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The Analysis on Intellectual Property Rights and Fashion Industry

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ABSTRACT

Design industry plays an critical part in Indian Economy. The paper points to distinguish the reasons for moo rate of enrollment of Mechanical Plan, Copyright, Obvious and Trademark by the Indian design industry. With wide run of items of Mold attire, Embellishments and Life fashion items being delivered in India and sent out to the world but the architects and trade houses don't effectively do enrollment of IPR of 'New' Item created. Field study was conducted and survey was administered to respondents to gather reaction from them with respect to their mindfulness towards IPR enlistment and its benefits. From the consider it was concluded that in spite of the fact that numerous divisions are ignorant of IPR enlistment, Creators and corporate who are mindful are still moderate in enrollment due to complication in recording method of IPR enrollment, fetched included and having less information around the benefits of enlistment. In any case, due to endeavors of Indian Government the IPR enrollment rate are expanding but still due to complexity in IPR enrollment law the 'Inventor' is still not clear of his rights. The creative industry may be a division that's developing quickly in this period of globalization, but the improvement of the inventive industry too postures challenges in securing Mental Property Rights. This investigate points to analyze the control of Mental Property Rights (IPR) within the inventive industry from an universal legitimate point of view. The research method utilized could be a regulating approach by looking at different universal legitimate rebellious related to Mental Property Rights (IPR). The research results appear that the control of Mental Property Rights within the imaginative industry still has shortcomings and challenges, especially in terms of law requirement and security of copyrights, licenses and brands. This investigate gives suggestions for making strides legitimate controls related to mental property rights within the inventive industry, counting expanding worldwide participation and more compelling law authorization.

Keywords: *Indian Economy, legitimate point , globalization, analyze , compelling law, Copyright.*

¹ Author is a Research Scholar in India.

I. INTRODUCTION

Fashion design is a form of art dedicated to the creation of clothing and other lifestyle accessories. It takes an artistic and creative personality to work as a designer. Fashion designers have a good visual imagination and put their ideas into garments. Fashion designers ought to demonstrate more than just a curiosity for reading books, periodicals, and magazines about the history of fashion design and current trends. They must understand the demands of the fashion industry, including safeguarding their intellectual property (IP). IP is the outcome of using your creativity and intelligence to produce something novel or unique. The fashion industry constantly generates and commercializes innovative ideas and creative thinking, making it an IP-intensive sector. In order to obtain the competitive edge necessary for success, creativity in the fashion industry extends beyond the act of designing and encompasses the marketing and advertising campaigns for both high fashion and ready-to-wear products. A fashion enterprise's most valuable asset is all of this intellectual capital associated with a distinctive brand. But a lot of companies, particularly those in the fashion sector, do not safeguard their intellectual property. Because the IP laws are so lax, it has become common practice for designers to "steal" ideas from each other in an industry that prides itself on innovation and aspiration and generates hundreds of billions of dollars annually. Such important intangible assets must be promptly identified by business managers, who must also assess their business value and decide which should be safeguarded and utilized by the IP system. Since the beginning of fashion houses, legal advice has always been necessary for the fashion industry. But until a few years ago, fashion law was not thought of as a specialty area of the law. These days, fashion law is a separate area of law created specifically for the fashion industry. Since the brand is what gives fashion its value, and intellectual property law is primarily responsible for protecting it, intellectual property laws form the foundation of fashion law. Copyrights, trademarks, trade dress protection, trade secret protection, utility and design patents, rights to publicity, and protection from misappropriation are all considered forms of intellectual property. In the fashion industry.

(A) Significance of the study:

The study of intellectual property (IP) in the fashion industry, particularly in relation to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), holds significant importance for various stakeholders. TRIPS provides a foundational framework for protecting IP rights, which is crucial for the fashion industry's economic growth, creativity, and innovation. By safeguarding designers' and companies' IP investments, TRIPS enables them

to recoup investments, generate revenue, and create jobs.

Moreover, TRIPS helps combat counterfeiting, estimated to cost the fashion industry billions annually, ensuring consumers receive authentic, high-quality products. The agreement also preserves cultural heritage by protecting traditional knowledge and cultural expressions incorporated into fashion designs. Furthermore, TRIPS promotes creativity and innovation by encouraging designers to create original works. From a legal and policy perspective, TRIPS harmonizes IP laws across countries, provides a framework for resolving IP disputes, and influences national policy development. Specifically, TRIPS provisions related to copyright, trademark, and industrial design protection are critical for the fashion industry.

(B) Review of literature:

The Implementation Of Trips-WTO In The Protection Of Ipr Over Fashion Trademark Of Creative Industry As An Effort To Improve Global Competitiveness (By Dr. Nina Nurani, S.H., M.Si.,2014). Legal Analysis Of The Regulation Of Intellectual Property Rights In The Creative Industry Review From An International Legal Perspective (By Simson Lasi ., 2024). A Quest Towards Fashion Design Protection Model For The Intellectual Property Rights Global Regime (By Prafulla Kumar Padhi .,2018). Intellectual Property Rights Protection Of Fashion Design In India (By Shishir Tiwari .,2014). Ipr Registration In Fashion Industry Of India (By., Vishaka Agarwal., 2019). Stimulating Creative Endeavour – How Well Does Intellectual Property Do It?(By Ejan Mackaay.,2024).Intellectual Property, Corporate Strategy , Globalisation : Trips In Context (By Peter Drahos And John .,2012).

(C) Research Gap:

Despite the significance of intellectual property (IP) protection in the fashion industry, particularly under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), several research gaps persist. One notable gap is the lack of comprehensive studies examining TRIPS' effectiveness in safeguarding fashion IP rights, particularly in developing countries. Existing research primarily focuses on developed economies, leaving a dearth of knowledge on how TRIPS impacts fashion industries in emerging markets. Another gap lies in the limited analysis of national implementations of TRIPS in the fashion industry. While TRIPS provides a framework, countries' interpretations and enforcement vary, leading to inconsistent IP protection. Research is needed to investigate these disparities and identify best practice. To Understand the international legal framework that regulates IPR in the creative industry, to analyse the effectiveness and weaknesses of IPR regulations in the creative industry from legal perspective. Addressing these research gaps will provide valuable insights for policymakers,

industry stakeholders, and designers, ultimately contributing to a more effective and equitable IP framework for the fashion industry.

(D) Research Problem:

The way in which variations in intellectual property laws across countries impact the protection of industrial designs in the fashion industry. The limitations of current IP laws in addressing counterfeiting and piracy in the fashion industry. The effectiveness are international agreements (e.g., TRIPS, Berne Convention) in protecting industrial designs in the fashion industry. The way in which IP laws balance the need for innovation with the need for accessibility in the fashion industry.

(E) Research Objective:

It enunciates what the Berne Convention and TRIPs Agreement seek to achieve in protecting IPR in general and fashion designs in particular. Special purpose is to analyse the basic concepts and principles of IPR in the creative industry. To identify international regulations governing Intellectual Property Rights (IPR) in the creative industry. To analyse the implementation of countries' compliance with international Intellectual Property Rights regulations in the creative industry.

(F) Research Methodology:

This study is based on Doctrinal method. The work is relied upon the primary and secondary sources which includes various research articles, journals, books and newspaper.

(G) Hypothesis:

This study hypothesizes that intellectual property play a significant role in the fashion industry, stronger IP protection leads to increased innovation in the fashion industry. Additionally Countries with more comprehensive IP laws have lower rates of fashion counterfeiting. Furthermore the implementation of TRIPS Agreement provisions specifically tailored to fashion IP will reduce global counterfeiting.

(H) Scope and limitation:

IP laws safeguard original fashion designs, logos, and brand identities. IP protection motivates designers to create unique and innovative designs. IP protection helps fashion companies generate revenue through licensing and royalties. IP protection enhances brand value and reputation by preventing counterfeiting. International agreements (TRIPS, Berne Convention) provide global IP protection.

On the other hand, Fashion-specific IP laws are often unclear or inconsistent across countries.

IP infringement is difficult to detect and prosecute, especially online. IP laws may not protect fashion designs that are considered "functional" or "utilitarian." IP protection and litigation can be expensive for small fashion businesses. IP laws may stifle creativity by restricting inspiration and innovation.

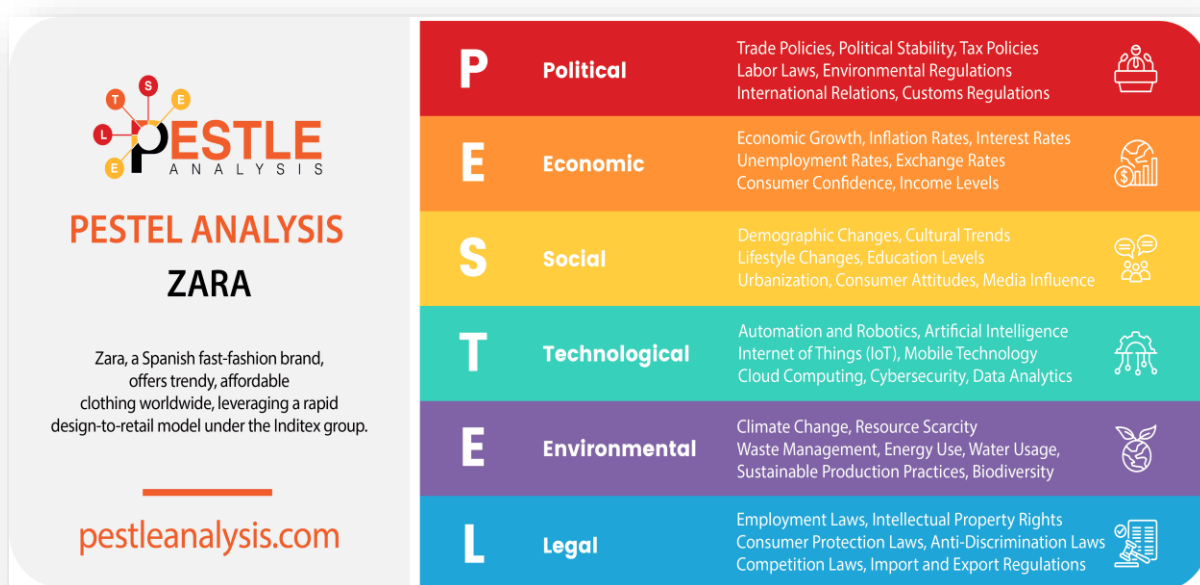
II. BACKGROUND OF THE ARTICLE

Globalization has changed society in terms of personality, lifestyle and attitude in a critical and thoughtful manner. This will increase the global market and demand more competition¹. This situation requires the company to find ways to reduce costs. Now the concentration of industry has shifted from Western countries to developing Asian countries, because they cannot compete with the low-cost labour implemented by the Republic of China and the product policies Japanese industry.

Developing countries have realized that they cannot rely on their industries but have to consider their creative human resources. This leads to more creativity, which means that creative industries drive the economy. Indonesia is promising innovative industries. It is estimated that 50% of the consumption in the G7 countries comes from the products of the creative industries, and consumption is 2/3 of the GDP. Currently, it can be considered that the potential market for this industry is 50% or 2/3 of the GDP.

Considering that the United States, England, France, Canada, Italy and Japan are export destinations for developing countries including Indonesia, it is very important. The creative industry, which has 14 sub-sectors, has been found to be a major contributor to Indonesia's GDP, averaging 6.3% in 2002-2006. In addition, it was 5.8% of the average jobs in 2002-2006 and 10.6%³ of the total exports in 2002-2006 and 13% . Of the 14 sub-sectors, Fashion is one of the most important sectors contributing to the economy in terms of the value of employees, the number of companies and exports.

In 2006, the value creation created by the fashion sub- sector was 43.71% of the total share of the creative industry sector. In addition, the number of jobs is 53.52%, the number of companies is 56.37%, and foreign sales is 65.73%⁵. On the other hand, in 1999, the potential market for this small sector in the world market was 12 million dollars, 5 million dollars and 1 million dollars in UK. The authority of this subsection corresponds to the diverse cultures of Indonesia from Sabang to Marauke.



III. INTELLECTUAL PROPERTY AND FASHION INDUSTRY

(A) Understanding “fashion” and “fashion design”:

"Fashion" and "fashion design" Fashion is an art, a reflection of life. The language of signs, symbols and symbols express ideas about individuals and groups. It's a way to express oneself and act as an extension of one's personality. Fashion vary within society by age, social class, generation, occupation and geography, as well as over time. It's constantly changing, and it's changing faster than any other area of human activity. In common terms, it is the style of clothing at a certain time or in a certain group of people¹¹. But, more than that, it is best defined as a style or style of clothing and accessories worn by groups of people at any given time. It also covers your shoes and jewellery. Fashion, in short, is about everything that is in the current fashion for a person's style and appearance. Fashion design is the use of design beauty and aesthetics in fashion items.

An art form dedicated to the creation of original clothing and other living accessories. Considered to be the "primary creative force" of the fashion industry, fashion design is influenced by cultural and social attitudes and changes over time and place. Modern fashion design is divided into three main categories:

A Haute couture (made to measure) is dedicated to specific customers, and custom sizing is appropriate to those customers. Until the 1950s, fashionable clothes were designed and produced according to fashion trends. A custom couture dress is made from high-quality, expensive fabric that is sewn with great attention to detail and finished using time-consuming

techniques. To qualify as a fashion house¹⁴, a designer must enter the group room for August clothes and present a new collection twice a year, with at least 35 different clothes each time. Ready-to-wear collections are not designed for individual customers, but are produced in small batches to ensure exclusivity. The clothes in this collection are standard sizes, not custom, so they are more suitable for big events. Most of the time the fashion houses show during the fashion week.

They are divided into two categories: designer/maker kits and candy kits. The designer collections are of higher quality and finish with a unique design. They often represent a specific idea and are designed to communicate rather than sell. Both ready-to-wear and couture collections are presented on the world's catwalks. The mass market caters to a large number of consumers by using cheaper fabrics and simpler manufacturing methods. In conclusion, fashion design reflects human intelligence and creativity. And this creativity comes to the fore in the form of fashion products.

(B) Justifications for intellectual property rights protection for the fashion design:

Fashion design, which is a product of human knowledge and creativity, is an appropriate subject for IPR protection. However, there is no consideration of the need to protect fashion designs under IPR rights. There are conflicting opinions on this issue as some of them agree with the urgent need to protect intellectual property rights for fashion design, and on the other hand, others do not see such a requirement. To examine the need for intellectual property protection for the fashion industry in general and fashion design, many articles have been written about 19 to 20 such protections.

Opponents of IPR protection for fashion design argue that because the fashion industry is growing, IPR protection is unnecessary. However, they argue that the lack of intellectual property protection forces fashion designers to innovate new designs that benefit the growth of the fashion industry. In a scientific paper, supporting this view, Rawsiala and Springman point out the "angelic" aspects of "piracy" and show that piracy in fashion design is more profitable than bad for the fashion industry.

The absence of [IPR] protection for creative designs and the regime of free design appropriation speeds diffusion and induces more rapid obsolescence of fashion designs. The fashion cycle is driven faster by widespread design copying, because copying erodes the positional qualities of fashion goods. Designers in turn respond to this obsolescence with new designs. In short, piracy paradoxically benefits designers by inducing more rapid turnover and additional sales.

Designers respond to these old and new designs. In short, theft favours designers who produce

faster and sell higher. Their thesis is that copying fashion designs is beneficial to the fashion industry, and therefore should be allowed to avoid intellectual property rights in fashion designs based on the "trickle down theory" of fashion change. According to them, copying fashion designs is at the highest and lowest levels of the fashion industry.

Conversely, critics are of the view that it occurs between all layers of the fashion industry, not just from the highest to the lowest. Extension of IPR protection for fashion design might not be beneficial for well-known fashion designers, but it is certainly important for un-established designers and small business owners, who suffer all the competition and overexposure burdens of copying without the benefit of increased prestige.

The proponents of IPR protection for fashion design acknowledge that fashion industry is one of the world's most important creative industries. According to them, designs, which are at the heart of fashion, are difficult and expensive to create, but relatively easy and inexpensive to copy. In the absence of IPR protection, they argue, copyists will free-ride on the efforts of creators, discouraging future investments in new inventions and creations. In short, copying stifles innovation. They claim that IPR protection for fashion designs would encourage greater innovation by ensuring that the profits from a design went to the designer and not to those who merely copied the work.

IV. CONVENTIONS IN RELATION TO FASHION INDUSTRY

(A) Berne Convention:

The Berne Convention for the Protection of Literary and Artistic Works was an international assembly in the Swiss city of Berne held in 1886. The Convention was adopted in 1886 and came into force in 1887. It is deposited with the World Intellectual Property Organization (WIPO) and is administered by the same. The fundamental condition for the enforcement of the Convention was 3 months after exchange of ratifications. As of 2022, 181 countries are signatories to this landmark IPR treaty. The Berne Convention evolved through various stages since its inception which are enlisted as follows-

- Signed in 1886 at Berne
- Effective since 1887
- Additional Act of Paris, 1897
- Berlin Revision of 1910
- Additional Protocol of Berne, 1915

- Rome Revision of 1931
- Brussels Revision of 1951
- Stockholm Revision of 1967
- Paris Revision of 1971

The latest entrant in the list of ratifiers of the Berne Convention is the United States which signed in 1989. The main objective of Berne Convention is to extend protection and sanctity intellectual property rights considering it to be of utmost importance as a developing legal field requiring progress, remedies and resolutions. Subject to certain allowed reservations, limitations or exceptions, the following are among the rights acknowledged as exclusive rights of authorization:

- The Right To Translate,
- The Right To Make Adaptations And Arrangements Of The Work,
- The Right To Perform In Public Dramatic, Dramatico-Musical And Musical Works,
- The Right To Recite Literary Works In Public,
- The Right To Communicate To The Public The Performance Of Such Works,
- The Right To Broadcast (With The Possibility That A Contracting State May Provide For A Mere Right To Equitable Remuneration Instead Of A Right Of Authorization),
- The Right To Make Reproductions In Any Manner Or Form (With The Possibility That A Contracting State May Permit, In Certain Special Cases, Reproduction Without Authorization, Provided That The Reproduction Does Not Conflict With The Normal Exploitation Of The Work And Does Not Unreasonably Prejudice The Legitimate Interests Of The Author; And The Possibility That A Contracting State May Provide, In The Case Of Sound Recordings Of Musical Works, For A Right To Equitable Remuneration),
- The Right To Use The Work As A Basis For An Audiovisual Work, And The Right To Reproduce, Distribute, Perform In Public Or Communicate To The Public That Audiovisual Work.

The vital provisions of the Berne Convention in general are explained below-

- **Article 2(1)** - It defines the expression ‘literary and artistic works’ as being inclusive to books, pamphlets, lectures, addresses, sermons, musical and cinematographic works, works of drawing, painting, architecture and sculpture and photographic works. It highlights that the usage of the words ‘such as’ indicates that the list of protected works is burgeoning without any limitations.
- **Article 2(2)** - It stipulates that only those works that’ve have been fixed in any material form i.e., published, recorded or expressed shall be eligible for protection as intellectual property.
- **Article 2(3)** - It also expands the purview of protected works to derivative works that’ve been influenced and conceptualized from an original work by clearly distinguishing it with ‘copied work’ which involves plagiarism. But derivative work has an element of invention.
- **Article 2(7)** - This is perhaps the most clinical and somewhat contentious provision as far as fashion designs are concerned. It gives discretion to the Unions to decide their own definitions of applied arts and photographic works in protecting this kind of work. The ambiguity regarding the same shall be discussed later in the paper.
- **Article 3(1)** - This forms the crux of the Berne Convention which aims to assure and ensure that the protection from copyright infringement of published literary and artistic works beyond the national boundaries and also in other member Unions. Thus, it dilutes the geographical criterion for the protection of intellectual property by applying it even to the habitual residents of other signatory Unions in Article 3(2) insofar as those works are ‘fixed materially’ consensually as per Article 3(3).

V. FASHION DESIGNS PROTECTED UNDER BERNE CONVENTION

Although the Convention suggests that use of the phrases ‘such as’ and ‘no limitations means that nothing is exclusionary of the ‘intellectual property’ domain, the explicit absence of the word ‘fashion designs’, its definition and the liberty given to Unions to apply Article 2(7) accordingly exposes the inadequate framework for the inclusion of fashion designs under ‘protected works’. So, it can be stated that Berne Convention does not specifically recognize fashion designs within its directions for member Unions. Unlike industrial designs mentioned directly in Article 2(7), fashion designs find no special mention in the Berne Convention.

(A) Trips Agreement:

TRIPs Agreement is an international legal treaty signed by all the members of the World Trade Organization (WTO) in 1995 at Morocco. The Agreement propounds a set of rules and regulations for the member nations to adhere to the basic principles according to protection of intellectual property rights. TRIPs introduces and integrates intellectual property into the multilateral trading system among the member nations. It directs WTO members to provide copyright rights to trademarks, patents, geographical indications, industrial designs and textile designs but not fashion designs.

The ultimate objective of the Agreement is to ensure that by enforcement of IPR don't themselves become barriers of international trade.

The TRIPs Agreement also specifies a separate enforcement mechanism and dispute resolution procedure in the IPR field. The Agreement directs all of its signatories to comply with Articles 1-21 of the Berne Convention according to Article 9(1) which have been inherited in the treaty.

Here are some important provisions which form the Part II of the TRIPs Agreement-

- Article 9(2)- It formulates that copyright protection shall be applicable to 'expressions' and not to ideas in any non-material form subscribing to Article 2(2) of the Berne Convention that entails works 'fixed in material form'.
- Article 25(1)- It mandates protection to independently created industrial designs that are new and original. It authorizes the member nations to decide on the originality of the industrial designs by considering the variety between two similar ones.
- Article 25(2)- It states that textile designs shall be protected by members and by securing them in regard to cost, examination or publication, reasonably guarding their opportunity to seek and obtain such protection. It offers discretion to the member nations to further integrate these obligations through domestic copyright legislations and design laws.
- Article 26- It enshrines the protection procedure to be abided by pertaining to industrial designs considering the commercial significance of these designs.

There are many loopholes and discrepancies in the TRIPs Agreement that results in an even dodgy, non-credible and poor system for the inclusion of fashion designs in intellectual property protection. It has been highlighted earlier that how fashion designs are classified for being an exquisitely intellectual creation. Hence, it's all the more unfortunate that a relatively modern and new international legal treaty that's more oriented and conclusive than the Berne

Convention is less effective and efficient than the older treaty in protecting fashion designs. The Berne Convention at least mentions about protection of applied arts which ambiguously implies to fashion designs, the TRIPs Agreement being so much scientific patent-centric, is silent about fashion designs as a part of IPR. Industrial designs and even textile designs (focusses on the woven, knitted or printed pattern on clothing accessories) find a mention in Article 25 which talks about preservation of designs. But no provision for fashion designs is seen in the TRIPs Agreement the effect of which in certain domestic legislations shall be discussed later. After considering the legislative scenario in the United Kingdom and Australia pertaining to Berne Convention, TRIPs Agreement and fashion designs, lets understand the situation in India as far as intellectual property security for fashion designs is concerned.

In India, the Designs Act, 2000 regulates the registration and further protection of designs. It defines design similar to what the Australian Act encompasses. The Act is totally based on the registration of designs which is an extensive process mentioning the rights of the designers and duties of the officials. It is a narrowly tailored legislation that is silent on the configuration vs function aspect but provides registration of a design after a thorough inspection by the Registrar. The dispute resolution is according to the Civil Procedure Code, 1908. One of the loopholes in the Act is that a pre-requisite for registration application is public morality and order which vests with the State the clarification of these aspects. But if one scrutinizes it in tandem with the Berne Convention and TRIPs Agreement, it directly protects fashion designs as intellectual property unlike the treaties.

(B) Justifications for intellectual property rights protection for the fashion design:

Fashion design, which is a product of human knowledge and creativity, is an appropriate subject for IPR protection. However, there is no consideration of the need to protect fashion designs under IPR rights. There are conflicting opinions on this issue as some of them agree with the urgent need to protect intellectual property rights for fashion design, and on the other hand, others do not see such a requirement. To examine the need for intellectual property protection for the fashion industry in general and fashion design, many articles have been written about 19 to 20 such protections. Opponents of IPR protection for fashion design argue that because the fashion industry is growing, IPR protection is unnecessary. However, they argue that the lack of intellectual property protection forces fashion designers to innovate new designs that benefit the growth of the fashion industry. In a scientific paper, supporting this view, Rawsiala and Springman point out the "angelic" aspects of "piracy" and show that piracy in fashion design is more profitable than bad for the fashion industry.

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Conversely, critics are of the view that it occurs between all layers of the fashion industry, not just from the highest to the lowest. Extension of IPR protection for fashion design might not be beneficial for well-known fashion designers, but it is certainly important for un-established designers and small business owners, who suffer all the competition and overexposure burdens of copying without the benefit of increased prestige.

The proponents of IPR protection for fashion design acknowledge that fashion industry is one of the world's most important creative industries. According to them, designs, which are at the heart of fashion, are difficult and expensive to create, but relatively easy and inexpensive to copy. In the absence of IPR protection, they argue, copyists will free-ride on the efforts of creators, discouraging future investments in new inventions and creations. In short, copying stifles innovation²². They claim that IPR protection for fashion designs would encourage

VI. INDIAN INTELLECTUAL PROPERTY RIGHTS REGIME

(A) Protection of fashion design under the Indian intellectual property rights regime:

IPR law in India protects designs under three different Acts namely Designs Act, 2000, Indian Copyright Act, 1957 and Trade Marks Act, 1999. These legal documents can be consulted under the following headings:

a. Industrial Design Protection For Fashion Designs

Industrial design protection for fashion design Industrial design protection is the most commonly used model of legal protection for fashion design. Most countries support fashion design as industrial design. In India, the law regarding the protection of industrial designs is laid down in the Design Act, 2000, this is the main law used by fashion designers to protect fashion designs. The Designs Act affords protection to the "design" registered under the Act.

Section 2 (d) of the Designs Act defines the term “design” as follows:

“Design” means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957.

It means that not every design but only those designs which fit into the definition of “design” as provided under Section 2 (d) of the Act can be registered under the Designs Act. Apart from it, a design, to get registration and, consequently, to get protection under the Designs Act, must satisfy the ensuing conditions as well:

- 1) It must be new or original.
- 2) It must not have been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the date of filing for registration.
- 3) It must be significantly distinguishable from known designs or combination of known designs.
- 4) This Act must not include or contain offensive or obscene matter²⁵.

Instead, it only takes care of the special/individual features like shape, design, color, etc. of the garment. Furthermore, to be protected under the Act, these features must not only meet the definition of "partnership" under the Act, but must also be registered under the Act.

Under the 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, 2001.²⁶ Goods manufactured by the fashion designers may fall under the following classes of goods:

- 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

including buttons, clasps for garments, for headwear and for footwear, laces, pins, hand sewing, knitting and embroidery equipment and clothing accessories such as belts, suspenders, braces etc.

- 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.
- Class 5: Textile piece-goods, artificial and natural sheet material – lace embroidery; ribbons, braids and other decorative trimmings; textile fabrics etc.
- Class 10: Clocks and watches and other measuring instruments, checking and signaling instruments - watches and wrist watches etc.
- Class 11: Articles of adornment – jewellery etc.

VII. TRANSBOUNDARY PROTECTION

(A) Transboundary IP protection in the fashion industry:

As earlier noted, IPRs are territorial. The territorial nature of IPRs stands as a major barrier to the protection of IPRs in cases of cross-border/international infringements. However, it is imperative to note that to assuage this situation, several international treaties have been established by the World Intellectual Property Organisation (WIPO) and other international entities vested with the mandate of establishing same. As it relates to the fashion industry, which mainly falls within the realm of industrial designs, the major international treaties and agreements which provide for the registration and protection of industrial designs are the Trade-Related Aspects of Intellectual Property Rights Agreement (“**TRIPS Agreement**”) and the Hague Agreement concerning the International Registration of Industrial Designs, of 1925 (“the Hague Agreement”). Whilst only a section of the TRIPS Agreement deals with industrial designs, the Hague Agreement is dedicated to the registration and protection of industrial designs in the international community.

It is also instructive to note that both the TRIPS Agreement and the Hague Agreement are subject to the Paris Convention for the Protection of Industrial Property of 1883 with regards to priority rights in the international registration and protection of IPRs.

(B) Protection under the trips agreement:

The TRIPS Agreement (“the Agreement”) is an international agreement between all member states of the World Trade Organisation (the WTO). It creates the basic standards for the

regulation by national governments, of the various forms of intellectual property (IP) as applied to nationals of other WTO member nations and is administered by the WTO 49. As it relates to industrial designs, Article 26(1) of the Agreement requires its member states to grant the owner of a protected industrial design, the right to prevent third parties who do not have their consent from making, selling, or importing articles bearing or embodying a design which is a copy, or substantially a copy, of their own design (the protected design) when such acts are undertaken for commercial purposes. Additionally, the Agreement provides that the duration of protection available shall be at least 10 years.

Worthy of mention is that a signatory state need not have domesticated the Agreement before its nationals can be entitled to its benefit in other countries that are parties to it. As such, even though Nigeria is yet to domesticate this Agreement, a Nigerian fashion designer will be entitled to the benefits under this Agreement as Nigeria is signatory.

(C) Under The Hague Agreement:

The Hague Agreement (“the Agreement”) provides for an international registration structure that offers the chances and possibility of securing protection for industrial designs in states and/or governmental organisations that are contracting parties to the Agreement, through a single international application filed with the International Bureau of WIPO. Thus, under this Agreement, a single application would suffice, and IPR owners in the fashion industry would not need to carry out series of registrations in countries that are parties to the Agreement for their rights to be protected under the Agreement. To be entitled to IPR protection under this system, an applicant must satisfy at least one of the following requirements:

- Must be a national of a contracting party or a member state of an intergovernmental organisation which is a contracting party, e.g., the African Intellectual Property Organisation or the EU;
- Must have a domicile in the territory of a contracting party; or
- Have a real and effective industrial or commercial establishment in the territory of a contracting party.

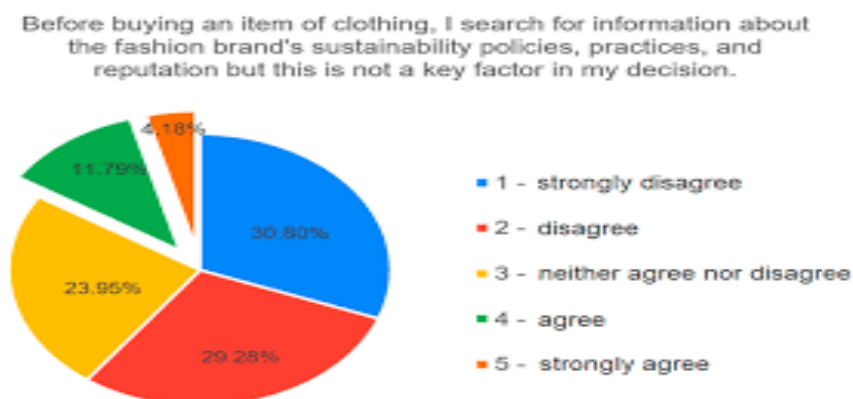
It is also instructive to note that under this Agreement, an international application does not need any prior national application or registration. This means that a fashion designer who seeks to register its intellectual property right in another country, does not need to have previously registered such right in its own country, to be entitled to registration in that other country. The application filed with the International Bureau of WIPO would suffice.

While this system is indeed commendable and makes it easy for fashion designers to register and seek protection for their intellectual property rights, particularly as it relates to industrial designs, Nigeria is not a party/signatory to this Agreement. It, therefore, does not protect Nigerian designers. Hence, Nigerian fashion designers that seek to be protected under this Agreement, will have to file a national or regional application. However, this method may not be as easy as the system applicable to the nationals of state parties.

(D) The right of priority under the Paris convention for the protection of industrial property:

As mentioned earlier, the protections afforded under the Hague and TRIPS Agreements are subject to the right of priority provided under the Paris Convention for the Protection of Industrial Property (“the Paris Convention”) The Paris Convention, yet to be domesticated in Nigeria, applies to industrial property in the broadest possible sense. It is divided into three main categories: national treatment, right of priority and common rules. The right of priority ensures that, on the ground of a regular first application filed in one of its contracting states (i.e., one of the states that are signatories to it), a fashion designer may, within a period of 6 months apply for the protection of its IPR, in any other country that is a signatory to the Agreement. Where an application is filed by a person in a country that is a signatory to the Agreement, and such a person intends to file another application in another country, the second application will be deemed filed at the same time as the original application.

For example, Ujay, a designer who has registered her design in Nigeria, intends to register the same design in the U.S. Under the Convention, the registration in the US will be deemed to have been done on the same day as that in Nigeria. By extension, if another designer applies to register Ujay’s design in the U.S after Ujay has done the registration in Nigeria, Ujay’s registration will take priority because it is deemed to have been done on the date the application was made in Nigeria. He will have protection over applications filed by others during the said period, for the same design.



A major advantage of this system is that applicants seeking protection in various countries are not mandated to present all their applications at the same time. They have 6 months to decide the countries in which they intend to seek protection and organise the steps necessary for securing protection. The rights afforded under the Hague and TRIPS Agreements are not automatic as fashion designers who intend to protect their IP under these international systems must consider the provisions of the Paris Convention as it relates to priority. It is not enough to contemplate international systems of protection; the right of priority must also be taken into consideration, to avoid a designer's IPR not being protected because the designer is out of time.

VIII. CONCLUSION AND SUGGESTIONS

In the creative industry, the regulation of intellectual property rights (IPR) is very important because it protects intellectual works such as works of art, music, films and so on. From an international law perspective, it is important to understand that each country has different IPR regulations, but there are several international agreements such as the TRIPS Agreement that provide a framework for protecting intellectual property rights globally. Analysis of IPR regulations in the creative industry from an international law perspective includes evaluation of the extent to which a country's IPR regulations comply with existing international standards. This involves also considering aspects such as the protection of the original work, the duration of protection, and the rules relating to the use of the work in the creative industries. By understanding the differences and similarities in the regulation of intellectual property rights from an international legal perspective, creative industry players can manage creative works and protect their intellectual property rights in various global markets. The need to protect IPRs in the fashion industry has become very imperative.

The current economic and digital evolution being experienced globally is enough justification for IPRs in the fashion industry to be protected. Fashion designs is very much a part of intellectual property owing to its novelty of its work. As the design appeals to the eyes and increases the marketability of any product it is necessary to protect it from copycats and to do that modern governance entails presence of authoritative international IPR treaties.

(A) Suggestions:

- To enhance IP protection in the fashion industry under TRIPS, countries should harmonize their IP laws and regulations to provide consistent protection globally. This can be achieved through international cooperation and collaboration between WIPO, WTO, and fashion industry stakeholders.
- TRIPS should be amended to include specific provisions addressing fashion-specific

IP concerns, such as protection for designs, patterns, and textures. Countries should establish specialized IP courts and tribunals to handle fashion-related disputes efficiently.

- Additionally, TRIPS should provide guidelines for online IP enforcement, including measures to combat counterfeiting and piracy on digital platforms. Member countries should also establish effective border control measures to prevent the importation of counterfeit goods.
- The fashion industry should prioritize IP education and training for designers, manufacturers, and employees. This can include workshops, training programs, and online resources. TRIPS should encourage collaboration between designers, manufacturers, and IP experts to develop innovative IP protection strategies.
- To leverage technology, TRIPS should promote the use of blockchain, AI-powered IP monitoring, and digital watermarking to secure IP registration and protection. Member countries should also develop guidelines for 3D scanning and printing IP protection. TRIPS should address sustainable fashion practices by providing IP incentives for eco-friendly designs and production methods. This can include tax benefits, subsidies, or expedited IP protection for sustainable fashion innovations.
- To promote consumer awareness, TRIPS should encourage member countries to launch public awareness campaigns highlighting the risks of counterfeiting and the importance of IP protection.
- Influencers, celebrities, and social media platforms can be leveraged to promote authentic fashion products. Finally, TRIPS should establish a dispute resolution mechanism specifically tailored to fashion IP disputes, providing an efficient and cost-effective resolution process for fashion industry stakeholders.
- By implementing these suggestions, TRIPS can provide robust IP protection, promote innovation, and support the growth of the fashion industry while ensuring consistency with international trade agreements.

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