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BRAND BEYOND BORDERS: LICENSING AGREEMENTS IN THE GLOBALIZATION OF FASHION BRANDS AND THE LEGAL ARCHITECTURE OF INTELLECTUAL PROPERTY ENFORCEMENT IN INDIA

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I. ABSTRACT

The problem of globalisation of fashion brands and the use of licensing agreements makes the provision of legal regulations rather complicated, particularly the Intellectual Property (IP) protection in various jurisdictions. The article examines the strategic importance of licensing arrangements for international expansion, accompanied by an analysis of the legal risks associated with cross-border IP protection, focusing specifically on the legal environment of the Indian market. Based on the comparison of IP enforcement systems, previous case laws and regulatory environments, the study has found that there are fundamental weaknesses in the protection of trademarks, design rights and brand integrity in the jurisdictions. The paper proposes that the evolving IP regime in India, as presently governed by the Trademarks Act 1999, the Designs Act 2000, and the Copyright Act 1957, all of which remain in force, offers international fashion firms' significant opportunities and corresponding implementation challenges in the context of licensing arrangements. By comparing judicial precedents such as Christian Louboutin SAS vs Pawan Kumar and Louis Vuitton Malletier vs Sheru Shiv Kumar, this paper sheds light on the jurisdictional issues in IP litigation, forum shopping and the effectiveness of the injunctive relief mechanism. The study suggests the detailed mitigation of any framework that involves contractual protection and technological authentication, strategies of jurisdictional choice, and partnering enforcement strategies. This structure is responsive to the imperatives of quality control, provisions on territorial exclusiveness, restrictions on sub-licensing and dispute resolution architectures tailored to the Indian market environment. The results are of value to the legal

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literature on transnational protection of brands and give useful insights into the fashion business that would handle the globalisation process of licensing as a complex strategy in new markets.

II. Keywords

Fashion Licensing, Intellectual Property Enforcement, Cross-Border IP Protection, Indian Trademark Law, Brand Globalisation.

III. INTRODUCTION

The modern fashion sector is in an ever-expanding global market, where the growth of the brand outside the national boundaries has become a necessity for the continued commercial sustainability and market leadership. Licensing agreements are now becoming the most popular means of brand proliferation on an international level, enabling the fashion houses to take advantage of the local market knowledge, distribution channels, and manufacturing capability, without having to take too much risk in terms of capital expenditure, as well as operational risks.² This form of globalisation, however, is accompanied by important legal complications, especially in respect to the protection and enforcement of intellectual property rights (IPR) in varying jurisdictional systems and the level of sophistication of intellectual property (IP) protection, enforcement and judicial interpretation.³

It is the intellectual property portfolio of a fashion brand of companies that has various overlapping rights such as trademarks, design registration, copyrights and in some jurisdictions, trade dress rights. This raises some special issues in the application of these rights by licensing arrangements involving jurisdictions of developing or developing IP regimes, including India. The Indian market is an exemplary case of the paradigm of tension in the globalisation of fashion brands using the licensing process. India, with a population of a consumer market of over 1.4 billion, high growth in the disposable

² Chaudhry PE and Zimmerman A, 'Protecting Your Intellectual Property Rights: Understanding the Role of Management, Governments, Consumers and Pirates' (2013) *Business Horizons* 56(1), 43-54.

³ Cornish W, Llewelyn D and Aplin T, *Intellectual Property: Patents, Copyright, Trademarks and Allied Rights* (9th edn, Sweet & Maxwell 2019) 745-768.

income of its urban dwellers, and a rising brand awareness, is a desirable expansion destination for global fashion companies.⁴ At the same time, the Indian system of protection of IP may be described as complete in terms of statutory structure, but having unique enforcement issues, such as judicial backlog, inconsistencies of lower courts, border enforcement difficulties, and advanced counterfeiting rings.⁵

The current article is a systematic review of the legal risk involved in licensing fashion brands when cross-jurisdictional, involving the analysis of the intellectual property enforcement system within the Indian legal system. Tensions in structure are examined by the research between the global demands of brand protection and the local demands of enforcement reality, and how a licensing arrangement can be structurally designed to both reduce jurisdictional exposure and provide brand integrity and commercial exclusivity. By conducting comparative legal analysis, case law analysis, and analysis of enforcement mechanisms, this paper creates an elaborate framework of risk identification and strategic mitigation of the particular context of the IP regime in India. A foundational policy document informing the objectives of this research is India's National Intellectual Property Rights Policy, 2016 ("IPR Policy"), adopted by the Union Cabinet on May 2016 sets a foundational commitment towards aligning India's IP regime with international obligations.

A. Research Objectives

This study is guided by three interrelated objectives.

1. It examines the regulatory architecture governing intellectual property protection in India, including statutory provisions, judicial precedents, and administrative enforcement mechanisms applicable to fashion brands.

⁴ The World Bank, 'India Overview' <https://www.worldbank.org/en/country/india> accessed 1 February 2026.

⁵ Dharmendra K and Patel B, 'Enforcement of IP Rights in India: Challenges and Opportunities' (2020) *Journal of Intellectual Property Rights* 25, 89-103.

2. It identifies the principal vulnerabilities in cross-border licensing arrangements, with particular focus on jurisdictional challenges, enforcement limitations, quality control concerns, and risks associated with sub-licensing.
3. It proposes targeted mitigation strategies tailored to the Indian market environment, including contractual structuring, technological authentication, and coordinated enforcement mechanisms.
4. The scope of analysis is primarily centred on India, while drawing comparative insights from select common law jurisdictions, including the United Kingdom and Singapore, to contextualise and strengthen the analysis. The study focuses on fashion sector entities, including luxury fashion houses, premium lifestyle brands, and fast fashion companies engaged in licensing activities within India, including manufacturing, distribution, and retail operations.

B. Research Questions

1. To what extent does India's current IP enforcement framework adequately protect foreign fashion brands entering the Indian market through licensing agreements?
2. How Efficacious is the judicial remedies including injunctive relief and damages accessible under the Trademarks Act 1999 and the Designs Act 2000 deter IP infringement through counterfeiting fashion goods in the Indian market, and what structural reforms could strengthen their deterrent value?
3. To what extent do contractual restrictions on sub-licensing and technological authentication mechanisms effectively safeguard the interests of foreign fashion brands in preventing unauthorised use and counterfeiting within the Indian market?

C. Research Methodology

This study adopts a doctrinal and non-empirical research design, grounded in qualitative legal analysis. The primary methodology involves doctrinal analysis of statutory provisions governing intellectual property law in India, including the Trademarks Act

1999, the Designs Act 2000, the Copyright Act 1957, the Information Technology Act 2000, and the Consumer Protection Act 2019. The research further relies on detailed case law analysis of judicial precedents relevant to fashion brand protection and licensing disputes, including decisions of the Delhi High Court and the Supreme Court of India.

In addition, a comparative legal approach has been employed to contextualise the Indian legal framework with reference to select common law jurisdictions, particularly the United Kingdom and Singapore, in order to identify structural similarities and divergences in IP enforcement mechanisms. Secondary sources, including academic commentary, journal articles, and authoritative treatises on intellectual property law, have also been consulted to support doctrinal interpretation and policy analysis.

The analytical framework of this study is centred on identifying legal risks in cross-border licensing arrangements and evaluating enforcement effectiveness through statutory interpretation, judicial trends, and procedural realities. The methodology integrates issue-based analysis with comparative insights to propose context-specific mitigation strategies tailored to the Indian market environment.

IV. CONCEPTUAL FRAMEWORK: LICENSING AGREEMENTS IN FASHION BRAND GLOBALIZATION

A. The Strategic Rationale for Licensing in Fashion Brand Expansion

Contractual agreements of licensing comprise a situation whereby the licensor, a brand owner, sells specific rights to a licensee to be used in specified commercial exploitation of intellectual property resources within specified territory and under specified negotiated conditions.⁶ Common licensing arrangements in the context of the fashion industry include rights to use trademarks, rights to implement designs, manufacturing specifications, compliance with quality standards, and parameters of distribution channels. The strategic merits of licensing in relation to other expansion modalities such

⁶ Kur A and Senftleben M, *European Trademark Law: A Commentary* (Oxford University Press 2017) 456-489.

as foreign direct investment, joint venture or setting up of wholly owned subsidiaries, are based on a number of commercial factors.

One of the key forces is capital efficiency, where the licensing allows entering the market without having to invest heavily in capital to build manufacturing facilities, establish a retail outlet, or finance stock. The other notable benefit is risk distribution, where the licensees take operational, market, and financial risks and the licensors have royalty streams, but with few downside risks. Also, licensing enables fast market penetration and expansion by tapping into the licensee's local market expertise, market-established distribution channels, regulatory familiarity, and cultural expertise.⁷ In the case of fashion companies in the emerging markets with intricate regulatory frameworks, licensing offers a means to cope with the local business patterns, governmental relations, and consumer demands by collaboration with local-based organizations.

B. Typology of Fashion Licensing Arrangements

Fashion licensing agreements occur in various structural forms, each of which has a different implication for IP enforcement. Manufacturing licenses endow production of branded products based on established designs and quality requirements, whereby the licensor will normally have control over distribution channels. Distribution licenses give permissions to market and sell branded products in a set territory in the form of wholesale, retail, and e-commerce. The retail format licenses also include brand presentation guidelines, store design specifications, and customer experience guidelines for branded retail settings. Comprehensive licenses can be integrated to give combined manufacturing, distributive and retail rights within specified territorial jurisdictions.

The issues of IP enforcement differ significantly in these typologies. To maintain brand purity by eliminating any factory production of lower quality, to protect the design to avoid unwanted duplication, and to control the supply chain to avoid diversion to rogue channels, manufacturing licenses must be subjected to stringent quality control systems,

⁷ Llewelyn M and Aplin T, 'The Challenges of Fashion Brand Protection' (2019) *EIPR* 41(2), 67-79.

design protection systems, and monitoring supply chain systems.⁸ Distribution licenses are faced with the threat of parallel imports, the existence of grey market products and also breaches of territorial boundaries. The retail format licenses face the difficulty of preserving the brand presentation standards and unauthorised exploitation of retail concepts. The choice of licensing structure is an essential determinant of the contractual architecture that is necessary to carry out an effective IP protection and enforcement.

V. THE INDIAN IP ENFORCEMENT LANDSCAPE FOR FASHION BRANDS

A. Statutory Framework and Regulatory Architecture

The regime of protection of intellectual property in India for fashion brands comprises various statutory instruments which overlap. The Trade Marks Act 1999 provides the basic structure for the protection of brand names that provide a registration service concerning word marks, device marks, shape marks, and, in a few cases, non-traditional marks consisting of colour combinations and three-dimensional forms.⁹ The Act does include well-known mark recognition, which gives greater protection against dilution and unfair advantage even where the mark is not registered in a particular class of goods or services. Section 11 forbids registration of identical or deceptively similar marks, whereas Section 29 places the parameters of infringement, which include the use of the mark unauthorised in the course of trade.

Designs Act 2000 regulates protection over visual design features to articles of manufacture, which include shape, configuration, pattern, ornamentation or arrangement of lines or colours. In the case of fashion items, design registration is granted to preserve the shape of a particular garment, patterns of textiles, arrangement of accessories and decorative elements. Registration gives exclusive rights for design protection under the Designs Act 2000 a term of ten years, with an option to renew the

⁸ Scafidi S, 'Intellectual Property and Fashion Design' in *Intellectual Property and Information Wealth* (Praeger 2006) 115-132.

⁹ Trademarks Act 1999, ss 2(1)(m), 2(1)(zb).

rights for a period of five years, totalling fifteen years.¹⁰ Nonetheless, design protection has significant restriction points, such as excluding methods or principles of construction, excluding features that are solely based on function, and novelty at registration. An additional statutory framework of relevance to fashion brands whose identity is rooted in geographic origin is the Geographical Indications of Goods (Registration and Protection) Act, 1999 ("GI Act") which is a relevant statute for fashion brands whose identity is tied to place of origin (e.g., Pashmina, Kancheepuram silk), particularly in the context of licensing arrangements involving Indian textile heritage.

The Copyright Act 1957 gives an additional safeguard to original artistic works which are used in fashion products such as fabric prints, graphic designs, and some three-dimensional design features which are considered works of art. The protection of copyright is automatic and lasts throughout the life of the author and for an additional sixty years.¹¹ But copyright protection of fashion design is faced with serious limitations in terms of doctrine, especially with respect to the idea-expression dichotomy and the exclusion of utilitarian articles. Indian courts have shown an unwillingness to grant copyright protection to the functionality of garment design and have granted copyright protection mainly to surface ornamentation and the graphic aspect.

B. Judicial Enforcement Mechanisms and Procedural Landscape

The application of IP rights in India is under a multi-level system of courts in India, which includes the District Courts, the High Courts and the Supreme Court of India. The High Courts of large commercial cities, especially Delhi, Bombay (Mumbai), and Madras (Chennai), serve as the main venue of IP litigation in fashion cases because of the special IP division and established jurisprudence of such cases.¹² Delhi High Court has become particularly relevant to the fashion IP disputes, as it has devised an advanced doctrine in

¹⁰ Designs Act 2000, s 11.

¹¹ Copyright Act 1957, s 22.

¹² Menon V, *Intellectual Property Law* (Eastern Book Company 2018) 234-256.

the areas of the well-known marks, the protection of the trade dresses, and the norms of the injunctive relief.

Interim injunctive relief is the most important enforcement tool in cases of infringement against fashion brands because the commercial worth of the seasonal collections decreases quickly, and full-trial relief may come many years after the original infringement. Indian courts use a three-pronged test in interim injunction whereby a plaintiff has to demonstrate a prima facie case, a balance of convenience to the plaintiff, and that the injury is irreparable without the injunction.¹³ The test of proving prima facie infringement varies among the various High Courts, with some having a high test of evidence of likelihood of confusion and others having a plaintiff-favours presumption of well-known marks.

The structural issues associated with the Indian judicial system have a major effect on the effectiveness of enforcement. Pendency of cases is high, and the average time it takes to have a final decision on a contested IP case has been increasing by three to seven years, depending on the court and the complication of issues.¹⁴ This time aspect provides infringers with strategic opportunities to keep on illegal processes in pendency, thereby reducing the effect of deterrence of unfavourable judgments that may be made later. In addition, application of judgment against stubborn defendants poses practical challenges, especially when the defendants do not have identifiable business assets or when they engage in informal business entities.

C. Border Enforcement and Administrative Remedies

The Intellectual Property Rights (Imported Goods) Enforcement Rules 2007 provide procedures for the enforcement of IP through customs so that the right owners can register their intellectual property with the customs to guard against the importation of fake products.¹⁵ Customs officials have the power to withhold a clearance of items

¹³ Code of Civil Procedure 1908, Order XXXIX, Rules 1 and 2.

¹⁴ National Judicial Data Grid, 'Pendency Statistics' <https://njdg.ecourts.gov.in> accessed 1 February 2026.

¹⁵ Intellectual Property Rights (Imported Goods) Enforcement Rules 2007.

suspected of being counterfeit when they have been recorded, so that those who hold rights can have a chance to pursue an infringement case. Nevertheless, the efficacy of the customs enforcement is restricted by the lack of resources, training gaps among the customs staff in the application of advanced methods of counterfeiting and the complexity of the procedure of the suspension and seizure.

The operational application of border control imposes certain problems on fashion products in particular, as the quantity of textile and clothing imports is very high, it is hard to distinguish between the original licensed products and counterfeits without specific authentication procedures, and the relatively short commercial life of fashion products puts pressure on the timely clearance of goods through customs. Rights holders are required to keep detailed sample stores with the customs and are required to make detailed training documentation and provide quick response procedures so that suspended shipments can be assessed within the short periods of time that exist as a result of the customs guidelines.

VI. JURISDICTIONAL CHALLENGES IN CROSS-BORDER IP ENFORCEMENT

A. Territorial Limitations and Extraterritorial Reach

The nature of intellectual property rights remains territorial in nature, as protection and enforcement of the rights are limited to the jurisdiction in which the rights are granted. This territorial rule poses natural complications when fashion companies conduct business via international licensing agreements because infringement in one law system may fail to furnish grounds to initiate a lawsuit in a different law system unless a certain linking aspect is established to that effect. Coming to fashion brands that license their marks and designs in India, this territorial restriction is expressed in a number of critical scenarios.

The issue of parallel importation has recurring problems, especially when authentic goods that are produced under licence in one country are introduced in India without the

consent of the Indian licensee or licensor. The jurisprudence of India has come up with a doctrine that allows parallel imports under specific conditions in the name of the principle of exhaustion of international rights. In *Samsung Electronics Co Ltd vs Kapil Wadhwa*, the Delhi High Court realised that the genuine goods, which are legally held in the market abroad, can be imported to India, but under the consideration of the material difference, quality difference, or the trademark-related limitation.¹⁶ This doctrine conflicts with exclusive territoriality provisions of licensing agreements, which may cause commercial erosion of exclusive territorial licensing.

Another aspect of jurisdiction complexity is the extraterritorial application of the Indian court orders. Although Indian courts have the power to impose an injunction against defendants under their jurisdiction, the application of such an order in cases where a given action happens outside Indian Territory faces practical and legal constraints. The Delhi High Court in the case *Christian Louboutin SAS vs Pawan Kumar* ordered an injunction to restrain the defendants against manufacturing and selling footwear with the distinctive red sole trademark, but the geographical scope of the order was restricted to operations within Indian jurisdiction.¹⁷ Those defendants who were still operating in other jurisdictions were not under the effective enforcement power of the court.

B. Forum Shopping and Jurisdictional Conflicts

The presence of many possible forums of IP disputes, which may result under international licensing arrangements, gives a chance of strategic forum choice, otherwise known as forum shopping. Parties might also want to proceed in jurisdictions that are viewed as providing a procedural benefit, substantive law that favours their cause or enforcement mechanisms that are better than those of other courts. In a typical Indian-based forum shopping, the set of circumstances through which fashion brands' licensing operates appears in a few scenarios.

¹⁶ *Samsung Electronics Co Ltd v Kapil Wadhwa* CS(OS) 1625/2012 (Delhi High Court).

¹⁷ *Christian Louboutin SAS v Pawan Kumar* CS(OS) 2867/2018 (Delhi High Court).

In such cases where the licensing arrangements are such that the foreign law forms the law governing and the foreign courts form the exclusive jurisdiction in case of dispute, enforcement of the resulting judgment in India would necessitate a manoeuvre around the Code of Civil Procedure 1908, Section 13, which provides circumstances in which the foreign judgments can be recognised.¹⁸ The foreign judgments will be acknowledged by the Indian courts in case the foreign court had competent jurisdiction, made the judgment based on the facts, the judgment is final and conclusive, and the judgment was not achieved through fraud. The requirements produce unpredictability on enforceability of foreign dispute resolution outcomes in India.

On the other hand, where fashion brands make legal claims in the Indian courts in relation to the actions of the licensees, concerns emerge as to the admissibility of the Indian court decision in foreign countries where the licensee has assets or operations. There is a large disparity in the mutual application of judgments among jurisdictions depending upon treaty obligations, principles of comity, and national procedural law. Lack of all-inclusive bilateral enforcement treaties between India and numerous important business jurisdictions of substantial business parties leaves enforcement gaps which high-end actors can take advantage of.

The strategic significance of the forum selection is not limited to judgment enforcement, but it also includes the procedural benefits, the level of evidence, the access to interim relief, and the future length of proceedings. The more developed IP jurisprudence and disposition of the Delhi High Court towards granting strong interim relief is what makes it an attractive venue to brand owners, but a court where defendants might want to challenge jurisdiction in Delhi based on its comparatively less developed IP practice or more defendant-friendly interim relief policy. The use of jurisdictional objections as delaying tactics was evident in the case of *Louis Vuitton Malletier vs Sheru Shiv Kumar*

¹⁸ Code of Civil Procedure 1908, s 13.

because the jurisdictional issues absorbed much time before the actual infringement matters could be heard.¹⁹

C. Choice of Law Complexities in International Licensing

Contracts between Indian territory and licensing have to deal with intricate questions of choice of law, especially the choice between obligations of the contract that are subject to a law chosen by parties to the contract and rights of intellectual property that are the subject of the law of a jurisdiction in which they are afforded protection. In fashion licensing, it is common to place the law of the jurisdiction of the licensor as the law of interpretation of the contract and the need to perform the contract. Nevertheless, Indian courts hold that the IP rights are subject to the Indian laws despite the provisions of contractual choice of law.

This bifurcation gives rise to possible conflicts in which the contractual provisions of the governing law of any foreign country are in conflict with the Indian IP law requirements. As an example, licensing contracts can contain terms as to the quality control standards, allowed changes or the sub-licensing rights, which are consistent with the IP provisions of the governing law, but which can be inconsistent with the Indian provisions of valid trademark licensing/program registration standards of registered designs. The Indian courts have indicated in readiness to interpret Indian IP law to override contractual terms and conditions that will either erode statutory IP protections or breach the principles of social welfare entrenched in Indian IP law.²⁰

There is further complexity in the interaction between the choice of contract law to be applied and the compulsory Indian consumer protection laws. Consumer Protection Act 2019 provides required protections and a standard of liability that cannot be contractually defined, which may lead to conflict with the provisions of the licensing agreements written in other consumer protection regimes. Fashion brands should make sure that

¹⁹ *Louis Vuitton Malletier v Sheru Shiv Kumar* CS(COMM) 425/2019 (Delhi High Court).

²⁰ *Sharma DK, Intellectual Property Rights* (Atlantic Publishers 2019) 345-367.

licensing reflects such obligatory legal provisions, notwithstanding the choice of laws descriptors in the contract.

VII. CRITICAL RISK AREAS IN FASHION LICENSING: AN INDIAN PERSPECTIVE

A. Trademark Licensors and Brand Integrity Maintenance

Loss of trademark due to quality corrosion is one of the greatest risks, which are inherent in licensing agreements because the brand reputation of a licensor can be partly reliant on quality standards, material choice and quality management of the licensee. The quality difference may easily take away brand equity and brand confidence in the fashion industry, where much of brand value is based on the perception of luxury, exclusivity and high-quality craftsmanship²¹ The Indian legal system on quality-based dilution has its advantages and disadvantages in the protection of the brand.

Section 49 of the Trademarks Act 1999 requires that licensors specify the degree of quality control over the permitted use of a trademark as a condition for registration of a registered user, thereby ensuring validity of trademark licensing arrangements.

The legal system acknowledges that the lack of quality control measures in licensing trademarks could amount to abandonment of the trademark or the loss of distinctiveness²² Nevertheless, there exist difficulties with the practice of legal implementation of quality standards. To demonstrate that licensed goods do not comply with quality standards set by a contract, it is necessary to have technical evidence, a comparative examination, and, in many cases, expert testimony on relevant industry standards and material properties. Moreover, the quality deterioration is often gradual in the form of a gradual replacement of poor-quality materials or manufacturing compromise to the point that it is hard to detect without strict monitoring programs.

²¹ McKenna MP, 'The Normative Foundations of Trademark Law' (2007) *Notre Dame Law Review* 82, 1839-1916.

²² Trademarks Act 1999, s 48.

India is advanced in the jurisprudential evolution of the well-known mark protection, which allows increased mechanisms to overcome the issue of dilution. The Supreme Court of India in *Toyota Jidosha Kabushiki Kaisha v M/S Prius Auto Industries Ltd* (2018) 2 SCC 1 applied the territoriality doctrine to hold that a foreign trademark holder must establish positive evidence of goodwill and reputation within the Indian market at the relevant date. The Court clarified that trans-border reputation alone, in the absence of actual commercial presence or spillover into India, is insufficient to sustain a passing off action under Indian law.²³ This doctrine covers protection beyond the traditional cases of infringement based on the likelihood of confusion and includes cases whereby low standards of quality in licensed products undermine the reputation of the mark, even in cases where consumers are aware of the authorised licensing relationship.

B. Counterfeiting and Unauthorised Production

The counterfeiting activities of licensed fashion brands in India have become more sophisticated, with the counterfeiters often taking advantage of the presence of legal licensing deals, causing confusion about the authenticity of the product. The fake products can have the proper trademark image, the packaging can resemble that of the licensed product and can even include some aspects of the real design feature, making the fake products difficult to detect by consumers as well as the enforcement authorities. The licensing situation provides further complications since counterfeiters can also pretend to be sub-licensees or authorised distributors, using the lack of knowledge by consumers about intricate licensing structures.

The criminal enforcement provisions that are applicable in trademark counterfeiting in India, as per the provisions provided in Section 103 of the Trade Marks Act 1999, stipulate that knowing use of false trademarks or trade descriptions results in imprisonment for a term not less than six months but which may extend to three years AND a fine not less

²³ *Toyota Jidosha Kabushiki Kaisha v M/S Prius Auto Industries Ltd* (2018) 2 SCC 1 (Supreme Court of India).

than Rs. 50,000 but which may extend to Rs. 2, 00,000.²⁴ Nonetheless, the real implementation of the measures based on criminal mechanisms faces significant challenges. Police officials have no technical knowledge to differentiate between fake goods and authentic products, especially when the licensing of the manufacture is carried out by various licensed manufacturers. Moreover, the necessity to prove the knowing intent designates evidentiary issues, since advanced counterfeiters can produce plausible deniability with the help of middle channels of distribution or assertion of awareness of authorisation legitimacy.

The civil method of enforcement, by infringement proceedings, provides stronger sanctions such as an injunction, delivery up of infringing goods, and account of profits. The Commercial Courts Act 2015 has created commercial courts and commercial divisions in the High Courts to quicken the settlement process of commercial disputes, such as IP cases, and mandatory timelines are to be established so as to cut down on case pendency.²⁵ Nonetheless, there is a lack of adherence to such timelines, and the performance of specialised courts differs significantly in various states and jurisdictions.

C. Unauthorised Sub-Licensing and Supply Chain Leakage

Unauthorised sub-licensing is a major liability in fashion licensing set up that is done when licensees transfer the right to produce or market goods to a third party without the permission of the licensor, thereby defying restrictions of the licensing agreement. The practice compromises territorial exclusivity and introduces quality control loopholes, and the authenticity status of products produced is legally undefined. Unauthorised sub-licensing in the Indian market often takes the form of informal manufacturing, whereby official licensees form manufacturing deals with unauthorised factories as a result of demand spikes or cost-cutting.

Legal regulation of unauthorised sub-licensing includes claims of breach of the contract and IP infringement. In cases where licensing clearly states that sub-licensing is not

²⁴ Trademarks Act 1999, s 103.

²⁵ Commercial Courts Act 2015, ss 3, 10.

allowed without the written consent, unauthorised delegation is considered to be a material breach that gives reasons to terminate the contract and reimburse the damages. Nonetheless, the issue of unauthorised sub-licensing opportunity detection and demonstration of the substantive knowledge and licensing of the licensee by the third-party manufacturer poses evidentiary challenges. Monitoring mechanisms such as regular factory inspections, production documentation, and chain of custody can be used to offer preventive measures, but it takes a lot of resources, commitment and the cooperation of the licensees.

There are associated issues of enforcement with respect to supply chain leakage, whereby licensed products that are destined to a particular distribution channel are diverted to an unauthorised channel. Legal licensed products can find their way into grey markets in several ways, such as overproduction of them above the number the authorised producer or distributor is allowed to produce under the contractual agreement, diversion by licensed distributors who want a higher markup in other markets, or theft of the same by employees of licensed manufacturers or distributors. The Indian courts have identified that the actual goods diverted into illegal channels may be considered as trademark infringement where the diversion is done against the terms of the licensing agreement on the basis that trademark rights extend to control of channels of distribution.²⁶

D. Online Marketplace Infringement and E-Commerce Challenges

The recent development of the e-commerce platform in India has posed new challenges to the protection of the fashion brands, as the online marketplaces have offered easy avenues of distribution of counterfeits, unauthorised parallel imports and ex-territory sales by licensees. Large e-commerce sites such as Amazon India, Flipkart, and many specialised fashion marketplaces have millions of listings of products, and it is in effect, impossible to monitor the activities of individual brand owners. Platform liability is still in its development phase, and it has substantial consequences on enforcement solutions.

²⁶ Basheer S and Reddy TPM, 'Intellectual Property and Competition Law' in Mitra M (ed), *Competition Law in India: A Commentary* (LexisNexis 2017) 567-589.

Section 79 of the Information Technology Act 2000 provides a safe harbour to intermediaries such as e-commerce platforms, whereby intermediaries do not have any actual knowledge of the illegal content, and where they are aware of the illegal content, they take prompt measures to delete or block access.²⁷ The rules of the Intermediary Guidelines and Digital Media Ethics Code 2021 create due diligence requirements on major intermediaries of social media, but the applicability of the rules to e-commerce platforms in particular is at best open to interpretation. Fashion companies to protect their IP rights against e-infringement are required to go through notice-and-takedown systems developed by individual websites, the effectiveness of which can be inconsistent. Recent court cases indicate that there is growing acceptance of the idea of holding the platforms to account for chronic infringement. In *Christian Louboutin SAS vs Nakul Bajaj*, the Delhi High Court passed directions directing e-commerce companies to delete any listing of fake products and take proactive action to stop any more listing in future.²⁸ But the real-world application of such orders faces difficulties, such as the use of variant descriptions of products to beat automatic filters, opening new seller accounts in large numbers immediately after takedown, and the sheer number of listings that have to be monitored.

VIII. MITIGATION STRATEGIES AND BEST PRACTICES

A. Contractual Architecture and Drafting Considerations

Licensing of fashion brands in India would involve having to exercise proper risk mitigation in terms of drafting of contracts so as to factor in IP protection, quality management, territorial limitations and enforcement. The licensing contract ought to make elaborate quality requirements with particular regard to materials, process and also specification of finished products. Such standards must also employ objective quantified criteria as opposed to subjective quality judgments, which are easily enforced with the help of testing procedures and expert inspection. The contract must allow the licensor the

²⁷ Information Technology Act 2000, s 79.

²⁸ *Christian Louboutin SAS vs Nakul Bajaj* CS(COMM) 344/2018 (Delhi High Court).

right to audit freely, such as the right to make impromptu visits to the factory, review production records, and sample finished products.²⁹

The territorial limitations should be formulated exactly, and the area to which the product will be licensed made clear, sales made out of the territory explicitly outlawed, and systems for tracing the product distribution put in place. Since Indian courts accept parallel importation with some conditions, a licensing agreement must have certain clauses that deal with the performance of genuine goods under the licenses of a foreign country, and that their importation to India should not be authorised under any circumstances and that it will also be a contract breach and trademark infringement.

Sub-licensing clauses need to be stated clearly, with no sub-licensing allowed unless written consent of the licensor with any sub-licensed sub-licensee is obliged to take direct responsibility directly with the licensor on quality and protection of IP. The agreement must provide that any unauthorised sub-licensing is a material breach that should be immediately terminated, leaving the grounds of injunctive relief to the licensee and unauthorised sub-licensee. The enforcement provisions shall also have a comprehensive dispute resolution architecture, which must include arbitration in a neutral seat with Indian enforcement mechanisms, articulate designation of Indian law on IP issues despite the presence of general governing law provisions and extensive indemnification requirements, which will compel the licensee to defend against third-party infringement claims brought about by the actions of the licensee.

B. Technological Authentication and Supply Chain Monitoring

Technological authentication systems offer effective means of combating counterfeiting and unauthorised production and allow transparency of the supply chain and verification of product authenticity by the consumer. Modern authentication systems that could be considered to be applied on fashion products are holographic labels with security encryptions to track an item, radio frequency identification tags to track an item

²⁹ Singh A, 'Trademark Licensing in India: A Practitioner's Guide' (2021) *Journal of Intellectual Property Law & Practice* 16(4), 412-425.

by being able to read a supply chain, QR codes to be redirected to authentication platforms with production verification features, blockchain based provenance tracking records the manufacturing and distribution history of an item, and DNA tagging that uses synthetic DNA markers on textiles or package materials.

Authentication systems must also be implemented and include stipulations in licensing agreements where the use of authentication technology must be mandatory to all licensed products, the use of authentication technology is not allowed to be removed or changed, any losses or breaches of authentication technology must be reported, and the licensor must have access to the data of authentication systems to monitor their usage. Consumer education and accessibility determine the value of the authentication systems. The fashion brands need to invest in the platforms that are consumer-facing, that allow verification of products, clear communication about authentication features, and response procedures to consumers who find possible counterfeits.³⁰

Supply chain surveillance involves orderly control of all the operations of production, distribution and retail to detect unacceptable practices such as overproduction, diversion as well as quality breaches. Efficient monitoring schemes include routine announced and unannounced factory inspections where photographs are taken, checking records of the production against the approved amounts, checking sourcing of the raw materials against specifications, testing the finished goods against quality specification and mystery shopping programs to check the retail presentation standards and detection of unauthorised sellers. These surveillance operations produce records that are useful in enforcement proceedings that provide a factual basis in claims of breach and injunctions.

C. Jurisdictional Strategy and Forum Selection

The use of strategic jurisdiction in licensing agreements is a significant influence on the effectiveness of enforcement and the efficiency of dispute resolution. In the case of licenses over Indian territory, much attention should be paid to whether the disputes

³⁰ Raustiala K and Sprigman C, 'The Piracy Paradox: Innovation and Intellectual Property in Fashion Design' (2006) *Virginia Law Review* 92, 1687-1777.

should be solved in Indian courts, foreign ones with specific enforcement mechanisms, or arbitration with specific seats. Both methods have their own pros and cons to be considered depending on certain situations.

The benefits of appointing Indian courts as a special court of jurisdiction are various a direct enforceability of judgments without the formal foreign judgment recognition rules, familiarity with the Indian IP law and enforcement procedures and access to interim relief under Indian procedures. One of the most appropriate courts to resolve the dispute over fashion brands is the Delhi High Court, with its own IP division and advanced jurisprudence. Nevertheless, the issues of case pendency, different judicial approach in various benches and the process of appeal that prolongs the process of resolution is a major drawback.

Another mechanism available through international arbitration is that it offers many benefits, such as the choice of arbitrators with experience in the fashion industry, the IP industry, and knowledge, the proceedings are confidential and not publicly available to any third party, and it might be faster than court proceedings.³¹ Nonetheless, arbitration awards that have to be enforced against recalcitrant parties have to be enforced by Indian courts, which may reduce time efficiencies. Moreover, Indian courts have also already shown that they are ready to abandon arbitral awards or even block enforcement under specific conditions, which has added to the uncertainty in enforcement.

An integrated strategy can be the best to use, arbitration in case of contractual conflicts, as well as the right to file an injunction and an IP-specialised solution in Indian courts. The architecture maintains access to an interim relief mechanism that is important in enforcing IP and offers the benefits of arbitration to complex contractual interpretation and damages quantification. The licensing agreement must expressly state that the use of court proceedings as an injunctive relief does not amount to foregoal of the arbitration terms of the underlying dispute.

³¹ Arbitration and Conciliation Act 1996, s 36.

D. Collaborative Enforcement and Industry Initiatives

The personal brand enforcement activities can be complemented by the activities of teamwork with other fashion brands, industry associations, governmental and e-commerce platforms. Fashion design industry organizations such as the Fashion Design Council of India, and other international bodies, such as the International Trademark Association, offer forums where information on counterfeiting trends, best practices in enforcing and coordinating anti-counterfeiting activities can be shared. Enforcement economies of scale can be attained by collective action against systematic counterfeiters in multiple brands, and this can also save on individual brand expenses.

Internet enforcement by e-commerce through brand registry programs, notice and takedown procedures, as well as proactive monitoring cooperation, offers crucial processes of online enforcement. Big tech has also created specific IP protection systems that enable verified brand owners to report infringement effectively and receive more streamlined takedown processes. The fashion brands ought to invest in building relationships with IP Teams on the platform, training platform staff on authentication, and participating in the creation of platform policies against fashion-specific counterfeiting methods.³²

The collaboration with the Indian law enforcement bodies, such as the Economic Offences Wing, special IP crime units and customs will augment criminal enforcement. The fashion companies need to develop collaborations with the concerned enforcement bodies to offer training on brand verification and detection of counterfeiting activities, and to join the efforts of the enforcement bodies against large-scale counterfeit distribution platforms. Technical expertise and support in investigations provided to law enforcement could go a long way in increasing enforcement effectiveness and show brand commitment to IP protection and consumer safety.

³² Wilkof N and Basheer S, *Overlapping Intellectual Property Rights* (Oxford University Press 2012) 289-312.

IX. CONCLUSION

The process of fashion brands' globalisation by means of licensing deals involves complicated issues that demand advanced legal practices to fit the jurisdictional contexts. India, being a fast-emerging major market of international fashion houses, is a prime illustration of the conflicts between commercial expansion needs and intellectual property safeguard in the developing legal frameworks. Although the Indian statutory IP regime has an extensive protection regime, which includes trademarks, design and copyright, practical implementation of the aforementioned rights into action by adopting judicial procedures, administrative procedure, and criminal prosecution faces enormous challenges such as pendency of cases, lack of resources and well-organised counterfeiting cartels.

The top risk areas in this analysis, such as trademark dilution via quality degradation, counterfeiting and unauthorised manufacture, unauthorised sub-licensing, supply chain control, and online marketplace infringement, need extensive mitigation measures touching on contractual structure, technological authentication, supply chain surveillance, jurisdictional choice, and joint execution. Licensing arrangements have to be also written with a keen eye on quality control mechanisms, territorial limitations, sub-licensing bans, as well as enforcement that is specifically moulded to Indian legal conditions and trading facts.

Technological solutions such as authentication, blockchain-based provenance tracking, and supply chain monitoring platforms are effective tools that can be used in complement to legal safeguards to prevent unauthorised actions as well as provide evidence to use in an enforcement process. The choice of strategic forums, the trade-offs involving the benefits of Indian court jurisdiction, international arbitration, and hybridisation, could have a great influence on the effectiveness of enforcement and efficiency in dispute resolution. Cooperative projects with industry groups, e-commerce solutions and government services improve the personal brand compliance and affect the high-level system enhancements of the IP protection.

The Indian IP enforcement environment is constantly changing, with advances in the courts providing more protection of the well-known marks, legislative changes which created special commercial courts, and the growing acknowledgement of specific brands of fashion as being of a distinctive right. Nevertheless, the inherent issues of case pendency, lack of enforcement resources and the advanced level of counterfeiting networks are still at stake. The fashion companies that start operating in India in the form of a license should treat the issue of IP protection as a long-term engaged obligation that needs to be invested in the development of the contractual framework, surveillance measures, measures of enforcement, and joint projects.

The study will be useful in the legal literature concerning the transnational enforcement of IP, as it presents a systematic review of India-specific obstacles and feasible mitigation strategies. Future studies must focus on the influence of new technologies, such as artificial intelligence, in fake product identification, the development of liability levels for e-commerce platforms, and a comparative evaluation of enforcement effectiveness in various jurisdictions of emerging markets. The ongoing process of globalisation of fashion companies due to the licensing process will necessitate constant change in legal strategies to reflect the changes in commercial reality and jurisdictional systems, and India will be a key target because of the importance of the market and the dual nature of the legal system.

X. BIBLIOGRAPHY

A. Legislation and Rules

1. Arbitration and Conciliation Act 1996
2. Code of Civil Procedure 1908
3. Commercial Courts Act 2015
4. Consumer Protection Act 2019
5. Copyright Act 1957
6. Designs Act 2000
7. Information Technology Act 2000

8. Intellectual Property Rights (Imported Goods) Enforcement Rules 2007
9. Intermediary Guidelines and Digital Media Ethics Code Rules 2021
10. Trademarks Act 1999

B. Cases

1. Christian Louboutin SAS vs Nakul Bajaj CS(COMM) 344/2018 (Delhi High Court)
2. Christian Louboutin SAS v Pawan Kumar CS(COMM) 714/2016 (Delhi High Court, 12 December 2017), 2017 SCC OnLine Del 12173
3. Louis Vuitton Malletier vs Sheru Shiv Kumar CS(COMM) 425/2019 (Delhi High Court)
4. Kapil Wadhwa & Ors v Samsung Electronics Co Ltd & Anr FAO(OS) 93/2012 (Delhi High Court Division Bench, 3 October 2012), 194 (2012) DLT 23
5. Toyota Jidosha Kabushiki Kaisha vs Prius Auto Industries Ltd (2018) 253 DLT 593 (Delhi High Court)

C. Books and Articles

1. Basheer S and Reddy TPM, 'Intellectual Property and Competition Law' in Mitra M (ed), *Competition Law in India: A Commentary* (LexisNexis 2017)
2. Chaudhry PE and Zimmerman A, 'Protecting Your Intellectual Property Rights: Understanding the Role of Management, Governments, Consumers and Pirates' (2013) *Business Horizons* 56(1), 43-54
3. Cornish W, Llewelyn D and Aplin T, *Intellectual Property: Patents, Copyright, Trademarks and Allied Rights* (9th edn, Sweet & Maxwell 2019)
4. Dharmendra K and Patel B, 'Enforcement of IP Rights in India: Challenges and Opportunities' (2020) *Journal of Intellectual Property Rights* 25, 89-103
5. Ganguli P, *Intellectual Property Rights: Unleashing the Knowledge Economy* (Tata McGraw-Hill 2001)

6. Hestermeyer H, 'International Trademark Law and Parallel Imports' in Dinwoodie GB (ed), *Methods and Perspectives in Intellectual Property* (Edward Elgar 2013)
7. Kur A and Senftleben M, *European Trademark Law: A Commentary* (Oxford University Press 2017)
8. Llewelyn M and Aplin T, 'The Challenges of Fashion Brand Protection' (2019) *EIPR* 41(2), 67-79
9. McKenna MP, 'The Normative Foundations of Trademark Law' (2007) *Notre Dame Law Review* 82, 1839-1916
10. Menon V, *Intellectual Property Law* (Eastern Book Company 2018)
11. Raustiala K and Sprigman C, 'The Piracy Paradox: Innovation and Intellectual Property in Fashion Design' (2006) *Virginia Law Review* 92, 1687-1777
12. Scafidi S, 'Intellectual Property and Fashion Design' in *Intellectual Property and Information Wealth* (Praeger 2006)
13. Sharma DK, *Intellectual Property Rights* (Atlantic Publishers 2019)
14. Singh A, 'Trademark Licensing in India: A Practitioner's Guide' (2021) *Journal of Intellectual Property Law & Practice* 16(4), 412-425
15. Wilkof N and Basheer S, *Overlapping Intellectual Property Rights* (Oxford University Press 2012)