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# Legal Protection to Fashion Designs under Intellectual Property Rights in India

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## ABSTRACT

*Unlike, most creative industries, fashion design is not adequately considered by Intellectual Property Law. Fashion design piracy occurs when someone reproduced or redistributed a part or all of a designer's original design under the name of an unauthorized entity. A design piracy risk for designers who want to protect their creations is invasive, and mostly this occurrence has the potential impact on small independent fashion designers who employ online media to reach their audience, which allows a vast online exposure to their designs. Apart from small independent fashion designers, it is also seen that reputed fashion industries are also pirated where their designs are used to reproduce products in the cheap quality to sell at a cheap price. Therefore they lost their reputation and also revenue. Fashion design piracy is now a growing concern with the advent of technology because pirates are also very intelligent and steal someone's design with full research. IPR regime is not enough to prevent fashion design piracy but if amended soon then it can reduce damages to the designers by making the penalty heavier. This article will give a glimpse of the IPRs protection available to fashion designs in India.*

**Keywords:** Fashion, design piracy, IPRs, cheap, technology, advent, reputation.

## I. INTRODUCTION

In the past, the inter differences in technology have been regarded as an important factor that determines market competitiveness between nations. However, due to globalization technology is exchanged across countries so these differences have lost their status as a major element that influences market competitiveness. Today, a powerful source of competitive edge in international markets is not technological superiority but human creativity or innovativeness. In the 21st century, designs have emerged and become a major growth engine in the knowledge-based economy. It now acts as an important axis in the industry. Design is more important in the fashion industry which aims to meet the needs of consumers. It serves as the most important criterion in purchasing decisions for consumers of fashion items.

The fashion industry produces various creative goods to market which are beneficial for the

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public. The fashion industry is gaining profits by developing creative content in the video game, music, film, and book industries. Thus the growth of this industry has spawned an increased public awareness about fashionable designer products. But along with the popularity of certain designers or their specific designs, design piracy has increased rapidly. Intellectual property rights in global fashion are now growing its importance as fashion designers have frequently complained about their designs which are pirated or copied. Plagiarism of designs is a growing concern in the fashion industry all over the world which stops the growth of this industry and hence it needs to be curbed. Apart from design piracy, trademark piracy is also a growing concern nowadays.

In India, there is no specific legal protection available for fashion designs so fashion designers can seek protection. However, fashion designs can be protected under Intellectual Property Rights in India. The designers can apply for IPRs protection under Copyright, Trademark, and Industrial Designs. Apart from IPRs protection, they can use some strategies to protect their designs which will be discussed later.

## **II. INTELLECTUAL PROPERTY RIGHTS AND FASHION DESIGN**

Before going through the main part let's know about Intellectual Property Rights and Fashion Design in brief. Intellectual property includes intangible innovations of the human intellect. Inventions, industrial designs, literary and artistic works, symbols, etc are some commonly known forms of intellectual property. Intellectual Property Rights (IPRs) are the legal rights that give protection to the creations of human minds. The intellectual property law controls the creation, use, and utilization of mental or creative labor. It stops the third parties from becoming unfairly enriched.

Intellectual property rights are that right which allows the inventor, brand owner, patent holder, and copyright holder to benefit from his or her work, labor, and investment but do not mean a monopoly of the intellect. Thus it can be said that if a person creates something from his intellect, labor, and investment then he is liable to claim IPRs protection for his creation.

Similarly, 'Fashion Design' is an art, a popular practice or style, and an aesthetic expression at a particular time and place, especially in clothing, footwear, accessories, makeup, body piercing, or furniture. It is a form of art dedicated to the creation of design and application of aesthetic beauty to the items of fashion i.e. clothing and other lifestyle accessories. As a form of art and the creation of the human mind, fashion design can be said as one of the branches of IPRs.

### **III. LEGAL PROTECTION TO FASHION DESIGNS UNDER INTELLECTUAL PROPERTY RIGHTS IN INDIA**

In India, the fashion originated thousands of years ago with royal traditions behind it. India is known as a rich country in diverse textile heritage where each region and state has its unique indigenous costume and traditional attire and accessories. Due to globalization, the apparel and accessory sector in India is enhancing itself at a rapid speed with international developments. Fashion designers have been found complaining about their innovations and designs being replicated and copied. Fashion design being treated as the creation of one's intellectual innovation and original creativity has escalated concern and requires the IPR's protection for fashion designs.

The IPR regime in India protects fashion design under three heads: (1) Industrial design protection for fashion design, (2) Copyright protection for fashion design, and (3) Trademark protection for fashion design:

#### **(A) Industrial Design for Fashion Design**

Industrial Design protection is the most commonly used legal protection mode for Fashion design. The majority of countries protect fashion design as industrial designs. In India, the Designs Act, of 2000 lays down the laws relating to the protection of industrial designs. And this is the principal law employed by fashion designers to protect their fashion designs. The Designs Act protects the "design" which are registered under the Act i.e. Design Act, 2000.

Generally, an article which is having artistic features and attracts the human eye can be registered under the Designs Act, 2000, and can enjoy exclusive rights by the fashion designer or the fashion industries producing the designed article. Apart from it, a design, to get registration and consequently, to get protection under the Designs Act, must satisfy the ensuring conditions as well:

1. It must be new or original.
2. It must not have been disclosed to the public anywhere in India or any other country by publication in tangible form or by use or in any other way before the day of applying for registration.
3. It must be considerably distinguishable from known designs or a combination of known designs.
4. It must not comprise or contain scandalous or obscene matter.

From the perception of the fashion industry, the Act does not protect the entire garment as a

whole; rather, it only protects the particular or individual aspects like shape, pattern, color, etc. of the garment. Under the Designs Act, the proprietor of a registered design gets copyright in the design which means *the exclusive right to apply the design to any article in any class* in which the design is registered. It means the Act affords protection not in a particular article but against a class of articles as enumerated in Schedule III of the Designs Rules, 2001. The goods of fashion designers may fall under the following classes of goods:

1. **Class 2:** Articles of clothing and haberdashery - undergarments, lingerie, corsets, brassieres, nightwear; headwear; footwear, socks, and stockings; neckties, scarves, neckerchiefs, and handkerchiefs; gloves; haberdashery and clothing accessories, *etc.*
2. **Class 3:** Travel goods, cases, parasols, and personal belongings, not elsewhere specified - trunks, suitcases, briefcases, handbags, key-holders, cases specially designed for their contents, wallets, and similar articles; umbrellas, parasols, sunshades, and walking sticks; fans, *etc.*
3. **Class 5:** Textile piece-goods, artificial and natural sheet material – lace embroidery; ribbons, braids, and other decorative trimmings; textile fabrics, *etc.*
4. **Class 10:** Clocks and watches and other measuring instruments, checking and signaling instruments - watches and wrist watches, *etc.*
5. **Class 11:** Articles of adornment – jewellery, *etc.*

As per the provisions of the Designs Act, copyright in the registered design subsists for ten years from the date of registration and may be extended further only for five years on the request regarding the same. Throughout the continuation of copyright in registered design, the Designs Act protects the registered design from piracy. If a person commits any act involving piracy of registered design, he is liable, on every act of piracy, to pay to the registered proprietor of the design a sum of twenty-five thousand rupees recoverable as a contract debt or if the proprietor elects to bring a suit for the recovery of the damages for any such act involving theft, and for any sanction against thereof, to pay such compensation as may be awarded and to be restrained by injunction accordingly and the total sum recoverable shall not exceed fifty thousand rupees. The proprietor of a registered design has to institute the suit in any court, not below the court of the District Judge.

#### **(B) Copyright Protection for Fashion Design:**

Copyright protection is another mode of legal protection employed by fashion designers to protect their creative works from pirates. In India, the laws relating to copyright are governed

by the Indian Copyright Act, 1957. The design, once reduced from mere imagination to some material form, which essentially translates into making drawings and sketches of the garment which depicts the quality of the implementation method of any fashion designer, would qualify as an artistic work if it shows a minimum level of creativity and is 'original'. Copyright would automatically, without any further formality, vest in the subject matter per section 13 of the Copyright Act, 1957. The designer may decide to show up his/her imagination directly in three dimensions and straightaway sew the garment. In that case, the three-dimensional creation of the garment would also be an artistic work, a subject matter of copyright. From the viewpoint of protection of design in general and fashion design in specific, Section 15 of the Copyright Act is applicable. It provides:

**Section 15:- Special provision regarding copyright in designs registered or capable of being registered under the Designs Act, 2000:-**

1. Copyright shall not subsist under this Act in any design which is registered under the Designs Act, 2000.
2. Copyright in any design, which is capable of being registered under the Designs Act, 2000, but which has not been so registered, shall end once any article to which the design has been used has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his license, by any other person.

A thorough glance of the above provision clearly shows that Copyright Act and Designs Act overlap each other on the issue of design protection. Section 15 of the Copyright Act when read conjointly with the Designs Act, lays down a vital framework for design protection in India as under:

1. Designs **capable of being registered under the Designs Act, 2000**, and **registered** as per the provisions of the Act get protection under the *Designs Act* only.
2. Designs **capable of being registered under the Designs Act, 2000** but **not so registered** get protection under the *Copyright Act, 1957*.
3. Designs **not capable of being registered under the Designs Act, 2000**, as they are original artistic works get protection under the *Copyright Act, 1957*.

The fact is that fashion design is also a kind of design so the above-described framework for design protection is relevant and applicable to fashion design protection also. It means that a fashion design that is qualified for registration as “design” under the Designs Act, 2000 and registered under the provisions of the Act will get copyright protection only under the Designs

Act and nowhere else. In this scenario, copyright in registered fashion design will subsist for a maximum period of fifteen years. Further, a fashion design that is qualified for registration as “design” under the Designs Act, 2000 but is not registered will get copyright protection under the Copyright Act, 1957. Here, Copyright in fashion design will subsist up to fifty times reproduction by an industrial process of the article to which design has been applied. And at the end, a fashion design that is an original artistic work and hence not capable of being registered as “design” under the Designs Act, 2000 will get copyright protection in the form of copyright in original artistic work under the Copyright Act, 1957. Copyright in an original artistic work automatically subsists as soon as the work comes into existence and it remains during the lifetime of the author plus sixty years when published during the lifetime of the author.

It is obvious from the above discussion that the protection offered to fashion design as an original artistic work is much stronger than the protection offered to it as a design qualified for registration under the Designs Act, 2000. In other words, a fashion design is better protected as an “artistic work” under the Copyright Act, 1957 than as a “design” under the Designs Act, 2000. Thus, fashion designers in India each time look to protect their creative works i.e. fashion designs as artistic works and to protect like the same.

### **(C) Trademark Protection for Fashion Design:**

A trademark is a mark that distinguishes goods from one enterprise to that of the other. It also comprises other kinds of marks such as certification marks, collective marks, and labels. Trademark recognizes the product and its origin gives assurance of the quality of the product, publicizes the product, and creates goodwill for the product in the market. Trademark law also helps to differentiate genuine products from copied products.

A fashion design may be protected under Trademark Act as a sign or a mark different from others. It helps to distinguish one’s products from another. Trademarks help to maintain a prestige quality for particular brands and can be quite valuable to apparel and accessory firms. The usefulness of trademark law, however, in protecting fashion designs, as different from fashion brands, is quite limited. A trademark is helpful for a fashion design only in that condition when it is incorporated into the design to such an amount that it turns into an element of the design. There is an increasing tendency amongst fashion designers to include a trademarked logo on the outer surface of the garment at the time of manufacturing of clothing and accessory designs. And in these situations, the logo turns into part of the design, and thus trademark provides significant protection against design copying.

Trademark plays a vital role in the fashion industry by protecting the brand name, image, design,

logos, and features of the fashion attires that are capable of distinguishing such attires from that of the others. The main purpose of the trademark law in the fashion industry is in high demand. Its focuses on three main things:

- To attract consumer's attention;
- The interest of trademark owners, and;
- Market competitors.

In India, Section 2(d) of the Designs Act of 2000 while defining "design" specifically excludes the trademark within the meaning of Section 2(1) (v) of Trade and Merchandise Marks Act, 1958 which after the repeal shall be the corresponding definition of Trade Marks Act, 1999. All this would signify that there is a precise exclusion under the Designs Act that anything capable of being a trademark. Therefore, an owner by choosing to go for registration of design forecloses his right to claim the said article as a trademark which is evident from the definition of "design" under Section 2 (d) of the Designs Act. It means that a fashion design that is trademarked cannot get protection under the Designs Act and similarly if a fashion design is registered under the Designs Act the same cannot be protected under the Trade Marks Act, 1999.

#### **IV. CONCLUSION**

The global fashion industry is rising by leaps and bounds. It has become a major part of the global economy and should therefore receive intellectual property rights protection for its growth. Intellectual property protection is very important to encourage innovation among our country's artists and scientists. Accordingly, the Copyright Act should be amended to include fashion design. However, from the above discussion, it has been noticed that the designers most of the time fail to protect their intellectual property using the legal method.

Fashion designers, especially small business owners, need protection for their designs. If other creators are rewarded for their hard work and innovation, fashion designers should be as well. While it is a fact that it is impossible to eliminate counterfeiting and prevent others from copying if creation is protected in the right way it may reduce the chances of loss by reducing damage. Therefore, the creators of the design should always remain alert and should try to get the right protection for their creation. Also, the government needs to take into consideration the recent trend of counterfeiting and knockoffs and pass a sui generis law exclusively applicable to the fashion industry, to keep the intellectual property of the country and in general to build up the country's economy.

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