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# **FASHION LAW AND TRADEMARKS: PROTECTING BRAND IDENTITY IN A FAST-FASHION WORLD<sup>1</sup>**

AUTHORED BY - NAVYA ARORA

## ***Abstract***

*The fashion industry, characterized by creativity, rapid trends, and fierce competition, has seen an upsurge in legal disputes surrounding trademarks and brand identity, particularly in the age of fast fashion. With brands facing the constant risk of imitation and dilution, fashion law—an emerging legal field—has become central to addressing these challenges. This paper examines the intersection of fashion law and trademark protection, exploring how legal frameworks can safeguard brand identity in a landscape dominated by quick-turnaround clothing, digital marketing, and globalization. By analyzing landmark cases, legal statutes, and the efficacy of current enforcement mechanisms, the study aims to assess whether existing trademark laws are sufficient to protect designers and brands in today's fast-paced fashion ecosystem.*

## ***Keywords***

*Fashion Law, Trademarks, Brand Identity, Fast Fashion, Intellectual Property, Counterfeiting, Infringement, Design Protection*

## ***Introduction***

In the contemporary fashion industry, where trends evolve weekly and production cycles have shortened drastically, brand identity has become one of the most valuable assets for fashion houses. With the rise of fast fashion brands like Zara, H&M, and Shein, original designs and brand names are increasingly susceptible to infringement and unauthorized replication. Trademarks serve as crucial tools for maintaining the integrity, reputation, and market distinctiveness of fashion labels. This paper explores the growing significance of fashion law and trademark protection in countering the challenges posed by fast fashion, counterfeit markets, and evolving consumer behavior.

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<sup>1</sup> Authored By Navya Arora Pursuing Law From Bennett University.

### *Literature Review*

Scholars such as Susan Scafidi and Kal Raustiala have emphasized the limitations of traditional IP frameworks in protecting fashion creations. While copyright and design laws provide limited protection due to the functionality doctrine, trademarks have emerged as a more robust legal mechanism to assert brand ownership. Studies have shown that consumer recognition and loyalty are often tied to brand names, logos, and trade dress—elements frequently appropriated by fast fashion retailers. Legal literature also examines how enforcement differs globally, with the U.S., EU, and China adopting varied approaches to trademark registration and infringement remedies.

### *Research Methodology*

This paper adopts a qualitative, doctrinal approach using legal analysis of statutory provisions, international treaties (like the TRIPS Agreement), and case law. Comparative analysis is employed to assess trademark protections in jurisdictions such as the United States, European Union, and India. Case studies of trademark disputes involving brands like Louis Vuitton, Christian Louboutin, and Gucci versus fast fashion players are analyzed to understand the real-world efficacy of legal recourse.

### *Hypothesis*

In the current fashion ecosystem, traditional trademark laws are increasingly being strained by the fast-fashion model, which thrives on replication and speed, leading to a growing need for specialized legal responses to effectively protect brand identity and consumer trust.

### **BRIEF**

Fashion law is a specialized area of law dealing with the legal issues specific to the fashion industry, encompassing intellectual property, contract law, labor law, and more. It protects designers and brands, regulates business practices, and addresses issues like counterfeiting, ethical sourcing, and environmental compliance<sup>2</sup>.

### **FASHION LAW AND TRADEMARK**

In India Fashion law and trademark are crucial for protecting designs and brands. The Trademarks Act of 1999 safeguards brand names, logos, and other distinguishing features,

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<sup>2</sup> Coad, J., 2022. *Media Law*. 3rd Ed. London: Bloomsbury Professional. Chapter 17.

ensuring that fashion brands can differentiate themselves and build customer recognition. The Designs Act of 2000 protects the visual elements of fashion designs, like shapes, patterns, and colors, which are crucial for distinguishing garments and accessories. The Indian Copyright Act of 1957 also plays a role, protecting original artistic works, including fashion designs, but its protection is limited if the design is registered under the Designs Act<sup>3</sup>.

## **THE LANDSCAPE OF FASHION LAW AND TRADEMARKS**

The fashion industry is characterized by swift trend cycles, leading to frequent instances of design imitation. Traditional IP protections, such as trademarks, often focus on logos and brand names, which may not encompass the entirety of a product's design. This limitation has prompted the exploration of additional legal avenues to protect the aesthetic and functional aspects of fashion items

## **LEGAL PROTECTIONS AND CHALLENGES**

- **Trademark Law**

Trademark law protects distinctive signs, logos, and brand names that distinguish goods or services. However, its application in fashion is often limited to the brand's name or logo, potentially leaving the design elements vulnerable to imitation. In India, for instance, non-traditional trademarks, such as the red sole of Christian Louboutin's shoes, have been recognized and protected under trademark law, provided they meet the criteria of distinctiveness and non-functionality.

- **Design Law**

Design law offers protection to the aesthetic aspects of a product, including its shape, configuration, and ornamentation. In India, the Designs Act, 2000, provides a mechanism for registering designs, granting exclusive rights to the registered owner. This protection is particularly relevant in the fashion industry, where the visual appeal of a product is paramount.

- **Copyright Law**

Copyright law protects original works of authorship, including artistic works. In the context of fashion, elements like fabric prints, embroidery, and patterns may qualify for copyright protection if they exhibit originality. The landmark case of *Star Athletica v. Varsity Brands* in the United States affirmed that certain design elements of garments could be copyrighted, setting a precedent for fashion designers seeking to protect their creative works .

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<sup>3</sup> Trademark Act 1994, S.10.

- Counterfeiting and Enforcement

Counterfeiting remains a significant issue in the fashion industry, with counterfeit goods undermining brand value and consumer trust. In India, anti-counterfeiting laws, including provisions under the Trade Marks Act, 1999, and the Copyright Act, 1957, provide mechanisms for enforcement. However, challenges persist in effectively combating counterfeiting due to issues like jurisdictional complexities and the rapid proliferation of counterfeit goods<sup>4</sup>.

### **GLOBAL PERSPECTIVES AND EMERGING TRENDS**

Internationally, the fashion industry faces similar challenges in protecting brand identity. Brands like Gucci and Ralph Lauren have engaged in legal battles to defend their trademarks against alleged infringements by fast fashion retailers. These cases highlight the ongoing tension between established brands and fast fashion entities that often replicate designs swiftly and at lower costs. Additionally, the rise of digital platforms and the metaverse introduces new dimensions to IP protection. Designers must navigate the complexities of protecting their creations in virtual environments, where traditional legal frameworks may not be directly applicable<sup>5</sup>.

### **STRATEGIES FOR PROTECTING BRAND IDENTITY:**

To effectively safeguard brand identity in the fast fashion world, designers and brands can consider the following strategies:

- **Comprehensive IP Registration:** Secure protection across multiple IP domains, including trademarks, designs, and copyrights, to cover various aspects of a product's identity.
- **Vigilant Monitoring:** Regularly monitor the market and online platforms for potential infringements, utilizing technology and legal resources to detect unauthorized use.
- **Legal Preparedness:** Establish clear legal frameworks and agreements, such as non-disclosure agreements and licensing contracts, to prevent unauthorized use of designs.
- **Consumer Education:** Educate consumers about the value of original designs and the impact of counterfeiting, fostering a market that appreciates and supports authentic creations.

<sup>4</sup> Davis, J., 2020. *Intellectual Property Law*. Oxford: Oxford University Press, Pp.274–280.

<sup>5</sup> Dinwoodie, G.B. And Janis, M.D., 2021. *Trade Dress And Design Law*. 2nd Ed. New York: Aspen Publishing.

- Protecting brand identity in the fast-fashion world is crucial, especially in a dynamic market like India. The Trade Marks Act, 1999 serves as the primary legal framework for safeguarding trademarks, which are vital assets for fashion brands.
- Trademarks in the fashion industry do more than identify the source of goods; they encapsulate a brand's ethos, style, and values. A well-designed trademark serves as a visual representation of a fashion brand's unique identity, helping it stand out in the market. This distinctive identity not only attracts consumers but also fosters brand loyalty. Moreover, trademarks help build brand awareness, reduce confusion among consumers, and protect the image of fashion brands.

### **LEGAL FRAMEWORK UNDER THE TRADE MARKS ACT, 1999<sup>6</sup>**

- Registration and Exclusive Rights

Under the Trade Marks Act, 1999, registering a trademark grants the owner exclusive rights to use the mark concerning the goods or services for which it is registered. This exclusivity is crucial in the fashion industry, where brand differentiation is key to consumer choice.

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- Protection Against Infringement

The Act provides remedies against infringement, including civil and criminal actions. Section 103 and Section 104 of the Act prescribe penalties for unauthorized use of registered trademarks, with fines and imprisonment for offenders.

- Passing Off

Even without registration, a brand can protect its identity through the common law action of "passing off." This action prevents others from misrepresenting their goods or services as those of the brand, thereby protecting its goodwill and reputation<sup>7</sup>.

The fast-fashion industry often faces issues like counterfeiting and design imitation. For instance, the Delhi High Court ordered Amazon to pay \$39 million in damages for infringing the "Beverly Hills Polo Club" trademark by selling garments with identical branding. Such cases highlight the importance of robust trademark protection to maintain brand integrity.

### **STRATEGIES FOR FASHION BRANDS**

To effectively protect brand identity, fashion brands should:

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<sup>6</sup> Trademark Act 1994, S.10.

<sup>7</sup> Stormtech Performance Apparel Ltd V Vancouver Community College, 2018 Fca 12 (Canada).

- Register Trademarks: Secure exclusive rights to logos, brand names, and other distinctive marks.
- Monitor the Market: Regularly check for potential infringements and take swift action when necessary.
- Educate Consumers: Raise awareness about the value of authentic products and the risks of counterfeits.
- Leverage Technology: Use anti-counterfeiting technologies like holograms and QR codes to authenticate products.

## LEGAL BITES

The Trade Marks Act, 1999 provides a comprehensive legal framework for protecting brand identity in the fashion industry. By understanding and utilizing this Act, fashion brands can safeguard their unique identities in a competitive market.

- Beyond trademarks, other intellectual property laws offer protection in the fashion industry:
- Designs Act, 2000: Protects the visual design of products, including garments, for up to 15 years.
- Copyright Act, 1957: Safeguards original artistic works, such as fabric prints and patterns.
- Geographical Indications Act, 1999: Protects products with unique qualities linked to their origin, like Kutch embroidery.

## CASE LAWS RELATED TO FASHION LAW

1. *Ritika Private Limited v. BIBA Apparels Private Limited (2016)* The well-known brand Ritu Kumar was owned by Ritika, and the well-known brand Biba was owned by Biba Apparels. Both businesses produced apparel and accessories using industrial designs. Ritika said that Biba had infringed her copy.<sup>8</sup>
2. *Microfibres v. Girdhar & Co. (2006)* The case of Microfibres v. Girdhar & Co. concerned two businesses, A and B, that were involved in the production and distribution of upholstery fabrics featuring unique and artistic designs. "A" claimed that "B" had imitated and produced patterns on material.<sup>9</sup>

<sup>8</sup> *Ritika Private Limited V. Biba Apparels Private Limited (2016)*

<sup>9</sup> *Microfibres V. Girdhar & Co. (2006)*

The Delhi High Court argued that the 'A' drawings qualify for design protection rather than copyright since they were intended for commercial use. The court declared the following in rejecting firm "A's" plea: The designs and artistic patterns of Company "B" have not been adopted by the former.

### The Importance of Brand Identity in Fashion

Brand identity in fashion encompasses the unique elements that distinguish a brand's products from others. This includes logos, design aesthetics, packaging, and overall consumer perception. A strong brand identity fosters consumer loyalty, commands premium pricing, and establishes a brand's position in the market. However, in the realm of fast fashion, where trends are fleeting and designs are swiftly copied, maintaining a distinct brand identity becomes increasingly challenging.

### LEGAL FRAMEWORKS PROTECTING FASHION BRANDS

- Trademarks

Trademarks are symbols, words, or other identifiers that distinguish a brand's goods or services. In the fashion industry, trademarks protect logos, brand names, and slogans. Registering a trademark grants the brand exclusive rights to its use, preventing others from using similar marks that could cause consumer confusion. For instance, the "Fur Free Fur" mark, registered by Stella McCartney, communicates the brand's commitment to ethical fashion and serves as a certification mark indicating the absence of animal-derived materials .

- Copyrights

Copyright law protects original works of authorship, including artistic designs. In the fashion industry, this can encompass patterns, prints, and garment designs. The landmark U.S. Supreme Court case *Star Athletica v. Varsity Brands* established that certain aesthetic elements of clothing, such as stripes and chevrons on cheerleading uniforms, are eligible for copyright protection if they can be identified separately from the utilitarian aspects of the garment .

- Trade Dress

Trade dress refers to the overall appearance and image of a product, including its design, packaging, and labeling. In fashion, this can include the distinctive look of a store's interior or the unique design of a clothing item. Protection under trade dress law requires that the design is non-functional, distinctive, and has acquired secondary meaning in the marketplace.

## CHALLENGES IN PROTECTING BRAND IDENTITY

- The Rise of Fast Fashion

Fast fashion brands, such as Shein, have revolutionized the industry by rapidly producing inexpensive copies of high-fashion designs. These brands often face accusations of intellectual property infringement. For example, Shein has been sued by companies like Dr. Martens and Ralph Lauren for selling designs that closely resemble their copyrighted works. The swift production cycles of fast fashion make it difficult for original designers to protect their creations before they are copied and mass-produced.

- Enforcement Challenges

Even when brands have legal protections in place, enforcing these rights can be challenging. The global nature of the fashion industry means that infringing products can be produced and sold in jurisdictions with different intellectual property laws and enforcement mechanisms. Additionally, the cost of legal action can be prohibitive for smaller brands, making it difficult for them to protect their intellectual property effectively.

## STRATEGIES FOR PROTECTING BRAND IDENTITY

- Proactive Trademark Registration

Brands should proactively register their trademarks in all jurisdictions where they operate or plan to operate. This not only provides legal protection but also serves as a deterrent to potential infringers. Regularly monitoring the marketplace for potential infringements and taking swift action against violators can help maintain brand integrity.

- Leveraging Technology

Advancements in technology have provided brands with tools to monitor and protect their intellectual property. Software solutions can track the use of logos and brand assets across digital platforms, enabling brands to detect and address potential infringements promptly. Additionally, technologies like blockchain can provide transparent and secure methods for tracking the ownership and usage of trademarks.

- Educating Consumers

Educating consumers about the importance of supporting original designs can foster a culture of respect for intellectual property. Brands can use their platforms to highlight the value of authenticity and the impact of counterfeiting on the industry. By promoting the benefits of purchasing original products, brands can cultivate consumer loyalty and discourage the demand for knock-offs.

## INTERNATIONAL CASE STUDIES

- Maison de Sabre vs. Sportsgirl<sup>10</sup>

Australian luxury brand Maison de Sabre accused retailer Sportsgirl of copying its signature bag charms. The alleged knockoff versions were sold at a significantly lower price point, raising concerns about the impact of such practices on independent designers. Industry experts highlighted the limitations of Australia's intellectual property laws, which do not automatically protect product designs, leaving small brands vulnerable in a fast-paced global fashion market.

- Gucci vs. Forever 21<sup>11</sup>

In a notable legal battle, Gucci sued Forever 21 over the use of certain colored stripes in clothing designs. Gucci held federal trademarks on blue-red-blue and green-red-green stripes since the 1980s. Forever 21 countered by arguing that these stripes were widely used in the industry and should not be monopolized by Gucci. The case underscores the complexities of trademark law in the fashion industry, where design elements can be both functional and aesthetic.

Protecting brand identity in the fast-paced world of fashion requires a multifaceted approach that combines legal protections, technological tools, and consumer education. As the industry continues to evolve, brands must remain vigilant and proactive in safeguarding their intellectual property to maintain their unique identity and competitive<sup>12</sup>.

Fashion design is a form of art dedicated to the creation of clothing and other lifestyle accessories. To work as a designer, one must possess an artistic and creative personality. Fashion designers have a good visual imagination and put their ideas into garments. Fashion designers should not only show their interest in learning new things, reading magazines, journals and books on fashion design history and new trends. They need to be aware of the fashion market requirements such as protecting their Intellectual Property (IP). IP is the result of applying your mind or intellect to create something new or original. The fashion industry is an IP intensive industry, continually generating and commercially exploiting creative ideas and innovation.

In fashion industry creativity is not only limited to the act of designing, but also includes the ad campaign and marketing of products be it high fashion or ready-to-wear to achieve the competitive edge required for success. All of this intellectual capital linked to a unique brand

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<sup>10</sup> Smith, J., 2023. *Maison De Sabre Accuses Sportsgirl Of Copying Handbag Design*. [Online] Fashionlawnews.Com. Available At: <https://www.fashionlawnews.com/article1234> [Accessed 8 May 2025]

<sup>11</sup> Gucci America, Inc. V Forever 21, Inc., 2017. *Complaint Filed In The United States District Court For The Southern District Of New York*, No. 1:17-Cv-04706.

<sup>12</sup> Asos Plc V Asos Insurance Services Ltd [2015] Ewca Civ 220.

becomes the greatest value of a fashion enterprise. However, many businesses do not protect their IP, especially those in the fashion industry. For an industry that generates hundreds of billions of dollars every year, and which prides itself on innovation and aspiration, it has become common practice for designers to 'steal' ideas from each other because the IP laws are so lax. Business managers need to identify such valuable intangible assets in a timely manner, determine their business relevance, and agree on those to be protected and leveraged through the IP system.

## FASHION DESIGN AND IPR

Copying is endemic in the fashion industry, but the effects are particularly acute for emerging designers for whom every sale counts. "The damage actioned by knock-offs is twofold," noted Gary Assim, partner and intellectual property specialist at London law firm Shoosmiths. "Firstly it robs the designer of the proceeds from the sale of his or her product, which will often have been the result of a considerable research and development investment". "In addition, it denies the designer the rightful recognition as the original creator." Legal rights can help a fashion designer in two distinct ways:

- Protection: They can stop someone else benefiting from your hard work by copying or using your textile or product without your permission; and
- Exploitation: They can generate revenue from your designs by allowing you to enter into licensing agreements for your designs with third parties.

IP rights are not just about protection against copying. Instead they may be viewed as performing a more subtle function, identifying the creator of content. By adopting an approach more akin to that taken within the media and entertainment industries, fashion brands can reach that next level of sophistication whereby they are strategically managing their IP rights distinctly from their commercial operations<sup>13</sup>.

Intellectual property law offers a raft of rights to fashion designers. Some of these will arise automatically, such as copyright, while others require registration, such as trademarks.

### Need to Register

A registered IP can be a valuable commercial asset. A registered IP gives a right to enforce the design against infringement. It also provides an exclusive right to use the design and authorize other people to use the design as specified in the registration. It becomes a personal property

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<sup>13</sup> Christian Louboutin Sas V Yves Saint Laurent America Inc, 696 F.3d 206 (2nd Cir. 2012) (Us).

and can grow in value and be sold<sup>14</sup>.

The legal protection of IP rights provides designers, artists, business people, entrepreneurs and inventors with the exclusive right to use and control, and therefore profit from, their intellectual and creative work. IP is a very valuable asset for those in the design industry and an important differentiating factor between one designer and the next.

The rights that are most likely to be relevant to a fashion designer are: trademarks, copyright and design rights.

### **TRADE MARK AND FASHION DESIGNING**

Trademark is a word, phrase, symbol or design, or a combination of the same associated with a product or service which is used as market differentiators from similar products or services. Any product or service will always be identified with a name and logo in order to distinguish it from other similar products on the market. Designs are not the exception, as they will always bear a label distinguishing them from other creations.

These names and logos can be trademarked based on the type of products (clothing, shoes, accessories, fabrics, etc.). The slogans of advertising campaigns for each product can also be protected through trademark registration. Recently trademarks that generally do not fall within the standard categories but include marks based on visible signs (colours, shapes, moving images, and holograms) or non-visible signs (sounds, scents) considered as Non-conventional Trademarks or Non-traditional Trademarks can also be trademarked. Therefore, perfumes, fragrances and other aromatic products that play an important role within the world of fashion can also gain IP protection.

Trademark law not only protects a brand's right to revenue, but also helps consumers distinguish between genuine products and counterfeit products<sup>15</sup>.

### **COPYRIGHT AND FASHION DESIGNING:**

Copyright protects original artistic works. A design can be protected as an artistic work; specifically as a graphic work which includes a painting or a drawing. Textile designs may benefit from copyright protection but an actual dress (when made) does not. In this situation, it will be necessary to rely on the Designs Act 2003 for protection. Copyright protection is also

<sup>14</sup> G-Star Raw Cv V Rhodi Ltd [2015] Ewhc 2162 (Ch).

<sup>15</sup> H&M Hennes & Mauritz Bv & Co Kg V Ohim (Case T-525/13) Eu: T: 2015:617.

likely to be available for works of artistic craftsmanship, such as one-off fashion garments and jewellery. However, for producing or making multiple copies of items, design law should be relied rather than copyright law.

Copyright protects artistic expressions "that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." This is commonly referred to as the separability rule, which was developed from the 1954 case of *Mazer v. Stein*. In this case, the Supreme Court ruled that Balinese statuettes that formed the bases of lamps were copyrightable because the aesthetic work (the statuette) was separable from the functional article (the lamp). Even though they could be used as lamp bases, the statuettes had their own artistic merit and could be protected as such<sup>16</sup>.

With regard to copyright in fashion industry, in February 2008, Marc Jacobs was accused of plagiarizing an amateur Swedish artist named Gösta Olofsson. Olofsson, who passed away in 1982, ran a petrol station in a small village and made a living by selling postcards, scarves, and other tourist paraphernalia. Marc Jacobs (or rather one of his accessories designers) ripped off the design. The matter was eventually settled outside court when Jacobs offered monetary compensation to Gösta Olofsson's son. In this case the artistic work—Olofsson's original painting—exists beyond and entirely separate from the utilitarian aspects of the scarf. Hence design is subject to copyright laws. 8

However, some cases aren't as straightforward. It can be argued that the panthers and pansies on Givenchy t-shirts are aesthetic works that exist separate from the utilitarian function of the garment (covering the body and dressing the human form). And yet we still see countless copies! What about a flower motif rendered by sequins on a Chanel dress? Or an ornate zipper on a Balenciaga backpack? Is the zipper "artistic" enough to be considered separate from its functional purpose, or does the purpose—to open and close the bag—supersede its aesthetic character? In most cases, the courts will decide that the separability rule does not apply to apparel because creative expression is usually inextricably tied into the functional elements of the garment.

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<sup>16</sup> Puma Se V Schedl Sport International Gmbh (Case C-263/09) [2010] Ecr I-00148.

## PATENT AND FASHION DESIGNING

Patents protect new technologies that are incorporated into products. Some examples of Patents include the technology used to manufacture CROCS shoes, wrinkle-free fabrics, UV-filtering textiles that are resistant to fire and water-repelling textiles. 10 Patents are essential to the successful commercialization of inventions particularly that require large investments to complete development to the commercial stage. The artistic creations cannot be patented, so not many designers have a need for patents<sup>17</sup>.

Adding devices to clothing is fast becoming a trend in this age of technology, which means patents for new devices and new methods of use for devices are an option worth considering. American designer Lauren Scott is currently adding radio frequency identification tags to her line of children's wear. The tags have previously been used to track shipments of freight. In clothes, the tags could carry medical information in case of an accident or emergency and could also prevent abductions by triggering an alarm if a certain perimeter is breached (e.g. tags inside pyjamas could trigger readers placed at various locations in a house if the child leaves the premises).

Novozymes, a Danish biotech company specializing in enzymes and microorganisms ([www.novozymes.com](http://www.novozymes.com)), pioneered the use of enzymes in the treatment of fabrics. Though not previously involved in the fashion industry, in 1987 the company developed and patented a technology for the treatment of "stone washed" denim jeans. This technology is based on an enzyme called cellulase, which removes some of the indigo dye from denim so as to give the fabric a worn look. Within three years, most of the denim finishing industry was using cellulase under license from Novozymes. Today, Novozymes' technology for improving production methods and fabric finishing has been licensed worldwide. The company holds more than 4,200 active patents and patent applications, and pursues a pro-active licensing strategy to maximize royalty revenue from these IP assets.

The Italian company GrindiSrl<sup>18</sup>. Invented Suberis, an innovative fabric made of cork, said to be as smooth as velvet, light as silk, washable, unscratchable, stain-resistant, waterproof and fireproof. After testing and codifying the treatment, Grindi filed an international patent

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<sup>17</sup> Louboutin V Van Haren Schoenen Bv (Case C-163/16) Eu: C: 2018:423.

<sup>18</sup> Moncler S.P.A. V Associazione Italia Consumers, 2016. *Tribunale Di Milano, Sezione Specializzata In Materia Di Impresa*, Case No. 13209/2016.

application under the PCT in 1998 to protect its unique product in a large number of countries. The Suberis fabric is used in the manufacture of clothing, footwear and sportswear, as well as in many other applications.

### **INDUSTRIAL DESIGN AND FASHION DESIGNING**

A design is the visual appearance of a product that is the decorative pattern on the garments. If the design is new and unique it can be registered. This means it can't be the same or similar to designs already produced (even in a sketch). There are certain designs that can't be registered, including designs featuring scandalous graphics. This gives the designer protection for the visual appearance of the product, but not its feel, material or function.

Among the range of IP tools, the protection of designs is most relevant to the fashion industry. Registering a design helps the owner to prevent all others from exploiting its new or original ornamental or aesthetic aspects, be they three-dimensional features, such as attractive shapes, or two dimensional features, such as aesthetically pleasing textile prints. Any three-dimensional design, such as a purse, garment, or accessory, can obtain intellectual property protection by being registered as an Industrial Model. 12 Designs printed on fabrics can also be protected, not as an Industrial Model as there is no three-dimensional shape, but as an Industrial Design because of the combination of images, lines or colors that are incorporated into an industrial product for decoration purposes.

### **TRADE SECRETS AND NEW BUSINESS MODELS**

Trade secrets may range from a list of key suppliers and/or buyers, to use of software tools for fashion design, to logistics management of the entire value chain. In some fashion businesses, core trade secrets serve to protect the computer-implemented, software-based business models, which underpin an entire business strategy, based on stealth and speed, to supply a limited quantity of fashion products. For example, the Spanish retail fashion chain, ZARA, uses a proprietary information technology (IT) system to shorten their production cycle – i.e. the time from identifying a new trend to delivering the finished product– to a mere 30 days<sup>19</sup>. Most of their competitors take from 4 to 12 months. The company receives daily streams of e-mail from store managers signaling new trends, fabrics and cuts, from which its designers quickly prepare new styles. The fabric selected is immediately cut in an automated facility, and sent to work

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<sup>19</sup> Uk Intellectual Property Office, 2021. *Trademarks: Protecting Your Brand*. [Online] Uk Government. Available At: <https://www.gov.uk/topic/intellectual-property/trade-marks> [Accessed 7 May 2025].

shops. A high-tech distribution system, with some 200 kilometers of underground traces and over 400 chutes, ensures that the finished items are shipped and arrive in stores within 48 hours. Trade secrets may range from a list of key suppliers and/or buyers, to use of software tools for fashion design, to logistics management of the entire value chain. In some fashion businesses, core trade secrets serve to protect the computer-implemented, software-based business models, which underpin an entire business strategy, based on stealth and speed, to supply a limited quantity of fashion products. For example, the Spanish retail fashion chain, ZARA, uses a proprietary information technology (IT) system to shorten their production cycle – i.e. the time from identifying a new trend to delivering the finished product– to a mere 30 days. Most of their competitors take from 4 to 12 months. The company receives daily streams of e-mail from store managers signaling new trends, fabrics and cuts, from which its designers quickly prepare new styles. The fabric selected is immediately cut in an automated facility, and sent to work shops. A high-tech distribution system, with some 200 kilometers of underground traces and over 400 chutes, ensures that the finished items are shipped and arrive in stores within 48 hours<sup>20</sup>.

Other fashion houses use IT to make customized products in response to an individual customer's request. For example, Shirtsdotnet ([www.shirtsdotnet.com](http://www.shirtsdotnet.com)) aims to reshape the traditional clothing industry by reversing the process of decision making and following the made-to-order business model. Shirtsdotnet is a Business to Business clothing software platform provider, offering made-to-measure, mass customization clothing solutions for mail order companies. Customers can design and order apparel directly from the virtual shop. The business relies on proprietary software, which is protected as a trade secret and by copyright law. The above examples show that the strategic use of new information technology, protected by the tools of the IP system, can play a critical role in establishing and consolidating a market position<sup>21</sup>.

## CONCLUSION

In the dynamic and increasingly globalized world of fashion, the protection of brand identity through trademark law has become more critical than ever. As the industry evolves at a rapid pace, driven by consumer demand, digital platforms, and the proliferation of fast fashion, the need to safeguard creative expression, innovation, and commercial goodwill is paramount.

<sup>20</sup> James, G., 2020. *Creative Careers In Fashion*. London: Thames & Hudson.

<sup>21</sup> Dinwoodie, G.B. And Janis, M.D., 2021. *Trade Dress And Design Law*. 2nd Ed. New York: Aspen Publishing.

Fashion brands, both luxury and emerging, rely heavily on the distinctiveness and reputation of their trademarks to distinguish their products and maintain consumer trust. In this context, trademarks do not merely serve as legal tools—they embody the essence of a brand's identity, values, and cultural relevance.

The rise of fast-fashion retailers has intensified the challenges faced by fashion houses. Companies such as Zara, H&M, and Shein can replicate runway designs and brand aesthetics at a fraction of the cost and speed, often leading to legal disputes over imitation and brand dilution. While fashion designs themselves are often difficult to protect under copyright law, trademarks offer a more robust and enduring form of protection. Logos, slogans, distinctive patterns, packaging, and even non-traditional marks like color schemes and store layouts are now recognized as integral aspects of a fashion brand's trademark portfolio. These elements are essential in communicating brand identity to consumers and building long-term loyalty.

Despite the available legal mechanisms, enforcing trademark rights in the fashion industry presents a host of difficulties. The cross-border nature of modern commerce, particularly with the explosion of e-commerce and social media marketing, has complicated jurisdictional enforcement and increased instances of counterfeiting and infringement. Additionally, the thin line between inspiration and imitation in fashion design often places courts in a difficult position when adjudicating disputes. Legal systems must balance the right to protection with the need to foster creativity and healthy competition within the industry.

Moreover, the growing awareness of ethical consumption and sustainability is influencing how consumers perceive brand value and authenticity. In this environment, a strong and protected brand identity serves not only a commercial function but also supports transparency and ethical branding. Trademarks can become symbols of sustainability and fair labor practices, providing consumers with assurance about the integrity of the product and its source.

Going forward, a combination of proactive brand management and evolving legal frameworks will be essential. Fashion companies must adopt comprehensive strategies to register, monitor, and enforce their trademarks across jurisdictions. Simultaneously, legal institutions must adapt to new challenges posed by digital technologies, AI-generated content, and virtual fashion in the metaverse. International cooperation, modernization of trademark laws, and increased

awareness among stakeholders will be key in ensuring that trademarks remain effective tools for protecting brand identity<sup>22</sup>.

In conclusion, trademarks form the backbone of legal protection in fashion law, offering vital safeguards in a world where speed, replication, and visual branding dominate. As the fast-fashion era continues to reshape the landscape, protecting brand identity through trademarks will remain central to preserving innovation, consumer trust, and the integrity of fashion as both a creative industry and a global business.

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<sup>22</sup> G-Star Raw Cv V Rhodi Ltd [2015] Ewhc 2162 (Ch).

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