

## **Role of IPR (Intellectual Property Rights) in Fashion Designing Industry: A Quantitative Investigation**

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### **ABSTRACT**

The apparel market is expanding rapidly on a worldwide scale. It must be protected by intellectual property rights in order to support its expansion since it's grown into an important component of the international business. Refreshing and modern designs sit in the centre of the burgeoning apparel sector. Plagiarism in fashion design, nevertheless, hinders the development of this business. The fashion design sector in India is struggling to address this issue. The fashion design sector cannot be adequately protected by the country 's existing intellectual property laws since they are neither adequate nor effective. To improve present intellectual property laws and enhance their efficacy at preventing copying of fashion designs, changes must be made. But before that we need to look into the role of IPR (Intellectual Property Rights) in the fashion designing industry.

### **KEYWORDS**

Intellectual property rights, fashion design, fashion designing industry, copyright, trademark

### **INTRODUCTION**

Whenever ingenuity combines with business and the bulk manufacturing of luxurious goods with a profit-making motive, the justification for intellectual property grows increasingly complex. The fashion sector falls under this category. A hazy instance of duplicating demonstrated how difficult it is to define and uphold IPR in this sector. A typical PR approach is insufficient as soon as innovation and culture have an important part in the artistic thinking. Substantial restrictions on identifying, entrusting, legitimising, maintaining, valuing, and transferring property rights are imposed by innovation. IPRs are being developed to coordinate the preservation and distribution of intellectual property, especially intangible cultural properties whose valuation is rising, as the marketing system of fashion replaces the elite fashion designer paradigm. Yet, the uniqueness of these heritage assets prevents the development of an industry for intellectual property rights in fashion design industry. Based on the particulars of the fashion design sector the basic model of intellectual

property, built on the concept of the production process and of the monetary approach, is only partly applicable herein (Barrère and Delabryère, 2011).

By safeguarding the presentation of artists' thoughts and granting them full ownership over the works they generate, intellectual property law seeks to promote creativity amongst artists. Despite being unable to effectively protect their ideas, artists have been able to be inventive and imaginative in their creations because to the existing lack of intellectual property protection in the American fashion business. Despite this, the sector has kept on growing and expand, demonstrating that further intellectual property rights are not required for the sector to keep succeeding. There ought to be no further expansion of intellectual property rights for fashion designs beyond what now exists. Increasing copyright might have disastrous consequences on the fiscal health of this nation, the sector overall, the wallets of the innovators, other nations, and most significantly and obviously, community. Whilst having designed to promote the expansion of the fashion sector, the planned IDPPPA could have the absolute reverse impact and seriously hurt it (Kari, 2012).

Operational parts of designs are not fully protected by copyright, trademark, or design intellectual property laws. They all accomplish this in fairly unique methods. To guarantee that such design elements are, if any, covered by usefulness patent law, all these judicial systems restrict practical content. Copyright, trademark, and design patent rules all require the functionalities of formerly patentable designs to be identified for their practical significance. For fashion designs, that copyright, trademark, and design patent laws may preserve, though only partially, this authentication effort is vital (Buccafusco and Fromer, 2017).

## **LITERATURE REVIEW**

Several connections between intellectual property rights in Hong Kong and Italy can be noticed via this analysis. They are comparable because of their security for designers despite having quite distinct geographical settings. Both feature individuals whom were ready to market fraudulent goods and individuals who are either deceived into purchasing them or are eager to do so. One may be linked to luxury designers, whereas the other may replicate those designers heavily. For both nations, counterfeiting is a concern as it raises the possibility that nations may hesitate to engage out of concern that their goods won't be protected. Furthermore, they damage regional economy. Owing to the value that luxury brands derive from its image and the restricted supply which is made accessible, counterfeits have a

significant negative influence on the trademarks. The market is contaminated with fake items with a lower grade and weren't created to draw attention despite having a comparable appearance. Companies are affected by the absence of IPR protection in a number of different ways. Inside the fashion industry, where reputation is all, it's beyond the immediate revenue loss (Hyde and Kulkarni, 2017).

To safeguard their malfunctioning creations, fashion designers often use copyright, design patents, and trademarks. The Copyright Act specifically grants intellectual property rights to literary creations established in any physical language. Trademark is considered to be the most suitable intellectual property right among those now in existence for encapsulating a full fashion design. Designers can benefit from trademarks as it covers both official and unofficial creations, requires neither uniqueness nor stability, and is applicable to both. For fashion designers looking to safeguard the illegitimate elements of their creations, trademark has recently demonstrated potential (Mills, 2009).

Ferrill and Tanhehco (2011) thought that fashion designers are creatives and businesspeople. These two personalities are both eligible to intellectual property rights, much like creators do with copyright and useful patent. If the proposed copyright law for fashion design is approved, this would be a while before it can be applied consistently. In the meanwhile, design patents provide an effective feature for the intellectual property arsenal of the fashion designer. Furthermore, even if the proposed copyright legislation passes, future designs would probably discover that a mix of several intellectual property measures ultimately provides greatest security. A design patent provides numerous frequently disregarded benefits, even though it may not appear suitable for all facets of fashion design. Future-thinking designers can discover that strategically copyrighting their designs might be crucial to defending their property and establishing their businesses.

Cassandra (2017) proposed that because fast fashion is periodic and there is inadequate security for intellectual property, imitations of designer fads are pervasive and affordable to youngsters. Fashion designers therefore create new styles as a result of the overflow of goods forcing trend-setters to look for the upcoming new fad. Several academics have come to the opinion that such a virtuous cycle in the fashion business really promotes creativity and accelerates fashion inventiveness. But because of this constant desire for affordable prices and different designs, several people have begun to wonder how the fashion industry is

impacting the planet. Retailers sometimes imitate designer patterns and buy new inventory weekly to refill the shop's inventory in an attempt at keeping customers satisfied.

Nicole (2012) informed that there are several thin boundaries in intellectual property in the fashion market which are as perilous as a circus performer wearing Christian Louboutin shoes. For example, there's a thin line between plagiarism and infringement, a distinct boundary between a pouch that might be mistaken for another, less costly pouch, and an even thinner boundary between positive press and diffusion. The judges' resistance to extending safeguards to the fashion sector is an example of how much credence they attach to the idea that mimicry is the best kind of praise. While creating laws, government does a balancing feat similar to the circus performer who balances on the thin thread of safety. It can be difficult to strike the right balance between intellectual property rights and the ability to govern patent, trademark and copyright monopolies.

The appropriate extent of intellectual property rights is one of the most important existing legal development policies. According to the conventional conception of intellectual property, rights must be given robust protection because, else, creativity would shrivel. Manufacturers will be forced out of business by inexpensive imitations that eliminate the motivation to create and discourage the capital that creation necessitates. The orthodox argument has received resounding backing from both the local and global legal systems, which has led to rapid surge in the power and application of copyright, patent, and trademark laws. IP legislation only safeguards some brand-related characteristics in the fashion design sector. Fashion sector investments has not been discouraged by the absence of copyright law for ideas. However, it hasn't slowed down the season's abundance of innovative designs. It is obvious that the fashion industry offers an intriguing and significant check of IP convention (Raustiala and Sprigman, 2006).

Scruggs (2007) said that the method used with building is perhaps the finest method for fashion design when the aforementioned considerations are kept in mind. Congress has the authority to alter the law so that the copyright law for fashion design is tailored to fulfill practical purposes and have a practical term. As comparison to trademarks, design patents, or doing nothing and letting the ruling class hold, copyright protection seems to be a more effective option for protecting fashion designs. This is a highly critical element in defending a billion dollar sector and enabling it to recuperate its assets as opposed to passively letting fashion piracy sailing off into the distance with unjustified loot.

By disproportionately requiring rare items like fashion designs, which have both functional and artistic ingredients or might seem more practical or artistic contingent on a situationally assessment, to select an edge on the art-utility continuum in to be eligible for intellectual property protection, the present intellectual property policy in America has grown increasingly repressive. After a fashion design is filed for either patents or copyright evaluation, the style's inescapable artistic or practical elements operate as powerful barriers that prohibit the design from really gaining the intended protections. The inauthenticity that inhibit awarding intellectual property rights is exposed by both the traditional principles of American intellectual property regulations and the most improvements made to the Copyright Act of 1976, making it essential for legislators to drop the artworks distinction and enable fashion designs, such as architectural designs, to be protected by intellectual property. Applying copyright laws to fashion designs is both feasible and essential, according to a quick study of the Copyright Act of 1976 and the evolving standards of international obligation and science (Miller, 2014).

Dodov and Gabriella (2013) opined that the artistic industries, including art, literature, music, technology, and science, are covered by intellectual property. Because although it has existed for several ages and is regarded as a design field, fashion is not afforded the similar degree of constitutional protections though it initially seems to be covered by the basic grounds and reasons for ip rights. This absence is frequently attributed to the "infringement dilemma," that claims that the absence of IP rights benefits fashion innovators instead of harming them and actually contributes to the success of the sector.

## **OBJECTIVE**

1. To know the role of IPR (intellectual property rights) in fashion designing industry

## **METHODOLOGY**

The researcher had considered people from fashion retailing sector to know the role of IPR (intellectual property rights) in fashion designing industry. The primary data of the study is collected with the help of a survey using structured questionnaire and random sampling method. The data was analysed and evaluated using mean to get the results.

## FINDINGS

**Table 2 Mean Score for Intellectual Property Rights in Fashion Designing Industry**

| S. No. | Statements  | Mean Value |
|--------|---|------------|
| 1.     | Trademark laws protect the logos and brands names for designers   | 4.23       |
| 2.     | Trademark law also protects the striking features of a product  | 3.43       |
| 3.     | Copyright act protects creative and artistic work of a designer   | 3.73       |
| 4.     | Under copyright act the owner can sue the person on the grounds of copyright infringement                                   | 4.37       |
| 5.     | The Design Act 2000, protects the non-functional aspects of an object having visual appeal                                  | 3.94       |
| 6.     | Under Design Act 2000, the design can be patented for maximum 15 years  | 3.87       |
| 7.     | With the help of patents, any new invention or innovation can be protected  | 4.32       |
| 8.     | IP laws helps a lot in saving the fashion designers from the evils of counterfeiting  | 4.08       |
| 9.     | IP laws helps the goods and fashion designs from being pirated or copied  | 3.95       |
| 10.    | Protecting information through IP, business can focus on market place and can work on their profit margins and market share | 3.56       |

Table above is showing different IPR (Intellectual Property Rights) in fashion designing industry. It is found that under copyright act the owner can sue the person on the grounds of copyright infringement with mean value 4.37, with the help of patents, any new invention or innovation can be protected with mean value 4.32 and Trademark laws protect the logos and brands names for designers with mean value 4.23. The respondent says that IP laws helps a lot in saving the fashion designers from the evils of counterfeiting with mean value 4.08, IP laws helps the goods and fashion designs from being pirated or copied with mean value 3.95, the Design Act 2000, protects the non-functional aspects of an object having visual appeal with mean value 3.94 and Under Design Act 2000, the design can be patented for maximum 15 years with mean value 3.87. The respondent shares that copyright act protects creative and artistic work of a designer with mean value 3.73, protecting information through IP, business can focus on market place and can work on their profit margins and market share with mean

value 3.56 and Trademark law also protects the striking features of a product with mean value 3.43. Figure 1 Graphically presents the mean score.



**Figure 1 Mean Score for Intellectual Property Rights in Fashion Designing Industry**

**CONCLUSION**

Every year, the fashion industry makes considerable investments in the development of fresh, innovative looks. Considering this large expenditure, the designers of clothing are hesitant to safeguard their intellectual property. A common justification for not licensing fashion designs, nevertheless, lies in the brief lifespan of a product, usually no longer than one six- to twelve-month that does not warrant the significant effort and monetary investment required. Specific instance analysis is required when evaluating the justifications for the registration of a novel design. When a design is registered, it ought to be simpler to combat dishonest rivals who try to replicate it and prevent from being copied by others. Furthermore, design copyright does not usually come at a large cost. The greatest strategy to stop people from employing the design for clothing products with a lengthy life span could be to safeguard the intellectual property. The fashion business is propelled by innovation and the intellectual capital that has been put into it. By safeguarding that intellectual property as IP assets, businesses can increase earnings by selling, licencing, and marketing of new innovative goods, increase industry dominance, increase profitability, and lower the chance of violating the Copyrights from others. A company or promotional strategy that effectively manages IP

assets increases the company's worth in the minds of potential shareholders and merchant banks.

**REFERENCES**

1. Barrère, C. and Delabruyère, S. (2011). Intellectual property rights on creativity and heritage: the case of the fashion industry: *European Journal of Law and Economics*, Vol. 32 (3), Pp 305-339.
2. Hyde, O. and Kulkarni, K.G. (2017). Counterfeits and Intellectual Property Rights (IPR): the Fashion Industry: *SCMS Journal of Indian Management*, Pp 5-13
3. Tiwari, S. (2014). Intellectual Property Rights Protection of Fashion Design in India: A Panoramic View, Pp 1-29
4. Kari, H. (2012). If It's Not Ripped, Why Sew It? An Analysis of Why Enhanced Intellectual Property Protection for Fashion Design is in Poor Taste: *Touro Law Review*, Vol. 28 (1), Pp 1-29
5. Buccafusco, C, and Fromer, J.C. (2017). Fashion's Function in Intellectual Property Law: *Notre Dame Law Review* 51: Vol. 93 (1), Pp 51-108
6. Raustiala, K. And Sprigman, C. (2006). The Piracy Paradox: Innovation And Intellectual Property In Fashion Design: *University of California*, Pp 1-85
7. Mills, N.E. (2009). Intellectual Property Protection for Fashion Design: An Overview of Existing Law and a Look Toward Proposed Legislative Changes: *Washington Journal of Law, Technology & Arts*, Vol. 5
8. Ferrill E. and Tanhehco, T. (2011). Protecting the Material World: The Role of Design Patents in the Fashion Industry: *North Carolina Journal Of Law & Technology*, Vol. 12 (2), Pp 251-300
9. Cassandra, E. (2017). The Domino Effect: How Inadequate Intellectual Property Rights in the Fashion Industry Affect Global Sustainability: *Indiana Journal of Global Legal Studies*, Vol. 24 (2), Pp 575-596
10. Nicole, G. (2012). The Look for Less: A Survey of Intellectual Property Protections in the Fashion Industry: *Touro Law Review*, Vol. 26 (1), Pp 1-44
11. Scruggs, B. (2007). Should Fashion Design Be Copyrightable: *Northwestern Journal of Technology and Intellectual Property*, Vol. 6 (1), Pp 122-137
12. Filma, V. Intellectual Property In The Fashion Design Industry



13. Miller, M.C. (2014). Copyrighting the "Useful Art" of Couture: Expanding Intellectual Property Protection for Fashion Designs: *William and Mary Law Review*, Vol. 55 (4), Pp 1617-1646
14. Dodov, K. and Gabriella, B. (2013). Fashion Police: Intellectual Property in the Fashion Industry: *Law School Student Scholarship*, Pp 1-30