoth ZARA has perfected this strategy by implementing a unique information technology (IT) system that significantly reduces their manufacturing cycle. Unlike rivals, who may take four to twelve months, ZARA may detect a new trend and produce the final product in 30 days. This short turnaround is aided by regular communications from shop managers regarding developing trends, which

designers swiftly incorporate into new fashions. Automated facilities cut selected fabrics, and a complex transportation system with over 200 kilometers of subterranean rails and 400 chutes guarantees that finished products arrive in stores within 48 hours.

Similarly, other fashion companies use IT to create personalized items that respond to unique client requirements. Shirts Dotnet, for example, has transformed the traditional garment sector by moving to a made-to-order approach. Their B2B platform provides mass customisation options, allowing clients to design and purchase clothes straight from a virtual shop. The underlying software, which is protected as a trade secret and under copyright law, is critical to their business plan.

For example, Coca-Cola's formula is a famous trade secret.

- g. GEOGRAPHICAL INDICATION** - Geographical Indications (GIs) are intellectual property rights that recognize merchandises originating from specific regions, highlighting qualities, reputations, or characteristics directly tied to their geographical origin. In the fashion industry, GIs play a crucial role by protecting garments with unique textures and fabrics that are distinctive to a particular area. These attributes often have significant artistic value, enhancing the cultural and economic significance of the fashion items produced. By safeguarding these regional specialties, GIs help maintain the authenticity and prestige of fashionable clothing and accessories, ensuring that the unique heritage and craftsmanship of these regions are recognized and preserved within the global fashion market.

Example of a Geographical Indication: Harris Tweed, a fabric originating from Scotland, known for its quality and craftsmanship.

IX. CASE LAWS

Case Studies for How Fashion Brands Have Successfully Protected Their IPR Through Legal Actions, Enhancing The Importance Of Proactive Management:

1. ***Ritika Private Limited v. BIBA Apparels Private Limited (2016)***⁸ - This case underscored the necessity of registering designs under the Design Act for copyright protection. The court ruled that Ritika's unregistered, industrial designs were ineligible for copyright protection under Section 15(2) of the Copyright Act of 1957. Ritika contended that Biba infringed on her copyright by using Ritu Kumar's designs as models for its own products. Despite Ritika's assertion that her sketches and clothing designs were distinctive and warranted copyright protection, Biba argued that the designs were industrial. Consequently, the court determined that Ritika's copyright claim was invalid, highlighting the critical importance of registering designs to safeguard intellectual property rights in the fashion industry.
2. ***Rolex SA v. Alex Jewellery Pvt Ltd. (2009)***⁹- The court issued a permanent injunction against the defendants for trademark infringement and passing off, emphasizing the critical need to protect registered trademarks and the consequences of unauthorized use. The plaintiff, Rolex SA, requested this injunction to stop the defendants from infringing on their brand by manufacturing and selling fake jewelry under the ROLEX name. The defendants, Alex Jewellery Private Limited, Ashish Kumar Ahuja, and S.S. Kohli, were found guilty of using the ROLEX trademark unlawfully. The court's decision highlighted the global recognition and protection of the ROLEX brand, originally registered in Switzerland in 1908, and prohibited the defendants from further exploiting the brand for dishonest profit.
3. ***Mr Aditya Birla Fashion and Retail Limited v. Manish Johar*** ¹⁰ - The court found that the defendant's use of the name "ALLEN SOLLY" was intended to deceive and confuse consumers, resulting in a permanent injunction to prevent further use. The plaintiff accused the defendant of globally manufacturing and selling various fashion items, including garments, footwear, and fragrances, using the protected name "ALLEN SOLLY." The defendant was charged with infringing the plaintiff's copyright

⁸ *Ritika Private Limited v. BIBA Apparels Private Limited (2016) CS (OS)NO. 182/2011.*

⁹ *Rolex SA v. Alex Jewellery Pvt Ltd. (2009) S (OS)NO. 41/2008.*

¹⁰ *Mr Aditya Birla Fashion and Retail Limited v. Manish Johar (2019) [6] TM NO.7/2017.*

and trademark rights by unlawfully using their name and markings, forging, and copying their distinguishing qualities. The court's analysis revealed that the defendant's actions misled consumers into believing they were purchasing genuine products from the plaintiff. The plaintiff sought an injunction to halt the infringing use and to dispose of any existing stock with the misleading brand name.

4. **Mahindra & Mahindra Ltd. v. Mahindra & Mahindra**¹¹ - The case of Mahindra & Mahindra Ltd. v. Mahindra & Mahindra is a significant example of trademark disputes in India. Mahindra & Mahindra Ltd., a leading Indian multinational, sued another entity for using the "Mahindra" name in similar business operations. The core issue was whether this use would cause consumer confusion and dilute the brand's value. The court ruled in favor of Mahindra & Mahindra Ltd., highlighting the importance of protecting established brand names to prevent consumer confusion and unfair competition. The court recognized that "Mahindra" had achieved distinctiveness and goodwill, and unauthorized use would lead to misrepresentation, thereby ensuring consumers could identify genuine products and fight counterfeiting.
5. **GUCCI V. GUESS**¹² - Gucci, a renowned luxury brand known for its high-end clothing and accessories, accused Guess, an international fashion retailer, of copying its copyrighted designs and logos. Gucci alleged that Guess created and sold items that closely resembled its trademarks, including the diamond pattern, interlocking "G" logo, and green-red-green stripe design. This dispute led to multiple lawsuits in countries such as the US, Italy, and France. In 2012, a U.S. federal court ruled in favor of Gucci, finding Guess guilty of trademark infringement and unfair competition. The court ordered Guess to compensate Gucci and issued an injunction to prevent further trademark violations. This case underscored the importance of protecting intellectual property rights in the fashion industry.

¹¹ *Mahindra & Mahindra Ltd. v. Mahindra & Mahindra* 1979 SCR (2)1038.

¹² *GUCCI V. GUESS* 843 F. SUPP. 2D 412 (S.D.N.Y. 2012).

6. **Louis Vuitton vs. My Other Bag**¹³ - Louis Vuitton successfully defended its trademark against Dooney & Bourke, who were found to have used similar designs on their handbags. This case reinforced the importance of trademark protection in the fashion industry. In this seminal case, notable for its impact on copyright infringement, Louis Vuitton faced off against 'My Other Bag,' a producer of parody tote bags. Louis Vuitton filed a lawsuit against 'My Other Bag,' alleging copyright infringement and design theft due to the latter's tote bag featuring an image resembling Louis Vuitton's trademark. During the trial, the court acknowledged that parody can communicate dual and contradictory messages. Louis Vuitton claimed that the defendant's product was a clear copy of their copyrighted design, whereas the defense argued that it was a legitimate parody and critique, thereby protecting intellectual property rights. Ultimately, the court ruled in favor of 'My Other Bag,' recognizing the product's satirical nature and dismissing the charges.
7. **Puma vs. Forever 21 - Inc.**¹⁴ This case concerns allegations of copyright and design infringement, specifically involving Puma's suede footwear and Forever 21. The latter replicated a limited edition of shoes originally created under the Puma brand and associated with the renowned singer Rihanna. The Creeper Sneaker, Fur Slide, and Bow Slide were significant components of Rihanna's Fenty collection, which she personally designed. The court concluded that the mere association of a celebrity with a product, whether through affiliation or endorsement, does not automatically grant copyright protection to the product. Copyright protection hinges on the distinctiveness, originality, and novelty of the design. Importantly, Rihanna was not explicitly referenced in the litigation.
8. **Adidas America Inc. v. Payless Shoesource Inc.**¹⁵- In 2001, Adidas-America, Inc. and Adidas-Salomon AG, collectively referred to as "Adidas," initiated legal proceedings against Payless ShoeSource, Inc. ("Payless") for replicating their three-strap shoe

¹³ Louis Vuitton vs. My Other Bag 156 F. Supp. 3d 425 (S.D.N.Y. 2016).

¹⁴ Puma vs. Forever 21 – Inc. 2:17-cv-02523, (C.D. Cal.).

¹⁵ Adidas America Inc. v. Payless Shoesource Inc. No. CV 01-1655-KI.

design. Payless was marketing footwear and athletic apparel resembling Adidas merchandise. Initially dismissed, the case was revived in 2006 by the Ninth Circuit. This subsequent hearing resulted in Adidas prevailing, awarded \$305 million in damages encompassing equitable royalties and punitive measures against Payless. Despite Payless's appeal seeking reduced damages, the court upheld the initial verdict.

X. LEGAL FRAMEWORK & ENFORCEMENT

A. The Designs Act of 2000: The Designs Act, 2000, offers a pragmatic framework for safeguarding fashion designs by providing robust and comprehensive protection lasting up to 15 years, which exceeds the scope typically provided by copyright laws. This Act, particularly under Section 2(d), requires that a design demonstrates independent existence from its article to qualify for protection. Registration entails meeting specific conditions: the design must be completely original, not previously accessible to the public, possess aesthetic appeal, and exclude offensive or obscene elements. These criteria ensure that registered designs maintain novelty and aesthetic merit, thereby strengthening their legal protection under the Designs Act, 2000.

❖ Advantages of protecting fashion designs under this Act include:

A. Comprehensive Protection: Unlike copyright, which may only cover specific aspects of a design, the Designs Act offers broader and more secure protection for the entirety of a fashion design.

B. Longer Duration: The 15-year protection period ensures that designers have an extended period to commercialize their creations without fear of unauthorized copying.

3. Legal Clarity: Clear criteria for registration help designers understand what qualifies for protection, reducing ambiguity and legal disputes.

4. *Enhanced Market Value*: Registered designs gain credibility and market value, which can be crucial for fashion houses and designers seeking to capitalize on their intellectual property.

5. *Deterrence Against Copying*: The Act acts as a deterrent against unauthorized copying and counterfeiting by providing legal remedies against infringers.

Products protected under the Designs Act, 2000, include fashion apparel, accessories, textile patterns, and any other industrial or handicraft item where aesthetic design plays a significant role in commercial appeal.

B. The Indian Copyright Act of 1957 –

In India, the protection of fashion or apparel designs can be secured under either copyright law or industrial design regulations as outlined in the Indian Copyright Act of 1957. According to Section 13 of the Act, copyright subsists in original literary, dramatic, musical, and artistic works, thereby encompassing fashion/apparel designs as forms of artistic expression. This implies that fashion designs may potentially qualify under Section 2(c) and benefit from protection under Section 13(1) of the Copyright Act of 1957.

❖ Advantages of protecting fashion designs under the Copyright Act include:

1. *Creative Expression Safeguarding*: Copyright protection ensures that the creative efforts and unique artistic expressions embodied in fashion designs are safeguarded against unauthorized copying or reproduction.
2. *Economic Benefits*: Protection encourages designers to invest in creating innovative designs without fear of immediate replication, fostering a conducive environment for economic growth within the fashion industry.
3. *Global Recognition*: Adherence to copyright standards aligns Indian fashion designs with international intellectual property norms, facilitating global recognition and marketability.

4. *Legal Redress*: Copyright protection provides legal recourse against infringement, enabling designers to enforce their rights and seek remedies for unauthorized use of their designs.

Products typically protected under the Copyright Act include:

- *Textile Patterns*: Original patterns and designs applied to textiles used in fashion garments.
- *Garment Designs*: Unique and original designs of clothing, including their aesthetic elements.
- *Accessory Designs*: Original designs of fashion accessories such as handbags, jewelry, and footwear.

By recognizing fashion designs as artistic works under copyright law, the Indian legal framework aims to encourage creativity, innovation, and economic development within the fashion industry while providing robust legal protection against infringement.

C. The Trademark Act of 1999 -

In contemporary fashion design, there is a growing trend among designers to incorporate registered emblems prominently into their clothing and designs. This practice not only enhances brand recognition but also integrates the logo as a fundamental element of the overall design aesthetic. By registering these trademarks under the Trade Marks Act of 1999, fashion designers gain significant legal safeguards against unauthorized replication of their designs. This protection extends beyond mere logos to encompass entire brand identities, ensuring that distinctive elements of fashion lines are shielded from infringement.

- ❖ **Advantages of protecting fashion under the Trade Marks Act of 1999 include:**

1. **Prevention of Design Piracy:** Trademarks deter others from copying or imitating distinctive fashion elements, thereby safeguarding the originality and uniqueness of designer creations.
2. **Brand Recognition and Reputation:** Registered trademarks build consumer trust and brand loyalty by associating specific designs or logos with a particular quality or style, fostering brand identity in the competitive fashion market.
3. **Legal Recourse and Enforcement:** Designers can legally enforce their rights against infringers, seeking remedies such as injunctions, damages, and even criminal penalties in cases of willful infringement.

Products protected under the Trade Marks Act of 1999 encompass not only clothing and accessories but also various fashion-related goods such as footwear, handbags, jewelry, and even fabrics featuring distinctive marks or logos. This broad scope ensures comprehensive protection for a wide range of fashion products, reinforcing the importance of trademark registration in the fashion industry.

D. Geographical Indications Act of 1999:

In the Geographical Indications Act of 1999, specific categories of products eligible for protection are delineated in the Fourth Schedule. This statutory framework extends protection to fashion garments, emphasizing the distinctive textures and creative value of fabrics utilized in the manufacturing of apparel and accessories. Registering geographical indications serves to safeguard these elements, offering several advantages. Firstly, it fosters economic growth by incentivizing innovation and quality craftsmanship within the fashion industry. Secondly, it ensures consumers can identify and trust products originating from specific geographical regions renowned for their expertise in textile production. Moreover, this protection aids in preserving cultural heritage associated with traditional textile techniques, thereby promoting sustainability and authenticity in fashion production..

XI. CURRENT CHALLENGES IN IPR FOR FASHION

Intellectual Property laws for fashion face many challenges in how much they can protect and enforce. This is because fashion relies on new ideas and trends, which are best protected through Intellectual Property. However, there aren't enough specific laws for the fashion industry, which means designers and their creativity aren't well protected. This leads to widespread counterfeiting, where designs are copied and sold cheaply. Some illustration of such challenges include: -

1. Copyright in fashion is meant to protect the creative parts of designs, not how they work. This means things like the patterns on clothes can be copied easily. This problem was looked at in a famous US court case, *Varsity Brands, Inc. v. Star Athletica, LLC*¹⁶. In this case, two clothing companies were arguing. Varsity Brands sold cheerleading uniforms with different designs, and they got copyrights for some of them. Star Athletica started making similar uniforms for cheaper and got sued by Varsity Brands for copying. Star Athletica said the designs couldn't be copyrighted because they were closely tied to the purpose of being uniforms. The main thing not answered in the case was if Varsity's designs were unique enough to be copyrighted.
2. Another problem is that fashion styles keep changing all the time, and it's hard for patents to keep pace. Also, new technologies come up quickly, giving some fashion companies an edge. But getting a patent can cost a lot, and it takes a long time, which might lead to others copying the design before it's approved.
3. **Copying and Counterfeiting:** The fashion business has tremendous hurdles in copying and counterfeiting. The popularity of counterfeit items, such as knockoff designer apparel, accessories, and footwear, causes significant financial losses for authentic fashion businesses. The industry's quick speed and worldwide supply chains make it difficult to enforce intellectual property rights (IPR) and prevent illegal copying. For example, luxury brand Gucci has consistently battled

¹⁶ 197 L. Ed. 2d 354; 2017 U.S. LEXIS 2026.

counterfeiters who produce fake Gucci products and sell them at lower prices, undermining the brand's exclusivity and quality.

4. **Enforcement Issues:** Enforcement issues: Enforcing intellectual property rights (IPR) in the fashion sector is complicated and time-consuming, requiring substantial resources, experience, and coordination among numerous parties such as designers, producers, merchants, and law enforcement. Identifying and prosecuting infringers is difficult, particularly in international marketplaces, because to differences in legislation and enforcement processes between states.
5. **Lack of Design Protection:** Several nations lack proper protection for fashion creations under IPR legislation. Unlike innovations that may be patented or unique works that can be copyrighted, fashion designs frequently fall into the gray area. The lack of comprehensive design protection allows for the copying or reproduction of designs without legal implications.
6. **Fast Fashion and Trend Cycles:** The fashion industry's fast-paced trend cycles might make it difficult for IPR rules to keep up with innovation and safeguard creators' rights. By the time legal action is taken against infringers, the relevant trend may have passed, making enforcement less effective. The rise of fast fashion brands like Zara and H&M has led to increased design piracy, where new designs are quickly copied and sold at lower prices. This practice undermines the original designers' efforts and affects their market share.
7. **Complex Supply Chains:** Fashion supply chains, which include many entities including designers, manufacturers, suppliers, distributors, and retailers, make managing intellectual property rights more challenging. Ensuring intellectual property protection across these linked networks necessitates open communication, collaboration, and legal agreements at all stages of creation and delivery.

8. **Cultural Appropriation:** The fashion industry has been condemned for cultural appropriation, which involves using patterns, motifs, or traditional aspects from minority cultures without due acknowledgement or consent. Balancing IPR protection with respect for cultural heritage and avoiding exploitation is a difficult task that necessitates a thorough grasp of cultural sensitivity and ethical concerns. For instance, Victoria's Secret faced backlash for using Native American headdresses in their fashion show, sparking debates about the ethical implications of such practices

In addition, In a report,¹⁷ the analytics firm reveals that Instagram serves as a hub for the counterfeit trade, encompassing a wide range of products such as fake Chanel bags, imitation Nike trainers, and counterfeit Valentino accessories. According to the study, nearly 20 percent of fashion product posts on Instagram feature counterfeit items, totaling approximately 50,000 active accounts predominantly engaged in promoting and selling these replicas, with a strong focus on luxury fashion. Reddit has also emerged as a prominent platform for counterfeit goods, effectively replacing traditional search engines in this domain.

The platform hosts numerous forums (subreddits) dedicated to fashion replicas, boasting a collective user base exceeding 700,000 individuals. These forums are designed to offer comprehensive guidance on initiating transactions involving counterfeit goods, including advice on evasion tactics, lists of reputable sellers, and reviews of replica products. This trend is notably gaining traction among younger consumers and poses significant challenges to enforcement efforts.

XII. STRATEGIES FOR FASHION BRANDS

1. **Trade Mark registration:** Protect your brand's name, emblem, and other unique identifiers or taglines with trademarks. This lessens the possibility of other users employing markings that are confusing to customers.

¹⁷ Andrea Stroppa, Davide Gatto, Lev Pasha, Bernardo Parrella, Ghost Data 2019.

2. **Design patents:** To safeguard the distinctive and original designs of your apparel, accessories, or packaging, apply for design patents. For a limited time, this stops other people from replicating your creations.
3. **Copyright protection:** Copyrighted unique creative works include artwork, fabric designs, and marketing collateral. Although creative works are inherently protected by copyright, copyright registration offers extra-legal advantages and security.
4. **Trade dress protection:** Use trade dress protection to safeguard the general aesthetic of your goods and packaging. This contains distinctive and brand-associated components like color palettes, package styles, and product arrangements.
5. **Non-disclosure Agreements (NDA):** When working with suppliers, manufacturers, or designers, use NDAs to protect sensitive information, such trade secrets or innovative designs.
6. **Online brand protection:** Keep an eye out for fraudulent advertising, duplicate goods, and unapproved use of your trademarks on websites, social media networks, and online marketplaces. Removing unauthorized products or content requires the necessary action. For instance, Burberry has implemented robust online brand protection strategies to combat counterfeit products and unauthorized sellers.
7. **Licensing Agreements:** To allow third parties to utilize your designs, trademarks, or copyrights, you might want to consider negotiating license agreements. To preserve control over the use of your intellectual property, make sure these agreements contain clear terms and restrictions. For example, Ralph Lauren has successfully used licensing agreements to expand its product range, including fragrances and home goods

8. **Other factors such as:** Adapt new and emerging technologies such as block chain technology which helps to keep the information safe. Use of advanced technologies to protect and enforce IPR. Maintenance and having a PROACTIVE IPR management.

XIII. CONCLUSION

In conclusion, the fashion industry is a pillar of the world economy, intricately linked to intellectual property rights (IPR) that are essential to its inventiveness, commercial viability, and innovation. The present study has examined the complex relationship between intellectual property rights (IPR) and fashion, and it has demonstrated that strong legal protections, including patents, trade dress, trade secrets, trademarks, and copyrights, are essential to creating an environment in which designers can flourish and protect their original works from unauthorized use and duplication.

IPR enforcement plays a crucial role in preserving market integrity and thwarting counterfeiting, as demonstrated by important case studies that include landmark legal cases like *Louis Vuitton v. My Other Bag* and *Gucci v. Guess*. In order to effectively prevent infringement and maintain fair competition, these instances highlight the need for proactive management methods, such as technology breakthroughs in online brand monitoring and the strategic use of licensing agreements.

In conclusion, a balanced approach to IPR that supports innovation while maintaining moral norms and preserving cultural diversity is necessary given the dynamic nature of the fashion business. In order to effectively tackle new issues in a global economy, governments, industry players, and legal professionals must work together to improve IPR frameworks, increase enforcement mechanisms, and foster international discourse. By achieving this, the 21st-century fashion business can maintain its position as a fulcrum of innovation, profitability, and cultural preservation. The relationship between intellectual property rights and the fashion industry is dynamic and multifaceted. As the industry continues to evolve, so too must the strategies for protecting and leveraging intellectual property. Ongoing collaboration between fashion brands, legal experts, and

policymakers is essential to address emerging challenges and foster innovation. By prioritizing the protection of intellectual property, the fashion industry can continue to thrive, ensuring that creativity and originality remain at the forefront. It is imperative for stakeholders to remain vigilant, proactive, and committed to upholding the integrity of intellectual property rights in the ever-changing landscape of fashion.

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