INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

DISCLAIMER

ISSN: 2582-6433

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur.Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time &Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

ISSN: 2582-6433

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ISSN: 2582-6433

THE COUTURE COPYCAT: NAVIGATING THE THIN LINE BETWEEN INSPIRATION AND INFRINGEMENT IN FASHION UNDER IP LAW

AUTHORED BY - YAMINI KAIRA
BALL.B
SCHOOL OF LAW GALGOTIAS UNIVERSITY GREATER NOIDA (2021- 2025)

DECLARATION

I, hereby declare that the dissertation entitled- THE COUTURE COPYCAT: NAVIGATING THE THIN LINE BETWEEN INSPIRATION AND INFRINGEMENT IN FASHION UNDER IP LAW is based on original
research undertaken by me & it has not been submitted in any university for any degree.

Place: Greater Noida, UP Date: 30th May, 2025

Signature of the student
Yamini Kaira 20101020260

ISSN: 2582-6433

CERTIFICATE

This is to certify that the dissertation entitled- THE COUTURE COPYCAT: NAVIGATING THE THIN LINE BETWEEN INSPIRATION AND INFRINGEMENT IN FASHION UNDER IP LAW has been prepared by

Yamini Kaira, pursuing BALL.B from School of Law, Galgotias University under my supervision & guidance.

Place: Greater Noida, U.P. Date: 30th May, 2025

Dr. Ajay Singh Assistant Professor of Law

ISSN: 2582-6433

ACKNOWLEDGEMENT

First and foremost, I would like to express my heartfelt gratitude to Dr. Ajay Singh, Assistant Professor of Law, School of Law, Galgotias University, for his unwavering guidance, encouragement, and support throughout the course of this dissertation. His insightful feedback, scholarly advice, and patient mentorship have been instrumental in shaping the direction and quality of this work. I am deeply thankful for the time he devoted to reviewing my drafts and for the valuable suggestions that helped refine my research.

I would also like to extend my appreciation to the faculty and staff at the School of Law, Galgotias University, for providing a stimulating academic environment and access to the necessary resources that greatly enriched my learning experience.

To my friends and fellow researchers, thank you for your constant motivation and for being a source of knowledge, collaboration, and moral support. Your constructive discussions and shared commitment to legal scholarship have helped me stay focused and inspired.

Lastly, I am immensely grateful to my family for their unconditional support, patience, and encouragement. Their belief in me has been the foundation of all my efforts.

This dissertation is the result of many minds, voices, and contributions, and I remain truly grateful to everyone who played a part in its completion.

ISSN: 2582-6433

LIST OF ACRONYMS AND ABBREVIATIONS

Acronym/Abbreviation	Full Form
ADR	Alternative Dispute Resolution
AI	Artificial Intelligence
AR	Augmented Reality
CGPDTM	Controller General of Patents, Designs and Trade Marks
COVID-19	Coronavirus Disease 2019
DPIIT	Department for Promotion of Industry and Internal Trade
EU	European Union
IPR	Intellectual Property Rights
IP	Intellectual Property
IPO	Indian Patent Office
IT	Information Technology
NFT	Non-Fungible Token
OEM	Original Equipment Manufacturer
R&D	Research and Development
UK	United Kingdom
US / USA	United States of America
VR	Virtual Reality
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

ISSN: 2582-6433

LIST OF CASES (ALPHABETICAL ORDER)

1. Allen West & Co. Ltd. v. British Westinghouse Electric and Manufacturing Co. Ltd.
2. Dabur India Ltd. v. Colgate Palmolive India Ltd.
3. Gopal Glass Works Ltd. v. Assistant Controller of Patents and Designs
4. Kestos Ltd. v. Kempat Ltd. & Vivian Fitch Kemp
5. Microfibres Inc. v. Giri & Co. & Anr.
6. M/s Whirlpool of India Ltd. v. M/s Videocon Industries Ltd.
7. Reckitt Benckiser (India) Ltd. v. Wyeth Ltd.
8. Sree Vishnu Bottles v. The State of Tamil Nadu
9. Tarun Sethi & Ors. v. Vikas Budhiraja & Ors.
10. Troikaa Pharmaceuticals Ltd. v. Pro Laboratories Ltd.

ISSN: 2582-6433

TABLE OF CONTENTS

ISSN: 2582-6433

CHAPTER 1: INTRODUCTION

1.1 Background And Context

1.1.1 *The Rise of Fashion as a Global Business*

Fashion today is a monumental force in the global economy, influencing societies at every level and generating vast revenues across the world. Its evolution, however, has not been linear. The journey from exclusive luxury to mass-market accessibility has been marked by contrasting phases, from artisanal craftsmanship to mechanized production, from haute couture to high-street fast fashion. Along this path, the industry has grown more inclusive and democratic, while simultaneously becoming more unsustainable. Understanding how fashion developed into a global business requires us to trace its transformation through social, technological, and economic lenses.

The story of fashion is inseparable from the story of human history. As societies evolved, so did the methods of garment creation and dissemination. Shifting political structures, economic developments, and media innovations all played a role in reshaping the fashion landscape. Initially confined to elite circles, fashion gradually became a shared cultural and commercial phenomenon, shaped by the rise of cities and the broadening of consumer markets.

The origins of fashion, as a concept, are widely believed to lie in Europe during the twilight of the Middle Ages. Its early development mirrored the growth of urban centers and was largely reserved for the upper classes. But the so-called "consumer revolution" of the 18th century changed that, fashion began to reach beyond aristocratic confines, engaging a broader and more diverse audience.

The Industrial Revolution marked a major turning point. It laid the groundwork for the fashion industry as we know it, turning what was once a luxury craft into a scalable business model

ISSN: 2582-6433

(Riello, 2020). Still, the modern fashion system, characterized by rapid trend cycles and enormous aesthetic and commercial impact, truly took shape in the second half of the 19th century, when the world was introduced to French haute couture.

1.1.1.2 *From High Fashion to the Mass Market*

The birth of haute couture in mid-19th century Paris revolutionized fashion. For the first time, designers known as couturiers emerged as creative forces who not only designed garments but signed their work and introduced entirely new ideas. These couture collections, tailored exclusively for women, were periodically unveiled in salons and presented in elaborate fashion shows. Clients selected styles to be custom-made in high-quality materials, a process that made these garments luxuries affordable only to the wealthiest.

However, the influence of couture extended beyond its elite clientele. Many designs were sold or licensed for reproduction in more affordable materials, allowing their style to trickle down to the middle classes. Over time, industrial clothing production began to mimic haute couture designs, broadening their reach even further.

Between the two World Wars, haute couture flourished and became a key pillar of the French economy. Designers like Coco Chanel, Jeanne Lanvin, Paul Poiret, and Elsa Schiaparelli turned Paris into the global fashion capital. After WWII, icons like Christian Dior and Cristóbal Balenciaga dominated the scene (Jones & Pouillard, 2017).

But fashion was about to shift again. From the 1960s, dramatic social changes across the Western world, especially the rise of youth culture and the empowerment of women, redefined fashion's purpose and audience. It was no longer solely the domain of the elite. The desire for self-expression, coupled with the expanding consumer base, pushed fashion toward democratization.

Paris's dominance began to wane. New cities entered the global fashion conversation. London, with its "Swinging Sixties" counterculture, gained prominence for its bold, youthful styles. Designers like Mary Quant, who introduced the mini-skirt, symbolized this new era. Carnaby Street and the King's Road bustled with boutiques catering to a generation with unprecedented spending power (O'Byrne, 2009).

Meanwhile, New York emerged as a serious player in the 1970s, blending practicality with chic aesthetics to define an American approach to fashion. This new wave of designers, Calvin Klein, Ralph Lauren, Tommy Hilfiger, pushed a more relaxed but stylish vision of modern clothing (Rantisi, 2006).

Italy, however, became the epicenter of the ready-to-wear revolution. Milan rose to global

ISSN: 2582-6433

prominence, powered by designers like Giorgio Armani, Gianni Versace, and Franco Moschino. From the 1970s onwards, Italy's fashion exports surged, from €800 million in 1970 to nearly €20 billion by 1990. Companies like Benetton helped pioneer flexible production strategies and affordable fashion, paving the way for fast fashion giants to come (Camufoetal., 2001; Merlo, 2003).

1.1.1.3 *The Corporate Age and the Fast Fashion Takeover*

As the 1980s drew to a close, France witnessed the rise of powerful luxury conglomerates. Louis Vuitton Moët Hennessy (LVMH), led by Bernard Arnault, transformed the fragmented luxury market into a corporate empire through aggressive acquisitions and global expansion (Bonin, 2012). These brands rejuvenated their image by appointing daring, often foreign, creative directors, including Alexander McQueen at Givenchy and Marc Jacobs at Louis Vuitton, and successfully entered booming markets in Asia and Eastern Europe. By the early 2000s, China had become a key growth driver, with LVMH capturing over 30% of its fashion division's sales there (Donzé & Fujioka, 2015).

At the same time, American fashion brands began dominating the mid-range market. Their business models were less about high design and more about mass-market appeal, branding, and marketing. Many American labels outsourced manufacturing to emerging markets, focusing their efforts on image-building and retail strategy rather than craftsmanship (Belfanti, 2017).

Perhaps the most transformative trend in recent decades has been the rise of fast fashion. Retailers like Zara (under Spain's Inditex) and H&M (based in Sweden) reshaped the entire industry. Fast fashion is built on speed and volume: low-cost garments are produced rapidly, often in response to the latest catwalk trends, and sold globally in enormous quantities. Production cycles are short, styles are refreshed constantly, and consumer appetite for novelty is fed like never before (Miranda & Roldán, 2021).

This model relies on flexible manufacturing, just-in-time logistics, and sophisticated supply chain technologies. For example, unfinished garments can be dyed and trimmed only days before release to match real-time trends. Some firms can take a design from concept to store shelf in under two weeks (Miranda & Roldán, 2023).

Fast fashion has further democratized access to style, allowing almost anyone, anywhere, to participate in the latest fashion trends. But the environmental and ethical costs are steep. The model is inherently wasteful, encouraging the rapid disposal of garments, overproduction, and overconsumption. The industry's ecological footprint has grown dramatically, from carbon

ISSN: 2582-6433

emissions to water usage and textile waste.

Furthermore, fast fashion has been criticized for poor labor conditions in its supply chains. In response, many companies have introduced sustainability initiatives, but critics argue these are often superficial, designed more for marketing than meaningful change.

In recent years, a more extreme variant of this model has emerged: ultra-fast fashion. Led by online giants like Shein, this new wave has pushed production speed and volume even further. These businesses churn out cheap, low-quality garments at an astonishing pace, driven by real-time data and social media trends. The environmental impact is even greater, raising urgent concerns about sustainability.

The future of fashion depends on finding a balance between access and responsibility. Policymakers across the European Union are beginning to explore regulations aimed at curbing overproduction and promoting sustainable practices. But the core dilemma remains: can the fashion industry maintain its democratic nature, offering accessible style for all, while shifting toward a more sustainable model?

The growth of fashion into a global business has been a story of innovation and inclusion, but also excess and exploitation. As we look ahead, the industry must confront the consequences of its success and consider how to redefine its future.

Topic 1.1.2 – Increasing Cases of Design Imitation and the Rise of Fast Fashion

In today’s economic climate, looking stylish on a budget has become increasingly challenging. With the surge in living costs, fast fashion and the rise of "dupes", inexpensive replicas of designer items, have captured the attention of younger consumers. While imitations were once stigmatized, today’s youth embrace them as a savvy way to stay fashionable without breaking the bank. These low-cost alternatives make style more accessible, but they raise serious ethical and creative concerns within the fashion industry.

ISSN: 2582-6433

Historically, fashion imitations were seen as embarrassing knock-offs, a sign of not being able to afford the real thing. But now, the narrative has shifted. Social media platforms, particularly Instagram, TikTok, and Pinterest, have become the driving force behind consumer choices. Influencers regularly showcase the latest trends, and many young followers seek similar outfits, minus the hefty price tags. Dupes offer a tempting shortcut, enabling users to mimic expensive looks for a fraction of the cost.

However, this shift toward imitation has troubling implications. While fast fashion opens doors for more people to engage with style trends, it simultaneously undermines the originality and hard work of designers, especially independent creators. Many small businesses struggle to protect their designs, which are frequently copied by fast fashion giants. Worse, some of these brands even steal original product images from designers' websites and social media pages to sell their replicas. For these smaller designers, competing with the sheer speed and low pricing of fast fashion is an impossible task. The aggressive pace and scale of fast fashion production are simply not feasible for independent labels that rely on ethical practices and limited production runs.

Beyond the theft of creativity, the ethical concerns of fast fashion run deep. A staggering 93% of fast fashion brands are reported to underpay their workers, often outsourcing production to factories in countries with lax labor regulations. These factories push laborers to work under grueling conditions for meager wages—fueling a supply chain built on exploitation. In this system, creativity is devalued, and factory workers suffer the brunt of the industry’s relentless drive for profit.

Compounding these issues is the poor quality of fast fashion garments. These items are designed for speed and volume, not durability. Most fast fashion pieces are made to be worn a few times and discarded, encouraging a cycle of overconsumption and waste. As trends shift rapidly, often changing weekly or monthly, consumers are encouraged to continuously buy and toss clothing, filling landfills with textile waste and contributing to serious environmental degradation.

But what makes fast fashion so irresistible, particularly to Gen Z and Millennials? The answer lies in its promise: trendy, runway-inspired looks at prices nearly anyone can afford. The constant pressure to showcase new outfits on social media adds to this appeal. The fashion industry has shifted from seasonal collections to a 24/7 content machine where users are expected to keep up with every microtrend. Dupes make this possible, but at what cost?

To address this growing crisis, consumers must be educated about the broader impact of their shopping habits. Awareness campaigns, influencer responsibility, and ethical fashion

ISSN: 2582-6433

movements all have a role to play. If influencers used their platforms to promote sustainable and independent designers instead of fast fashion hauls, the narrative could begin to shift. Social media has the power to change consumer behavior, it simply needs to be wielded more responsibly.

Legal reform is also crucial. The fast-paced nature of the fashion industry makes it difficult for designers to secure patents before their work is copied. Though full patent protection is rare in fashion, existing intellectual property laws, such as copyright and trademark, can offer some recourse. However, they are often slow, expensive, and ill-suited for the speed at which fast fashion operates.

Several high-profile cases underscore the murky legal waters surrounding design imitation:

- **Gucci vs. Forever 21**: Gucci filed a lawsuit accusing Forever 21 of copying its iconic green-red-green stripe design. Gucci argued the imitation diluted its brand and misled consumers. The case ended in a confidential settlement, leaving the legal boundaries unresolved.
- **Christian Louboutin vs. Mr. Pawan Kumar & Ors.**: In India, Louboutin won a landmark trademark case after suing manufacturers for replicating its signature red-soled heels. The court awarded punitive damages, recognizing the misuse of a legally protected design element.
- **Adidas vs. Skechers**: Adidas successfully secured an injunction against Skechers for copying its distinctive sneaker design, showing how established brands are more likely to win in design disputes.
- **Ritika Private Limited vs. Biba Apparels**: This case highlighted a key loophole in

ISSN: 2582-6433

Indian design law. The court ruled that once a design is mass-produced over 50 times, it loses copyright protection unless it is separately registered under the Designs Act. This precedent exposes designers to legal vulnerabilities and reinforces the importance of proactive IP protection.

While these legal victories help curb blatant imitation, they only scratch the surface. Most fast fashion companies continue to operate in legal gray zones, replicating designs quickly enough to avoid consequences.

The economic fallout is significant. Luxury brands lose their aura of exclusivity, and their brand equity suffers when their designs become widely copied. Meanwhile, consumers are drawn into a cycle of disposable fashion, contributing to the decline of both quality and originality. Small designers, often the wellspring of innovation, struggle to survive in an ecosystem that rewards speed and scale over creativity and integrity.

In essence, the surge in fast fashion and the normalization of dupe culture present a major crossroads for the industry. Can the desire for affordability coexist with respect for intellectual property and ethical labor? Can we reshape consumer behavior to prioritize sustainability and support for original design?

Fast fashion's explosive growth has made style accessible—but at great cost. Moving forward, a combination of legal safeguards, consumer awareness, and responsible digital influence will be critical to preserving the soul of fashion: creativity, originality, and ethical expression.

Topic 1.1.3 – The Intersection of Creativity, Commerce, and Law

The world of fashion is a dazzling blend of artistry, innovation, and culture. Beneath its glamorous surface, however, lies a complex struggle often overlooked, the battle to protect original creations. From the first spark of an idea to its debut on the runway, fashion designs travel a perilous path where legal protection is essential. As fashion evolves at breakneck speed, the legal frameworks that safeguard intellectual property must keep pace to ensure that designers are rewarded for their creativity and investment.

Fashion as Innovation: Beyond Just Aesthetics

Fashion is more than surface beauty; it's an arena of constant innovation. Functional fashion, like temperature- regulating garments, self-adjusting closures, or smart textiles, illustrates how technological progress is reshaping clothing. These advancements are not just design elements; they are inventions, often qualifying for **patent protection**. For example, high-performance athletic wear using moisture-wicking fabrics or self-lacing shoes represent patented

ISSN: 2582-6433

technologies that offer competitive advantages and reinforce brand identity.

Patents allow creators to maintain control over their innovations, ensuring they benefit financially and commercially from their work. Without such protection, the risk of replication looms large, diminishing the returns on years of research, design refinement, and technological investment.

The Need for Strategic Investment in Protection

The fashion industry operates in a high-risk, high-investment landscape. Brands pour millions into product development, marketing, and consumer outreach. Protecting these investments with intellectual property rights, especially patents, has become a business necessity. A well-timed patent can serve as a shield, deterring copycats and preserving the originality of techniques or technology. Take, for example, a designer who spends years developing a unique tailoring method; a patent ensures that this innovation isn't easily duplicated or exploited by competitors.

Navigating the Complex Terrain of Fashion Patents

Despite its benefits, the process of obtaining a patent in fashion can be intricate. The fast-paced nature of the industry, and the fine line between functional utility and visual appeal, often complicate the eligibility for patent protection. Nonetheless, fashion houses that adopt a strategic approach—early patent filing, a comprehensive global protection plan, and ongoing IP monitoring—can build a strong patent portfolio that ensures long-term sustainability and commercial strength.

Real-World Applications of Patents in Fashion

To grasp the tangible impact of patents in fashion, we can look at several real-life examples:

- **Nike's Self-Lacing Sneakers**: Inspired by the futuristic footwear in *Back to the Future*, Nike's self- lacing shoes are not just a marvel of design but a product of patented innovation. The technology behind the automatic adjustment system has been secured through patents, solidifying Nike's place at the forefront of wearable tech.
- **Under Armour's Moisture-Wicking Fabric**: By patenting its signature performance fabric, Under Armour revolutionized sportswear and protected its breakthrough in athletic gear, ensuring its market dominance against fast followers.
- **Yves Saint Laurent's Mondrian Dress**: Though primarily protected by copyright for its artistic visual design, this piece also illustrates the importance of design patents in

ISSN: 2582-6433

defending the aesthetic uniqueness of fashion items.

These examples show that both functional and visual elements of fashion can and should be protected under different intellectual property frameworks, with patents being a cornerstone of that protection.

Protecting Cultural Heritage: The Role of Geographical Indications

Fashion is not solely defined by the runway or luxury labels—it is also deeply rooted in cultural traditions. **Geographical Indications (GIs)** offer a way to protect and preserve the heritage woven into traditional textiles and craftsmanship. GIs are identifiers that link products to specific regions, reflecting the unique qualities and techniques tied to their origin.

In fashion, GIs help preserve traditional artistry such as:

- The fine **Pashmina** embroidery from Kashmir
- The rich **Kancheepuram silk** of Tamil Nadu
- The intricate **Zari work** of Gujarat

These are more than just design elements—they are expressions of cultural identity passed down through generations. GIs empower artisan communities by protecting their intellectual legacy and ensuring fair economic returns. As fashion becomes more globalized, GIs play a pivotal role in promoting sustainability and ethical production by recognizing and valuing cultural contributions.

Technology's Dual Role in Fashion IP

The digital revolution has transformed every facet of fashion—from ideation and production to marketing and sales. Technologies like digital pattern design and **3D printing** have expanded the possibilities for creators, while **e-commerce platforms** have opened global markets. Yet, with these opportunities come risks. The rise of online retail has also facilitated the spread of counterfeit goods and brand impersonation on an unprecedented scale.

In response, technologies such as **blockchain** are now being employed to verify the authenticity and traceability of fashion products. Blockchain creates tamper-proof records, helping brands combat counterfeiting and protect their reputation. Still, despite such innovations, safeguarding confidential design details remains a serious challenge in the digital age. Fashion businesses must strike a careful balance between leveraging digital tools for growth and protecting their intellectual assets.

ISSN: 2582-6433

Topic 1.1.4 – The Unique Position of Fashion Within the Broader Framework of IP Law

Fashion, unlike many other industries, occupies a particularly dynamic and multifaceted position within the broader framework of intellectual property (IP) law. From the luxury catwalks of Paris to the digital marketplaces of meme-laden streetwear, fashion operates across a diverse spectrum of creativity, commerce, and culture. The industry comprises several interwoven subdomains—design, manufacturing, and retail—all contributing to an ecosystem that generates over a trillion dollars in global revenue annually. For consumers, fashion is far more than a commodity—it's a form of self-expression, a cultural identifier, and a statement of values, status, mood, and even ideology. The uniqueness of fashion within IP law stems from the way it intersects with multiple forms of intellectual property, each offering distinct, sometimes overlapping protections and limitations.

The Fashion IP Puzzle: An Industry of Intersections

In the fashion world, ideas move rapidly. High-end designs seen on Fashion Week runways often "trickle down" into accessible trends found on high-street racks just months—or even weeks—later. The pace of replication has only accelerated with technological advancements, particularly in digital design, 3D printing, and global e-commerce. This quick diffusion of trends raises urgent concerns around copycat production, particularly when original garments are imitated with such precision that it affects both brand value and market exclusivity. This is precisely where IP law becomes a crucial instrument for fashion businesses—especially startups and established labels alike—to preserve their creative edge and economic viability.

Fashion, due to its hybrid nature combining artistry and functionality, relies on several overlapping areas of IP law—namely industrial designs, trademarks, copyrights, patents, and trade secrets. Each form of IP protection contributes differently to safeguarding various elements of fashion products and the businesses behind them. Together, they provide a legal toolkit uniquely suited to the fast-paced and highly visual nature of the industry.

Industrial Designs: Style with Substance

Industrial design rights, often called "design patents" in jurisdictions like the U.S., protect the visual and aesthetic features of a product—its shape, surface patterns, ornamentation, and configuration. In essence, this form of IP covers the "look" rather than the function of fashion items. To qualify for protection, the design must be original and not publicly disclosed before filing.

In Canada, design protection is not automatic. Creators must register their designs with the

ISSN: 2582-6433

Canadian Intellectual Property Office (CIPO) under the Industrial Design Act, which grants exclusive rights for up to 15 years. Both three-dimensional forms (like a garment's silhouette) and two-dimensional patterns (such as fabric motifs) can be protected.

The benefits of registration are threefold: it serves as a "sword" to stop unauthorized replicas; as a "shield" to assert rightful ownership; and as an "asset" that enhances a brand's commercial value. Industrial designs can be licensed, sold, or used to attract investment—essentially turning creativity into capital. These advantages highlight the broader importance of exclusivity, a value that carries across all IP protections in fashion.

Trademarks: The Identity of Fashion

Trademarks are arguably the most iconic form of IP in fashion. They distinguish a brand's goods or services through recognizable signs—logos, names, symbols, or even sounds. From Nike's "Swoosh" to its "Just Do It" slogan, trademarks cement brand identity and consumer trust.

Originally developed as a form of consumer protection, trademark law ensures that goods bearing the same mark originate from the same source. Certification marks, like Woolmark, further assure quality and compliance with specific standards.

Though limited rights can be acquired through common law use (based on reputation and market presence), registered trademarks provide broader, stronger, and geographically recognized protection. In Canada, a registered trademark is valid for ten years, with renewable rights. Globally, the Madrid Protocol streamlines registration across multiple jurisdictions, simplifying international IP strategy.

Conducting early trademark searches in key markets is vital for avoiding costly rebranding or legal conflicts. Infringement disputes not only drain resources but can also jeopardize inventory, marketing efforts, and brand equity.

Copyright: Artistic Elements in a Functional World

Copyright protects original literary and artistic works—texts, images, performances, and certain design elements. It arises automatically upon creation, though registration bolsters enforcement by establishing a presumption of ownership. In Canada, the term of protection spans the author's life plus 70 years (extended from 50 as of December 30, 2022).

Yet, the utilitarian nature of most garments limits copyright's application in fashion. Under Canada's Copyright Act, clothing produced more than 50 times is considered a "useful article" and is thus excluded from copyright protection in its physical form. Instead, fashion designs

ISSN: 2582-6433

are directed to industrial design protection.

Nonetheless, copyright remains relevant. Graphic prints, brand crests, and textile patterns can be copyrighted. For instance, Tommy Hilfiger's crest design and Louis Vuitton's iconic monograms are protected by copyright, reinforcing their brand identities. Legal precedent affirms this: Hilfiger successfully pursued copyright claims for its pajama sets, although earlier-produced shirts were exempt due to timing of registration.

Copyright also extends beyond the clothing itself. Marketing materials, websites, lookbooks, and ad campaigns carry multiple copyrightable components, offering layered protection for a brand's image and voice.

Patents: Innovation in Fashion

Patents protect inventions—new, useful, and non-obvious products or processes. Once granted, a patent confers a 20-year exclusive right in exchange for public disclosure of the invention.

In fashion, patents can cover high-tech textiles, eco-friendly manufacturing processes, and functional innovations like insect-repellent fabrics, ergonomic stitching, or color-stripping methods. While patents are jurisdiction-specific and costly, they offer unmatched protection for genuinely novel contributions.

However, the trade-off between disclosure and protection must be carefully evaluated. If keeping the invention confidential provides a longer competitive advantage, a trade secret may be a better route.

Trade Secrets: The Invisible Armor

Unlike other IP rights, trade secrets aren't registered—they're guarded. Any confidential business information with commercial value can qualify, as long as it's kept secret through internal policies or legal agreements like non-disclosure clauses.

In fashion, trade secrets can include everything from proprietary production processes to supplier databases and logistic systems. Zara, for example, uses a closely guarded IT infrastructure to rapidly respond to trends. Similarly, Nike leverages secretive manufacturing methods and material compositions as part of its innovation strategy.

Though often associated with tech industries, trade secrets are invaluable in fashion's backend operations and innovation pipelines. Protecting them requires diligence: restricted access, employee training, and clear contractual safeguards.

ISSN: 2582-6433

Fashion's IP Matrix: A Synergistic Approach

The most effective IP strategy in fashion is rarely singular. Instead, it blends multiple forms of protection to secure different aspects of the brand and its products. A mountaineering apparel company, for example, might:

- Use industrial design to protect the cut of its jackets,
- Trademark its name, logo, and tagline,
- Apply copyright to its graphic designs and advertising,
- Patent its climate-regulating textile innovations, and
- Safeguard its supplier network and production workflow as trade secrets.

This layered approach not only protects against infringement but also creates a portfolio of intangible assets that enhance brand valuation, investor appeal, and licensing opportunities. IP thus moves beyond legal compliance into the core of business strategy.

The fashion industry's unique convergence of creativity, functionality, and marketability places it at an exceptional intersection within the world of intellectual property law. It draws from, and contributes to, every form of IP—sometimes individually, often simultaneously. As such, fashion exemplifies the need for a nuanced, flexible, and well-integrated IP framework—one that respects the rapid tempo of trends while reinforcing the long-term value of originality. Understanding and strategically leveraging this framework is not just a legal formality but a critical pillar of success in the highly competitive world of fashion.

Topic 1.1.4.1 – Intellectual Property Rights Available to Indian Fashion Designers

While India's intellectual property (IP) framework offers a range of protections across various creative industries, its relevance to fashion is more nuanced. Not every form of IP is tailored to the needs of fashion designers, whose work is driven largely by aesthetics, originality, and market identity. The Indian fashion industry—where artistic expression meets functionality—primarily relies on three key forms of IP protection: **copyright**, **design rights**, and **trademarks**. Each offers distinct safeguards, but also comes with limitations that have significant implications for Indian designers seeking to protect their creative output in a fast-moving, trend-driven environment.

I. ***Copyright and Design Protection for Fashion in India***

The **Copyright Act of 1957** governs the law of copyright in India. While the statute does not specifically mention fashion or garments, it protects original artistic works—a category under which fashion design often falls. In the fashion context, copyright gives creators the exclusive

ISSN: 2582-6433

right to prevent unauthorized duplication of their original works, including two- or three-dimensional expressions of their designs. Section 13 of the Act recognizes copyright in artistic, dramatic, musical, and literary works, and also in cinematographic films and sound recordings. Fashion design—while not explicitly referenced—may be classified as "artistic work" when it involves original drawings, sketches, or ornamentation.

The Act defines artistic work broadly, encompassing paintings, sculptures, drawings, engravings, photographs, and even architectural works. As such, many elements of fashion design—particularly original prints, embroidery, patterns, and motifs—can qualify for copyright protection. Once a fashion design meets the originality threshold, it is automatically protected, regardless of whether it is registered. Designers enjoy exclusive rights over their creations for their lifetime, plus an additional 60 years after their death. This means unauthorized reproduction, commercial exploitation, import/export, or sale of such fashion items without the designer's permission constitutes infringement.

However, copyright protection is not without caveats—particularly when fashion items are mass-produced. Section 15(2) of the Copyright Act introduces a key limitation: if a design is reproduced more than **50 times** through an industrial process, it loses copyright protection and falls under the purview of the **Designs Act of 2000**. This provision is a crucial intersection between copyright and industrial design law in India and reflects a shift in protection from creativity to commercial replication.

A Landmark Interpretation: *Microfibres Inc. v. Girdhar & Co.*

A significant legal precedent on this issue comes from the *Microfibres Inc. v. Girdhar & Co.* case, where the dispute revolved around copied textile designs. The plaintiff, Microfibres, alleged copyright infringement.

However, the defendant countered that the designs had been reproduced in more than 50 garments, making them subject to the Designs Act rather than the Copyright Act. The court ruled in favor of the defendant, citing Section 15(2) and holding that mass production of the design triggered a shift in applicable protection—from copyright to design registration. The decision underscored how industrial use could strip a designer of copyright protection unless the design was registered under the Designs Act.

II. *The Designs Act, 2000: Formal Protection for Industrial Fashion Designs*

To address the gap left by copyright limitations, fashion designers must turn to the **Designs Act, 2000**, which was created to protect the aesthetic elements of items produced through

ISSN: 2582-6433

industrial means. Unlike copyright, which is granted automatically, protection under the Designs Act requires **formal registration**. Once registered, a design receives exclusive rights for an initial term of 10 years, extendable by an additional 5 years.

Under Section 2(d), a design is defined as the features of shape, configuration, pattern, ornamentation, or composition of lines or colors applied to an article. Although this definition focuses on components rather than the fashion article as a whole, the accompanying **Design Rules** broaden the scope of coverage. These rules categorize designs by class, covering a wide range of fashion-related products:

- **Class 2**: Garments, footwear, and fashion accessories
- **Class 5**: Textiles, including embroidery and lace
- **Class 3**: Travel accessories like wallets and handbags
- **Class 10**: Timepieces and related accessories
- **Class 11**: Jewellery and ornamentation

These categories ensure that nearly every element within the fashion ecosystem—from couture to accessories—is potentially protectable under the Designs Act. Most importantly, unlike copyright, the Designs Act does not impose a limit on the number of times a registered design may be reproduced industrially. This makes it a more robust form of protection for commercial fashion houses and brands with large-scale production goals.

However, design registration is not without its hurdles. To qualify, a design must be:

- Completely **original** and **new**
- **Not previously disclosed** to the public
- ***Visually appealing***
- ***Free from obscene or offensive material***

Designers often display their work at fashion shows, on websites, or through sketches before formally registering it. Unfortunately, such actions may amount to "publication," potentially disqualifying the design from registration due to prior disclosure. Even internal documentation—such as a sketch created in a designer's private inventory—can be deemed prior art if proven to exist before the registration date. This technicality can result in the loss of protection, highlighting how rigid procedural rules can undermine genuine innovation in the fashion space.

III. *Trademark Protection for Fashion Brands*

Trademarks serve a different purpose in the fashion world. Governed by the **Trade Marks Act, 1999**, trademarks are identifiers that distinguish the products or services of one brand

ISSN: 2582-6433

from another. These can include names, logos, symbols, taglines, colour combinations, and even sounds. For fashion brands, trademarks are essential in building identity and trust with consumers. They become symbols of status, quality, and aesthetic value.

Indian fashion houses like **Sabyasachi** use trademarks such as their name or iconic symbols (e.g., the tiger logo) to represent the brand. Globally, the double-G of **Gucci** or the horse and carriage of **Hermès** serve a similar function. These marks are critical not only for consumer recognition but also for brand equity—an intangible asset that commands significant value in the luxury market.

Trademark protection also extends to **trade dress**, which covers the visual appearance of a product or its packaging. However, enforcing trade dress rights in India has proven challenging. A notable example is the **Christian Louboutin v. Abu Baker** case. The plaintiff alleged infringement of their trademark red soles by a Mumbai-based retailer. The defense argued that a single colour could not qualify for trademark protection under Indian law. The Delhi High Court agreed, denying protection and highlighting a gap in the Indian IP regime when it comes to unconventional marks like colours or scents—common trademarks in global fashion.

Conclusion: Bridging the Gaps in Indian Fashion IP Law

Despite the availability of various IP rights in India, their practical application within the fashion industry is riddled with inconsistencies and limitations. Very few fashion-related legal precedents exist, suggesting that Indian designers either lack awareness, resources, or motivation to enforce their rights. This may also reflect the industry's seasonal nature—trends come and go rapidly, leaving little time for protracted legal battles or registrations.

Moreover, each IP regime presents its own challenges. **Copyright** is lost after industrial reproduction unless registration under the **Designs Act** is pursued. The **Designs Act** itself is burdened with strict registration requirements that are not always compatible with the realities of the fashion world. **Trademarks**, while strong for brand identity, offer little protection for the designs themselves.

To better support fashion creators, the Indian IP framework needs reform. Amending **Section 15(2)** of the Copyright Act could enable designers to retain copyright protection even after limited mass production. Simultaneously, the registration process under the Designs Act should be simplified and clarified, making it more accessible to smaller labels and emerging designers.

Ultimately, India's judiciary and legislative bodies must recognize fashion as a serious creative

ISSN: 2582-6433

industry, deserving of dedicated legal protections similar to those in fashion-forward nations like France, Italy, and the U.S. With India's booming fashion scene and growing global influence, now is the time to evolve its IP laws to match the pace and prestige of its designers.

1.2 Literature Review

The intersection of fashion and intellectual property (IP) has long sparked debate among scholars, lawyers, and industry professionals. As fashion continues to blend creativity with commerce, the need for stronger legal frameworks to protect design innovation has become more urgent—especially in a world shaped by digital disruption and globalized production.

Historically, IP law has not been well-aligned with the fast-paced, cyclical nature of the fashion industry. Scholars like Susan Scafidi and Kal Raustiala have argued that fashion operates in a unique creative space where trends move rapidly, and the idea of exclusivity is both fleeting and fundamental. Raustiala and Sprigman (2006) notably coined the term "piracy paradox" to describe how copying in fashion can paradoxically fuel creativity and economic growth. However, this perspective has been increasingly questioned in the digital age, where replicas can flood markets within days, undercutting original creators before they can profit from their designs.

In recent years, literature has shifted focus to the inadequacy of existing IP mechanisms—particularly copyright, trademark, and design rights—when applied to fashion. While copyright offers protection for original works, it often excludes useful articles, leaving clothing and accessories in a gray area. Trademark law, though valuable for brand protection, does not safeguard individual design elements. Design rights, where available, provide some relief, but are often costly, jurisdiction-specific, and difficult to enforce across borders.

Several studies highlight the fragmented nature of global IP law and the challenges it creates for fashion designers operating internationally. For instance, designs protected in Europe under registered or unregistered design rights may not receive the same protection in the U.S. or Asian markets. This legal patchwork creates uncertainty and deters small and independent designers from seeking redress. Scholars have emphasized the need for harmonization of IP standards, especially as e-commerce continues to globalize fashion retail.

Digital fashion—an emerging field combining 3D design, virtual garments, and non-fungible tokens (NFTs)— has introduced even more complexity. Academic commentary and industry reports alike acknowledge that current IP laws do not adequately account for digital assets. Virtual designs, which can be infinitely replicated without any loss of quality, are particularly vulnerable to misuse. Moreover, digital platforms like Instagram and TikTok act as both

ISSN: 2582-6433

marketplaces and exhibit spaces, further blurring the line between inspiration and infringement. The literature also recognizes moral rights and cultural considerations as increasingly important. In countries like France and India, moral rights protect the creator's connection to their work, even after commercialization. However, such protections are not universal, leading to further legal uncertainty. Furthermore, indigenous and traditional designs often fall outside the scope of conventional IP frameworks, raising ethical concerns about appropriation and exploitation.

Recent research urges a rethinking of how IP can better serve the modern fashion ecosystem. Proposals include the creation of sui generis (unique) rights for fashion, expanding the scope of design protections, and developing international treaties that specifically address fashion and digital design rights. Legal scholars argue that a more flexible, tailored approach is necessary to balance innovation with fair protection in today's fast-moving, tech-driven fashion landscape.

In sum, the existing body of literature points to a clear gap between legal theory and industry practice. While some protections exist, they are often inconsistent, inaccessible, or outdated. As fashion continues to expand into digital and global domains, the call for reform is growing louder—demanding more agile and inclusive IP laws that reflect the realities of modern design and commerce.

1.3 Problem Statement

Topic 1.3.1 – Lack of Adequate IP Protection for Fashion Designs

India's fashion industry is witnessing an unprecedented boom—rapidly evolving, innovating,

ISSN: 2582-6433

and contributing to both cultural expression and economic growth. Yet, beneath the glamour and glitz lies a persistent problem that continues to challenge the foundation of this creative sector: the inadequacy of intellectual property (IP) protection. Despite fashion being a clear outcome of artistic expression and inventive labor, the current Indian IP regime offers only limited safeguards to designers, leaving them exposed to rampant infringement and imitation.

This gap in protection significantly hampers the industry's ability to foster innovation. The absence of robust legal support allows widespread copying, which is further accelerated by the fast-fashion culture and the competitive need to rapidly reproduce emerging trends. The original essence of design—the uniqueness and creativity that define fashion—is diluted by this unchecked imitation. Designers, especially emerging ones, find themselves battling not just for recognition but also for their rightful claim over their work. This situation calls into question whether the current legal framework can truly protect the heart of fashion design in India.

Legal Framework and Its Shortcomings

The Indian legal landscape offers some avenues for fashion design protection under three principal laws: the Copyright Act, 1957; the Trademarks Act, 1999; and the Designs Act, 2000. However, none of these legislations are tailored specifically to the fashion industry. Their limitations are amplified by inconsistencies, procedural complications, and the absence of clear guidance on overlapping protections.

For instance, Section 2(d) of the Designs Act and Section 15(1) of the Copyright Act create confusion over whether a fashion design is protected under one or both laws. Once a design is commercially produced beyond fifty copies, copyright protection ceases, forcing the creator to rely solely on design registration—a process that is often too slow and expensive for the pace of modern fashion. This gap has made it easier for counterfeiters and imitators to thrive, as enforcement becomes reactive rather than preventive.

Key Issues and Impacts of Inadequate IP Protection

1. **Piracy in Fashion: A Growing Menace**

Piracy, or the unauthorized reproduction of protected designs, is particularly rampant in India’s fashion sector. The two major forms of piracy affecting designers are:

- **Counterfeiting:** This involves the wholesale copying of both the design and the brand's trademark or logo, with the intent to deceive consumers. According to market estimates, nearly 25–31% of all goods sold in India are counterfeit, with the apparel industry being

ISSN: 2582-6433

hit the hardest. The proliferation of these fake goods—fueled by online platforms and street markets alike—leads to a direct loss in revenue, market share, and brand value for genuine designers. Labels like H&M, Gucci, Adidas, and Hermes are frequently counterfeited, with vendors openly advertising "first copies" to unwitting customers.

In 2021, authorities uncovered a massive stockpile of counterfeit clothing from brands like Allen Solly and Killer, with a market valuation exceeding ₹20 crores. Hermes International also secured a temporary injunction against Macky Lifestyle Pvt. Ltd. for infringing its three-dimensional mark. Further, in the 2020 USTR "Notorious Markets" report, an Indian website was flagged for facilitating the sale of fake fashion goods.

In response, luxury brands such as Moncler have begun investing in anti-counterfeiting technologies, including RFID chips and holographic labels, to help consumers authenticate their purchases and prevent deception.

- **Knockoffs:** While not outright fakes, knockoffs imitate the appearance of original designs but are sold under different brand names. The digital age has exacerbated this issue, as instant image-sharing enables copycats to mass-produce imitations within days. A well-known example is the case of *Rajesh Masrani v. Tahiliani Design Pvt. Ltd.*, where the court granted an ex parte injunction against a designer who had closely copied a Tarun Tahiliani outfit from his 2006 collection.

Courts are increasingly stepping in. In 2023, the Delhi High Court issued a strong injunction against Ashok Kumar for selling counterfeit Puma footwear. Similarly, in *Guccio Gucci v. Intiyaz Sheikh*, the Tis Hazari District Court prohibited the unauthorized use of Gucci's logo on locally produced socks. These judicial efforts, while commendable, underscore the urgency for a more specialized legal framework for fashion.

2. *Challenges Faced by Young Designers*

Young and independent designers are among the most affected by the current IP inadequacies. Without established brand power or financial resources, they are more susceptible to exploitation. Often, their work is copied by influential fashion houses, and they are denied both recognition and legal recourse.

A notable case is that of Indian designer Orijit Sen, whose yoga-inspired prints were allegedly used by Christian Dior in a garment worn by Sonam Kapoor for *Elle India*. Although the dispute was settled privately, and Sen signed a non-disclosure agreement, the case reflects the power imbalance that leaves emerging designers vulnerable.

The chilling effect of such incidents cannot be overstated. When new talent feels unprotected,

ISSN: 2582-6433

it discourages innovation, weakens the creative pipeline, and risks stagnating the entire industry. If India wishes to maintain its cultural richness and market momentum, it must ensure the protection of its next generation of designers.

3. *Cumbersome Design Registration Process*

The necessity of registration under the Designs Act, 2000, was meant to help designers safeguard their work— but the process itself is outdated and incompatible with the pace of modern fashion. The time taken for registering a copyright is approximately 2–3 months, while design registration under the Designs Act can take up to 6 months or more. The entire procedure can stretch to almost a year, by which time the design may have already exited the market.

Fashion operates in short cycles—often with a garment's shelf life lasting just a season. Designers must plan far in advance, risking premature exposure of their ideas. Worse still, when applications are pending, there's no real mechanism to prevent theft. The financial burden and bureaucratic maze of the process further discourage small designers from seeking protection.

To adapt to the demands of a fast-fashion economy, the IP registration process needs urgent reform. A flexible, accelerated registration system would empower designers and act as a deterrent to potential infringers.

Recommendations

A closer inspection of India's current IP laws reveals several areas requiring immediate improvement. While laws governing registered trademarks are comparatively well-established, the provisions for unregistered marks and passing off rely heavily on judicial precedents and lack statutory clarity. This inconsistency allows lower courts to interpret the law at their discretion, sometimes beyond their authority.

There is a pressing need for a concrete legislative framework to protect fashion designs, including unregistered ones. Making trademark registration faster, mandatory, and more affordable would offer designers exclusive rights while reducing litigation complexity for courts.

Moreover, the judicial system should adopt a tougher stance on counterfeiters and copycats. Introducing criminal liability and higher penalties for design infringement would discourage malicious imitation and preserve the originality that fuels the industry.

ISSN: 2582-6433

1.3.2 Difficulty in Distinguishing Between "Inspiration" and "Imitation"

In the world of fashion, creativity often walks a razor's edge between inspiration and imitation, making it incredibly challenging to draw a clear boundary. Designers worldwide frequently draw from a shared palette— similar colors, textiles, and silhouettes—that reflect prevailing trends and cultural influences. What ultimately distinguishes one designer's work from another is the unique way these elements are combined. Yet, despite these differences, the recurring visual similarities inevitably spark a fundamental question: does true originality even exist in fashion? The straightforward answer may be no—but this isn't necessarily a drawback.

Mark Twain famously said, "There is no such thing as a new idea. It is impossible. We simply take a lot of old ideas and put them into a sort of mental kaleidoscope. We give them a turn and they make new and curious combinations." Although Twain was likely referring to writing, his insight applies just as profoundly to fashion design. The industry thrives on reimagining existing concepts in fresh and unexpected ways, continuously remixing familiar "pieces" to create something new.

However, the fashion world faces a darker side to this creative recycling: plagiarism. This issue has long plagued the industry, and with the rise of fast fashion brands, it has become even more pronounced. Retail giants like SHEIN, Boohoo, and H&M can churn out trendy new pieces in a matter of weeks—something that would be prohibitively expensive and time-consuming for authentic designers. The speed and scale of fast fashion's production often rely on replicating existing designs, undermining the original creators.

While luxury brands tend to have the resources and legal clout to protect their designs, small, independent designers often fall prey to exploitation. They face an uphill battle when their creations are appropriated by larger players who can afford costly legal fights, leaving emerging

ISSN: 2582-6433

talent vulnerable to design theft and without effective means to defend their intellectual property.

Real-World Examples of the Inspiration-Imitation Dilemma Bottega Veneta vs. Niccolò Pasqualetti

In 2019, Niccolò Pasqualetti, a recent graduate from Central Saint Martins, submitted his portfolio to Bottega Veneta in hopes of joining the prestigious fashion house. He was rejected, but just a year later, Bottega Veneta unveiled its Resort 2021 collection featuring pieces suspiciously similar to Pasqualetti's own designs. Pasqualetti took to Instagram to publicly highlight the striking resemblance between his work and Bottega's collection, posting side-by-side images as evidence.

The influential Instagram account @diet_prada, known for spotlighting fashion controversies, weighed in on the debate. They acknowledged the difficulty of the case, pointing out that macramé stones—a key element of the designs—have been used widely by various creators, from Etsy sellers to established brands like Tiffany & Co. They questioned whether Bottega Veneta had copied Pasqualetti directly or if he had merely ignited a trend that Bottega later followed. Despite the public outcry, Bottega Veneta has remained silent, and no legal action was pursued. Pasqualetti's response was to raise awareness about the ongoing issue of plagiarism within the industry.

ISSN: 2582-6433

Chet Lo vs. H&M

More recently, designer Chet Lo accused fast fashion giant H&M of replicating his signature spiky knitwear designs in their "Cherish Waste" collection. Lo, an independent queer designer of color, took to Instagram to condemn what he described as a consistent pattern of fast fashion companies copying smaller, more creative designers. Though he refrained from naming H&M directly, @diet_prada again stepped in, drawing public attention by juxtaposing H&M's collection with Lo's original work.

Lo emphasized that his designs are deeply rooted in personal heritage and experiences, something he believes cannot be authentically copied. His call to action highlighted the imbalance between smaller designers—who pour passion and identity into their creations—and the mass-market brands that profit from reproducing them without acknowledgment.

The Challenge of Drawing the Line

Julie Zerbo, founder of The Fashion Law, explains that the tension between inspiration and imitation is as old as fashion itself. Inspiration is essential; it is what fuels creativity and allows the industry to flourish. But imitation crosses a line when it infringes on the legal rights of creators, and that line is interpreted differently depending on the context and the applicable laws.

Determining where inspiration ends and illegal copying begins is notoriously difficult. Fashion's inherently iterative nature means that many designs echo past works, making it a

ISSN: 2582-6433

gray area with no clear-cut answers. While some degree of borrowing is inevitable, persistent and blatant copying undermines the integrity of the creative process.

The Road Ahead: Advocacy and Awareness

Though the problem of plagiarism in fashion may never be fully eradicated, the industry is witnessing growing efforts to challenge these injustices. Small designers and independent brands are increasingly vocal in calling out unethical practices, demanding stronger legal protections and fairer treatment.

Furthermore, as sustainability and ethical production gain traction, the fast fashion model that thrives on quick replication may face renewed scrutiny. This could create opportunities for smaller brands, who often champion originality and craftsmanship, to claim a stronger foothold in the marketplace.

In conclusion, the blurred boundary between inspiration and imitation remains one of fashion's most complex dilemmas. However, with persistent advocacy, increased public awareness, and evolving legal frameworks, there is hope for a future where creativity is both inspired and respected—giving genuine designers the recognition and protection they deserve.

Topic 1.3.3 – Inconsistencies in Global Legal Responses to Design Copying

Have you ever paused to wonder why it's often so difficult to access images of historical artworks online—or why photographs of public sculptures in one country are readily available while others are completely absent? Or perhaps you've noticed how wildly the pricing or availability of books and films varies across borders? These inconsistencies are often the result of one thing: *differences in copyright laws around the world*. When the legal framework for intellectual property (IP) varies this much from one country to another, even the most well-meaning efforts to share or archive cultural content can become legally precarious. This lack of legal harmony becomes especially problematic when it comes to moderating and managing creative works online, particularly visual designs.

Take the case of the Wikimedia Foundation. As the non-profit behind Wikipedia, its mission is to support freely accessible, educational content. But even this noble goal runs into obstacles when copyright laws are inconsistent or difficult to interpret. The Foundation often faces content moderation challenges, particularly when trying to determine whether a piece of content is actually in the public domain or still under protection. This is not a simple task—it involves navigating legal grey areas that vary from country to country, complicating efforts to make knowledge truly global and accessible.

ISSN: 2582-6433

Historical Designs: A Question of Provenance and Publication

One of the most persistent challenges in global design law stems from the treatment of historical materials. In the U.S., works published before 1923 are generally assumed to be in the public domain. But this "safe zone" quickly becomes muddy. Many works created before that date were never formally published, or their publication history is unclear, requiring meticulous detective work to confirm whether or not they're truly public domain. For instance, a legal dispute once centered around a passport photograph believed to date back to the early 20th century. The complexity? Determining whether it had been taken in Egypt or Syria—a detail that mattered significantly because Egypt's legal relationship with the U.S. at the time extended copyright recognition, while Syria's did not. In regions shaped by war, colonization, or shifting borders, records are often lost, making the dating of creative works deeply unreliable.

The Moral Rights Puzzle

The situation becomes even more convoluted when we enter the domain of moral rights—legal provisions found in many countries that give creators ongoing control over how their work is used, regardless of any prior agreements. For example, even if a designer or artist releases their work under a free license like Creative Commons, countries like France or Germany may allow them to revoke that license later under moral rights provisions. This means a creator can decide years later to rescind their permission, potentially invalidating previous uses of the work. This legal uncertainty undermines the purpose of open access licenses and makes it incredibly risky for platforms, scholars, and designers to rely on them.

Photographs of Artworks: A Tangle of National Exceptions

Photographs—whether of ancient art or contemporary public installations—also highlight these legal inconsistencies. Copyright is supposed to reward *original* creativity. Yet, in many countries, even a straightforward, two-dimensional photograph of a public domain painting can itself receive copyright protection. This has led to cases like the Reiss Engelhorn Museum lawsuit in Germany, where the museum argued that their digital reproductions of centuries-old artworks are themselves protected, effectively creating a "new" copyright over public domain content. This clashes with U.S. standards, where such direct reproductions are generally not eligible for copyright.

Then there's the issue of taking photos in public spaces. Did you know that snapping a photo of a statue in a park could violate copyright laws in some countries? This is where the principle of *freedom of panorama* comes into play. Some countries allow photographs of buildings but

ISSN: 2582-6433

not sculptures; others ban photos of any copyrighted art in public spaces entirely. This patchwork of rules can trip up even the most careful content creators and stifle global sharing of culture and creativity. Wikimedia volunteers have long championed reform on this front, especially in debates within the European Parliament, but a global consensus remains elusive.

The Shrinking Public Domain

These legal inconsistencies don't just create headaches for institutions like Wikimedia or content creators— they also chip away at the public domain. As more companies and platforms opt to steer clear of legally ambiguous content, entire categories of culture become harder to find, share, or study. What should be freely accessible, by virtue of age or creator intent, often remains locked away behind legal uncertainty.

A Decentralized Solution—and Its Limits

To navigate these waters, Wikimedia has taken an unusual approach: decentralization. Rather than enforcing a uniform standard, the platform allows volunteer editors—local experts fluent in their own national laws and cultural norms—to determine what is allowed in each version of Wikipedia. For instance, English Wikipedia may host certain fair use images that French Wikipedia would reject outright. This community-driven model has proven remarkably effective, even leading to some of the most detailed and thoughtful photo policies found anywhere online. In turn, this grassroots vigilance frees Wikimedia's legal team to focus on complex disputes like the Reiss Engelhorn case.

Still, even with dedicated volunteers and thoughtful policies, the problem remains: global legal inconsistency makes it hard to confidently share designs and artwork. Unlike high-profile copyright battles over movies or music piracy, these issues often fly under the radar—but their impact may be even more far-reaching. As uncertainty grows, platforms and individuals alike are increasingly discouraged from engaging with potentially grey-area content. And when caution wins over access, the public loses.

In conclusion, inconsistencies in global legal responses to design copying do more than just confuse lawyers— they create real barriers for education, innovation, and cultural preservation. They risk silencing the creative commons and impoverishing our shared cultural heritage. Unless steps are taken to harmonize legal standards and strengthen international cooperation, design protection will continue to be a puzzle with missing and mismatched pieces—and we will all pay the price in lost access and opportunity.

ISSN: 2582-6433

Topic 1.3.4: The Need for More Dynamic and Tailored Legal Protections in the Age of Digital Fashion and Globalized Retail

In today's fast-paced, hyperconnected world, the fashion industry is undergoing a transformative shift, driven largely by digital innovation and the rise of global retail platforms. From virtual try-ons to AI-generated designs and seamless cross-border e-commerce, the modern fashion landscape looks dramatically different than it did just a decade ago. Yet, the legal framework intended to protect the creativity and labor behind fashion often remains rigid, outdated, and ill-equipped to meet the needs of this rapidly evolving industry.

Traditionally, intellectual property laws—particularly those concerning design protection—have struggled to keep pace with the unique demands of fashion. These laws were crafted in an era when fashion followed a predictable seasonal cycle, when garments were physically traded, and when copying a design required time and resources. Today, that paradigm has been completely overturned. With just a few clicks, a design can be uploaded, shared, and reproduced anywhere in the world, often without the original creator ever knowing. The current legal infrastructure, however, is still deeply rooted in geography-bound systems and slow-moving processes, leaving fashion designers especially vulnerable in the digital space.

What's even more concerning is the one-size-fits-all approach many legal systems adopt when dealing with fashion design, failing to account for the nuances that set fashion apart from other creative industries. Unlike literature or music, where infringement is relatively easy to identify, fashion operates in a realm of constant inspiration and reinterpretation. The fine line between homage and outright imitation is blurred, making enforcement of rights more complicated. A digitally native fashion ecosystem—with 3D printing, virtual fashion shows, and blockchain-authenticated garments—demands a legal system that is agile, scalable, and nuanced.

Moreover, fashion's global reach has made the shortcomings of national legal frameworks more pronounced. Designers today often market to a global audience via platforms like Instagram, Etsy, or Farfetch. Yet their legal protections remain largely confined to the jurisdictions where they file for rights. This fragmented system of protection fails to match the borderless nature of digital commerce. For instance, a designer in India whose work is copied and sold in Europe or China might find that their domestic rights are meaningless abroad unless they've navigated the costly and complex web of international registrations. The gap between the global spread of fashion and the local nature of its legal protections creates a dangerous loophole for infringers and poses a significant barrier for independent designers seeking to scale globally.

In light of these realities, there is a growing consensus that legal protections for fashion design

ISSN: 2582-6433

must become more dynamic, responsive, and specifically tailored to the sector's modern challenges. First, more countries need to recognize the urgency of fashion-specific IP laws that offer faster registration and simpler enforcement. For example, systems like the European Union's Unregistered Community Design Right offer a step in the right direction by granting temporary protection without the need for formal registration—an invaluable tool in a world where trends come and go in weeks. More such measures, adapted to local realities but harmonized internationally, would offer meaningful safeguards for fashion creators.

Secondly, the adoption of technology itself can aid legal reform. Tools like blockchain can provide verifiable records of design creation and usage, serving as evidence in infringement cases and making licensing more transparent. Similarly, AI-driven monitoring tools could help detect design theft across e-commerce platforms in real time, empowering designers with timely data and the ability to act swiftly.

Finally, legal education and support mechanisms must evolve to guide designers through the increasingly complex IP landscape. This is particularly important for small brands and emerging designers who may lack the legal resources of big fashion houses. Governments, trade organizations, and fashion councils must step up efforts to raise awareness and provide accessible legal aid tailored to the unique needs of the fashion industry.

In conclusion, the digital age and the globalization of retail have disrupted fashion in revolutionary ways, exposing deep cracks in the existing legal framework for design protection. Without more responsive, fashion- forward legal systems, innovation in fashion risks being stifled by rampant design theft and uneven enforcement. To protect creativity in this new era, the law must evolve—not just to catch up with the present, but to anticipate the future. The call for dynamic and customized legal protections in fashion is not just a matter of policy—it's essential for preserving the integrity, diversity, and sustainability of fashion's creative ecosystem.

1.3 Research Objectives

- To analyze the extent to which IP laws protect fashion designs.
- To assess the limitations and loopholes in current frameworks.
- To investigate case law where courts have addressed design infringement.
- To propose legal and policy reforms suited to modern challenges in fashion.

ISSN: 2582-6433

1.4 Hypothesis:

In the rapidly evolving landscape of digital fashion and global retail, traditional intellectual property laws are no longer sufficient; without more adaptive, fashion-specific legal protections, designers will continue to face increasing risks of design theft, creative exploitation, and loss of commercial value across borders.

1.5 Research Questions

- How do various IP regimes currently regulate fashion design protection?
- What is the legal threshold for distinguishing inspiration from infringement?
- How do fast fashion, digital platforms, and emerging tech affect IP enforcement?
- Can new technologies like blockchain and NFTs play a protective role?

1.6 Scope and Delimitation

- Jurisdictional Focus: Comparative analysis involving the U.S., EU, U.K., and India.
- Subject Focus: IP protection (copyright, trademarks, design rights, patents) in relation to fashion.
- Temporal Focus: Emphasis on legal developments in the past 10–15 years.
- Exclusions: Counterfeit enforcement, contract law issues, or purely ethical/moral questions beyond legal scope.

1.7 Significance of the Study

- Academic relevance in bridging the gap between fashion law and IP law scholarship.
- Practical significance for designers, policymakers, and legal practitioners.
- Industry relevance given the global economic importance of fashion and rising infringement disputes.
- Contribution to emerging debates on AI fashion design, digital fashion, and NFTs.

1.8 Research Methodology

- Doctrinal Analysis: Examination of statutes, case law, and legal commentaries.
- Comparative Legal Study: Analysis of similarities and divergences in major legal systems.
- Case Studies: In-depth look at landmark and recent legal battles in fashion infringement.

ISSN: 2582-6433

- Interdisciplinary Integration: Use of fashion theory, cultural studies, and technology perspectives to supplement legal analysis.

1.9 Limitations of the Study

- Limited empirical data due to access constraints.
- Jurisdictional focus may not capture all global perspectives.
- Rapidly evolving technology may render parts of the research outdated in the near future.

1.10 Tentative Chapterisation

Chapter 1 – Introduction: Scope, significance, and methodology.

Chapter 2 – Fashion as an Industry & its Legal Challenges: Historical evolution and industry overview. Chapter 3 – The IP Toolbox: Analysis of copyright, trademark, patent, and design laws.

Chapter 4 – Research Questions

Chapter 5 – Conclusion and Recommendations

1.11 Bibliography

ISSN: 2582-6433

CHAPTER 2: FASHION AS AN INDUSTRY & ITS LEGAL CHALLENGES – HISTORICAL EVOLUTION AND INDUSTRY OVERVIEW

2.1 Introduction

2.1.1 Tracing the Evolution of Fashion as Both Art and Enterprise

This chapter sets out to explore the dynamic journey of fashion from its origins as a form of personal expression to its current status as a global commercial powerhouse. Fashion has never been just about clothing—it's a reflection of identity, culture, politics, and innovation. Over time, what people wore evolved from being a symbol of social status or tribal affiliation to a medium of storytelling, artistry, and individual creativity. Yet, alongside this cultural significance, fashion also transformed into a lucrative industry worth trillions, shaped by trends, technology, and an ever-expanding global consumer base.

By tracing fashion's evolution, this chapter aims to show how the creative spirit behind design has always coexisted—sometimes uneasily—with the demands of commerce. The early days of fashion saw designs passed down through craftsmanship and atelier traditions, where the value lay in manual labor, uniqueness, and reputation. But with the rise of industrialization, mass production entered the scene, revolutionizing how fashion was made, marketed, and consumed. The 20th century witnessed fashion houses becoming brands, designers becoming celebrities, and seasonal collections turning into major global events. What began as wearable art became commodified, branded, and scaled for the masses.

The chapter also reflects on how technological and economic shifts have continually reshaped the fashion landscape. The introduction of ready-to-wear collections (prêt-à-porter), the

ISSN: 2582-6433

emergence of fashion weeks, and the birth of luxury conglomerates like LVMH and Kering all played a role in blending creativity with corporate structure. More recently, fast fashion and digital fashion have redefined how quickly trends are produced and consumed, raising new questions about originality, ownership, and sustainability.

Through this exploration, the chapter lays the groundwork for understanding the unique legal challenges the fashion industry faces. As both a form of artistic expression and a commercial commodity, fashion sits at the intersection of creativity and commerce—an intersection that poses significant implications for intellectual property protection. This context is essential for grasping why existing legal frameworks often struggle to keep pace with the industry's rapid innovation and global reach.

In short, this chapter serves as a foundation for the rest of the dissertation. By mapping out how fashion grew into the complex ecosystem it is today—equal parts art, identity, and industry—it becomes easier to understand the tensions and gaps within intellectual property law that are explored in the chapters to follow.

2.1.2 Intersection between fashion and law, particularly intellectual property law

Fashion, by its very nature, is a fast-paced and highly visual industry driven by creativity, trend cycles, and consumer perception. However, when it comes to safeguarding the unique designs that emerge from this dynamic ecosystem, the existing intellectual property (IP) frameworks often fall short. Designers frequently find themselves in a legal grey zone, struggling to secure meaningful protection for their creations under current IP regimes.

One of the most pressing issues is that fashion designs—unlike literary works, films, or technological inventions—do not fit neatly into the traditional IP categories. While copyright protects original literary and artistic works, and patents safeguard inventions, fashion design sits uncomfortably between these regimes. A garment or accessory must meet high thresholds of originality or functionality to qualify for legal protection, standards that many fashion designs do not meet, particularly in countries where utility or industrial application is a prerequisite.

Design law, where available, does offer a more fitting solution. It provides a mechanism to protect the appearance of a product, including its shape, configuration, and ornamentation. However, the registration processes involved are often time-consuming, bureaucratic, and costly—obstacles that pose a significant burden for emerging designers or small labels. Moreover, in fast fashion environments where the life cycle of a garment can be shorter than the time it takes to obtain registration, such delays render the system ineffective.

ISSN: 2582-6433

Adding to this complexity is the lack of harmonisation in IP laws across jurisdictions. Some countries offer unregistered design rights (like in the EU and UK), granting limited protection for a short period. In contrast, others require formal registration to access any protection at all, leaving designers in less supportive legal systems more vulnerable. The global nature of fashion—where a design can go viral overnight and be replicated across continents—means that inconsistency in legal standards becomes a serious liability.

Another challenge lies in enforcement. Even where protection exists, pursuing legal action against infringers can be prohibitively expensive and time-consuming, especially for independent designers without the financial backing of major fashion houses. This imbalance creates a culture where copying is often tolerated or even expected, with legal remedies out of reach for many of those harmed by it.

The cumulative effect of these issues is a systemic failure to provide fashion designers with the robust protection their work deserves. As commentators like Calboli and Rosati have noted, this gap not only devalues originality and discourages innovation but also allows the cycle of appropriation and replication to thrive unchecked. Until IP systems evolve to better accommodate the distinctive nature of fashion, designers will continue to face uphill battles in defending the integrity of their work.

2.2 The Evolution of Fashion as a Cultural and Economic Force

2.2.1 Pre-Industrial Era: Tailoring, Artisanship, and Guild Protections

Before the mechanisation of textile production, the apparel industry was rooted in craftsmanship, local production, and community-based economies. Today's multi-trillion-dollar fashion ecosystem—valued at approximately USD $1.53 trillion and employing over 430 million people worldwide, or roughly 12.6% of the global workforce, according to the World Bank—had humble beginnings that can be traced back thousands of years. The industry's current scale and sophistication are the results of a gradual but remarkable evolution, one that began with basic tools, necessity, and human creativity.

ISSN: 2582-6433

Clothing as One of Humanity's Earliest Innovations

Long before garments became a medium for self-expression or status, clothing served a basic yet critical function: protection. Early humans distinguished themselves from other species by developing tools, and among the earliest and most important of these tools were clothes. Initially fashioned from animal hides and plant fibres, these primitive garments provided shelter from the elements, but they also took on symbolic and cultural significance.

Even prehistoric attire was not purely utilitarian. Early clothing was often decorated with bones, feathers, flowers, or shells—signs that humans were already experimenting with aesthetic embellishment and beginning to form what would later evolve into fashion. As societies became more organized, so did their approaches to garment production. Techniques such as wrapping, knotting, and stitching became more refined. In ancient Egypt, linen made from spun flax became a widely used fabric, serving both practical and ceremonial purposes. In Mesopotamia, the vertical loom enabled the creation of detailed and colorful textiles.
Clothing in ancient China, particularly before the unification under the Qin Dynasty in 221 BCE, also carried important social and political connotations. The cut, color, and style of a person's clothing signaled not just their regional identity, but also their role and status within society. Garments became a language of their own, communicating authority, class, and affiliation.

Craftsmanship in Classical Civilizations

The classical civilizations of Greece and Rome brought about further technological and stylistic advances in clothing. The Greeks harnessed wool and refined loom technologies, while the Romans innovated with the spinning wheel, a tool that significantly increased the

ISSN: 2582-6433

speed and volume of yarn production. These innovations laid the groundwork for tailoring as a skilled trade. Draping techniques evolved into early methods of cutting and fitting garments—key concepts that remain central to fashion design today.

However, despite these advancements, mass production remained limited. Clothes were predominantly made locally, often within the household or small community workshops. Large-scale production was typically reserved for military uniforms or ceremonial dress, and the diffusion of styles occurred primarily through conquest rather than commerce. Roman occupation, for instance, played a major role in spreading Roman styles and garment construction methods across Europe.

The Role of Artisan Guilds and Cottage Industries in Medieval Europe

Following the collapse of the Roman Empire, Europe entered the feudal period, where the absence of centralised economies led to a rise in self-sustaining, local production. It was during this era that **artisan guilds** emerged as vital institutions for regulating and sustaining the apparel trade. These guilds functioned as professional associations for trades such as weaving, spinning, dyeing, and tailoring. More than just trade unions, they were community hubs that offered education, apprenticeships, mentorship, and a structured pathway for passing on technical knowledge and trade secrets.

Guilds ensured quality control and preserved high standards of craftsmanship. They offered their members protection, access to markets and materials, and a clear structure for skill development and professional advancement. In this period, artisans were responsible for all stages of clothing production—from spinning thread to tailoring finished garments.

A significant portion of production occurred through **cottage industries**—a decentralized system of home- based garment-making. In these settings, family members often worked collaboratively, each contributing to different aspects of a garment's production. Tasks such as spinning, weaving, and sewing were divided among households in a community, creating a flexible and scalable system. Remarkably, this model still survives in various parts of rural Asia today, continuing the legacy of distributed, domestic production.

The garments produced in medieval Europe were often richly adorned, showcasing the skills of their makers. From elaborate embroidery to intricate lacework, these items were not merely functional but celebrated as works of art and craftsmanship.

ISSN: 2582-6433

Laying the Groundwork for Industrialization

This guild- and cottage-based system laid the intellectual and logistical foundation for the industrial revolution that followed. By fostering specialisation, standardisation, and collaboration, guilds effectively built the infrastructure required for more scalable modes of production. Once the necessary technology emerged, it was only natural that clothing production would transition into a more centralised, mechanised model.

That moment came in **1764**, with the invention of the **Spinning Jenny** by James Hargreaves. This multi-spool spinning wheel revolutionised yarn production by allowing several threads to be spun simultaneously, significantly boosting output and efficiency. This invention marked the beginning of textile mechanisation and the eventual shift from cottage industries to factory-based systems.

Further acceleration came in **1785**, when Edmund Cartwright invented the **Power Loom**. This innovation automated the previously labor-intensive weaving process, exponentially increasing fabric production. By **1833**, Britain alone had more than **100,000 power looms** in operation. The power loom epitomised the industrialisation of the apparel sector and became a symbol of the broader industrial revolution.

Controversy and Resistance from the Beginning

However, these advancements were not universally welcomed. The early industrial era was marked by resistance from workers who feared job loss due to mechanisation. This anxiety gave rise to the **Luddite movement** during the economic turmoil of the Napoleonic Wars. Workers, outraged by the threat machines posed to their livelihoods, protested by vandalising factories and destroying equipment. Though the British government ultimately crushed the

ISSN: 2582-6433

movement with military force, the tensions it highlighted—between innovation and labour, progress and displacement—continue to echo in today's discussions about automation and AI in fashion and manufacturing.

In summary, the pre-industrial era was more than a prelude to modern fashion—it was a period of rich innovation, social organisation, and skilled artistry. Tailors, weavers, and spinners of the time were not only craftsmen but also entrepreneurs, educators, and cultural custodians. The institutions they built, particularly guilds and cottage industries, were essential precursors to the globalised and mechanised fashion industry we know today.

2.2.2 Industrial Revolution: Rise of Ready-to-Wear and Mass Production

In today's world, where a few clicks on a screen can deliver the latest fashion trend to one's doorstep within days, it's easy to forget the immense historical transformation that made this possible. Almost everything we consume—from clothing to electronics—is now mass produced, with advanced technology and mechanisation streamlining manufacturing and distribution. This level of efficiency, affordability, and global accessibility is largely the result of a sweeping historical shift: the Industrial Revolution. Often regarded as the most significant revolution in human history, it redefined not only how goods were made, but also how people lived, worked, and connected with the world.

Origins of Industrialisation and Textile Innovation

The Industrial Revolution began around **1750** in **Britain**, as noted by *Encyclopaedia Britannica (2014)*, and it marked a turning point with the introduction of transformative inventions and industrial techniques. Among the first sectors to feel the wave of change was the **textile industry**, laying the groundwork for mass production as we know it.

Inventions like **John Kay's Flying Shuttle** dramatically increased the speed at which cloth could be woven. This innovation boosted the demand for yarn, prompting further breakthroughs such as **James Hargreaves' Spinning Jenny** and **Richard Arkwright's Water Frame**, both of which significantly raised yarn production capacity (*Encyclopaedia Britannica, 2014*). These advances were further amplified by new energy sources. First **water power**, and later **steam and coal power**, perfected by **James Watt**, mechanised textile processes and vastly increased production output (*Green, J., 2012*).

Before these developments, producing garments was a slow and manual process. After mechanisation, however, machines replaced much of the labour-intensive handwork, slashing production times and making clothing more affordable. It was during this period that the

ISSN: 2582-6433

concept of **ready-to-wear clothing** began to emerge—garments produced in standard sizes for a broad market, rather than bespoke tailoring for individuals.

The Division of Labour and the Birth of Mass Production

Beyond the inventions themselves, one of the most revolutionary ideas of the period came from **Adam Smith**, who championed the principle of the **division of labour**. In *The Wealth of Nations (1776),* Smith illustrated how breaking down a task into specialised roles could yield exponential efficiency. For instance, if ten workers each made complete pins, the total output might be a few dozen a day. But if each worker focused on a specific part of the process, together they could produce **thousands of pins daily**.

This method of task specialisation became the bedrock of the **factory system**. Workers no longer crafted entire products by hand from start to finish. Instead, they performed segmented roles within an assembly line—an innovation that made mass production possible. Products became cheaper, faster to produce, and more consistent in quality. These efficiencies revolutionised the fashion industry, transforming clothing from a luxury to a commodity accessible to the masses.

Social Impact: Urbanisation, Employment, and Shifting Roles

The rise of factories had profound effects on the fabric of society. Prior to the Industrial Revolution, roughly **80% of Britain's population lived in rural areas**, subsisting mainly on agriculture. This trend was sharply reversed as factories and mills began to dominate urban landscapes. Post-industrialisation, **80% of the population resided in cities**—a demographic shift that dramatically altered daily life (*The Economist, 2009*).

Urbanisation surged. With new job opportunities in manufacturing, people migrated to cities in search of employment. Entire families entered the workforce; **women and children**, previously confined to domestic roles, began working in factories. This shift increased household incomes and contributed to **Britain's population quadrupling** during and after the Industrial Revolution. The expansion of industry created a self-sustaining loop: more businesses meant more jobs, and more jobs led to population growth and economic momentum.

Displacement, Inequality, and Labour Alienation

Yet, the benefits of industrialisation were not evenly distributed. Skilled artisans—particularly weavers and craftsmen—found themselves replaced by machines that could produce more, faster, and at a lower cost. Adam Smith himself lamented this human cost, observing that

ISSN: 2582-6433

workers who once earned **20 to 30 shillings a week** were now forced to survive on **5 shillings or less**.

While business owners and industrial investors reaped vast profits, many labourers faced long hours, poor working conditions, and dwindling job satisfaction. As machines took over, the nature of work changed. Factory workers were often confined to performing monotonous tasks, disconnected from the finished product and the consumer. Surveys conducted in the United States and industrialised parts of Europe have shown that many workers lacked an understanding of how their roles fit into the larger societal or production context (*Encyclopaedia Britannica, 2014*). This alienation, born from the compartmentalisation of labour, made factory work physically and psychologically draining for many.

A Lasting Legacy

The Industrial Revolution redefined the factory—not just as a building filled with machines, but as a symbol of efficiency, innovation, and global commerce. It created the template for modern mass production, introduced the **ready-to-wear** model, and laid the economic and social foundations of today's fashion industry. It also sparked debates—still ongoing—about the balance between technological progress and human wellbeing.

In conclusion, the Industrial Revolution didn't just revolutionise production techniques; it rewired societies, restructured economies, and reshaped the human relationship with work and consumption. The developments born out of this era continue to influence how today's factories function, how fashion is produced and consumed, and how the global economy is structured. Its impact is not just a chapter in history—it is a force still woven into the fabric of modern life.

2.2.2.1 ***Democratization of Fashion***

ISSN: 2582-6433

Fashion, once confined to the runways of Paris and the wardrobes of the elite, has undergone a radical transformation. In the past two decades, a confluence of retail innovation, digital platforms, reality television, and fast fashion has torn down the velvet ropes, ushering the masses into the once-exclusive world of high style. This movement, known as the **democratization of fashion**, has not only changed how people consume fashion but also who gets to participate in shaping it.

Designer Collaborations: The Isaac Mizrahi x Target Blueprint

One of the first cracks in fashion's glass ceiling came in 2002, when acclaimed designer **Isaac Mizrahi** partnered with **Target** to launch a high-end diffusion line at bargain-store prices. Though Mizrahi had already made a name for himself in couture, his career had seen its ups and downs. The collaboration with Target was a game changer—for both parties. Mizrahi brought designer credibility to the mass market, and Target gained prestige and a broader consumer base. The venture was a commercial hit, reportedly generating up to **$300 million annually**, and it opened the doors for subsequent collaborations with heavyweights like **Marc Jacobs** and **Vera Wang**. The success of Mizrahi's line not only cemented Target's role as a retail innovator but also signaled to the industry that high fashion could thrive beyond luxury boutiques.

Street Style and the Rise of the Fashion Blogger

Social media and fashion blogs have played a pivotal role in reshaping the fashion narrative. Influencers like **Leandra Medine**, founder of *Man Repeller*, redefined how style is perceived. Her irreverent approach— mixing a **Hermès cuff with a Forever 21 jacket**—embodies a new ethos: that fashion is less about price tags and more about personal expression. Her concept of "dressing in a way that might repel men but delights the self" is both satirical and sincere, and it resonated deeply with a generation that sought authenticity over aspiration.

Fashion blogs such as *Cupcakes and Cashmere*, *The Sartorialist*, and *Atlantic-Pacific* showcased relatable, everyday individuals—often not famous or wealthy—wearing accessible yet stylish outfits. These digital platforms blurred the lines between high fashion and street style, empowering readers to incorporate a single luxury piece into an otherwise affordable ensemble. By doing so, they nurtured both a curiosity for designer labels and the confidence to mix and match, thereby fueling interest in luxury brands among a wider audience.

ISSN: 2582-6433

Social Media: A Window Into Fashion's Inner Sanctum

Platforms like **Instagram** and **Twitter** have further dismantled fashion's traditional hierarchies. Designers and fashion insiders now share their inspirations and creative processes directly with their followers. **Prabal Gurung**, for instance, frequently posts vivid images such as brightly colored **saris** that inspire his collections, while **Oscar PR Girl** offers behind-the-scenes glimpses into the glamorous world of **Oscar de la Renta**.

Design icons such as **Alexander Wang**, **Christian Louboutin**, and **Diane von Furstenberg** engage directly with their audiences, amassing hundreds of thousands of followers. Their candid posts—ranging from mundane studio snapshots to captivating runway teasers—help demystify the fashion industry. What once required a front-row seat or industry connection is now accessible to anyone with a smartphone, making the fashion world feel more personal, transparent, and inclusive.

Fashion on Television: Project Runway and ANTM

Reality television has also contributed significantly to the democratization of fashion. Shows like **Project Runway** offer viewers a behind-the-scenes look at the creative journey—from concept sketches to full runway presentations. Judge **Michael Kors**, among others, brought a professional, often witty critique that educated audiences on the subtleties of construction, fit, and fashion storytelling. By giving viewers a designer's eye, the show transformed passive watchers into informed consumers.

Similarly, **America's Next Top Model** turned modeling into a mainstream aspiration. Watching contestants master the runway, poses, and the infamous "smize" taught viewers the nuances of professional modeling. While these shows primarily entertain, they also dismantle the perception of fashion as a distant, elite domain and instead present it as a process anyone can learn about, understand, and engage with.

Fast Fashion: From Catwalk to Sidewalk

The phenomenon of **fast fashion**—although rooted in the 1980s—came into full maturity with the public's heightened awareness of runway trends. Retailers like **Zara**, **H&M**, **Topshop**, and **Forever 21** capitalized on this interest, translating high fashion into accessible streetwear in record time. These brands replicate the styles, silhouettes, and colors of recent runway shows and deliver them to stores within weeks, at a fraction of the cost.

This rapid turnaround has not been without criticism. **Forever 21**, for example, has faced numerous **intellectual property lawsuits** from designers like **Anna Sui** and **Diane von**

ISSN: 2582-6433

Furstenberg. Nevertheless, the appeal of wearing something runway-inspired for less than $50 has been too powerful for most consumers to resist. Fast fashion empowers even budget-conscious shoppers to emulate their style icons, making the average city street feel like an extension of **New York Fashion Week**.

Fashion Week Goes Digital

Even the once-exclusive **Mercedes-Benz Fashion Week** has embraced accessibility. Through live broadcasts and digital platforms, the event allows global audiences to preview the upcoming season's trends in real time— no celebrity invite or media credential required. While nothing replaces the thrill of being physically present at a runway show, virtual access has made the experience far more **democratic**, offering inspiration and engagement to anyone, anywhere.

In essence, the democratization of fashion has torn down the walls that once separated the fashion elite from the everyday consumer. Through designer-retailer collaborations, social media, television, fast fashion, and live-streamed runways, the fashion industry has become more inclusive, interactive, and accessible. The modern fashion landscape is no longer dictated solely by top designers or glossy magazines; instead, it's shaped by a global community of creators, consumers, and commentators, all playing a part in fashion's ever- evolving story.

2.2.2.2 *Beginnings of Large-Scale Copying and Replication*

The fashion industry has long been haunted by imitation. From the corseted gowns of centuries past to modern luxury handbags, the practice of mimicking high-end designs—known today as knockoffs or replicas—has deep roots. Though often dismissed as a byproduct of fashion's popularity, the reality is that large-scale copying has evolved in lockstep with the fashion industry itself, growing more sophisticated and pervasive with time.

ISSN: 2582-6433

From Toga to Trademark: Counterfeiting in Ancient Times

Even in antiquity, fashion imitations were rampant. In **ancient Rome**, artisans recreated luxury goods and sold them at a lower price to appeal to aspirational consumers. The trend became so widespread that Roman authorities were eventually compelled to enact laws against the production of these fake wares. This early legislative response marks one of the first recorded efforts to control counterfeit fashion.

During the **Middle Ages and the Renaissance**, imitation continued—not as a criminal offense but often as a display of status. Monarchs and aristocrats would commission copies of opulent garments, jewelry, and artworks to affirm their power and affluence. Wealthy patrons, too, hired artists to replicate masterpieces, turning counterfeit artistry into a symbol of sophistication. These historical examples highlight that fashion copying has never been solely about affordability—it has also been tied to social aspiration and identity.

Industrial Revolution and the Rise of Branded Identity

The 19th century ushered in the industrial age, and with it came the mass production of textiles and garments. This technological shift made it significantly easier for imitators to reproduce popular designs and flood the market with lookalikes. Fashion houses across **Europe and the United States** faced increasing pressure as the efficiency of production outweighed exclusivity. In response, designers such as **Louis Vuitton** began prominently marking their products with logos and monograms in an attempt to ward off counterfeiters and assert brand authenticity.

However, the proliferation of knockoffs only intensified. Counterfeiters quickly adapted, crafting convincing fakes that mimicked not only the designs but the branding itself. As mass production scaled up, so did replication—making designer goods more vulnerable than ever.

Fashion Fraud in the Digital Age: Enter the Knockoff Economy

The 20th and 21st centuries marked a new era: **Fashion Fraud 2.0**. Technological innovation and the rise of **fast fashion** further accelerated the speed and scale of copying. Retail giants like **Zara**, **H&M**, and **Zara Home** pioneered rapid design-to-store pipelines, drawing heavy influence from luxury runway collections. These brands managed to replicate designer aesthetics within weeks—at a price that average consumers could afford. While not illegal, this practice walks a fine ethical line and raises ongoing concerns about design theft.

With the advent of **e-commerce** and global marketplaces, the knockoff trade exploded. Online platforms such as **Alibaba**, **Taobao**, and **Wish** have been repeatedly accused of enabling the

ISSN: 2582-6433

sale of counterfeit designer items. Despite their claims of monitoring and enforcement, many of these platforms continue to serve as hotbeds for imitation goods. From **handbags and jewelry** to **footwear and accessories**, counterfeit products now flood both virtual storefronts and physical shops worldwide.

Luxury fashion brands have not remained silent. In **2020**, **Louis Vuitton** filed a high-profile lawsuit against **Alibaba**, accusing the Chinese e-commerce giant of facilitating the sale of counterfeit goods that bore its protected trademarks. Similarly, **Gucci** initiated legal proceedings against **Forever 21** for allegedly replicating its distinctive "Princetown" slipper design, underscoring how even fast fashion retailers occasionally face accusations of infringement.

The Streetwear Surge and Designer Dupes

Streetwear culture has also been swept into the tide of replication. Characterized by oversized cuts, graphic prints, and urban aesthetics, streetwear has become a global phenomenon. Yet as it has risen in prestige, so has its vulnerability to duplication. Both major and minor labels have been accused of recycling design elements from more established brands, blurring the lines between homage and hijack. In some cases, entire collections echo the look and feel of popular streetwear without offering innovation or attribution.

Meanwhile, **luxury sneakers** and limited-edition drops have created a lucrative grey market for high-quality fakes. As sneaker culture has gone mainstream, the demand for designer kicks has skyrocketed—bringing with it a wave of near-perfect counterfeits that challenge even seasoned collectors to spot the difference.

Consequences of Copying: The Impact of Counterfeits

The implications of widespread replication are far-reaching. For the **fashion industry**, knockoffs dilute brand value and erode profitability. For **consumers**, they present potential safety risks and mislead buyers into spending money on substandard products. Furthermore, the counterfeit trade often has a darker side—its revenues can fuel organized crime, forced labor, and other illegal enterprises.

In response, many fashion houses have intensified their efforts to fight back. Legal teams pursue counterfeiters through litigation, while governments worldwide have introduced stricter laws to crack down on intellectual property violations. Advanced **technological tools**—from blockchain tracking to AI-powered detection—are increasingly used to detect and dismantle counterfeit networks online.

ISSN: 2582-6433

Yet despite these measures, counterfeiting remains resilient. Much of its persistence lies in consumer behavior: many shoppers knowingly purchase fakes, lured by the promise of luxury aesthetics at a budget price. And with increasingly sophisticated replication techniques, even the most discerning eyes can be fooled.

The Copycat Paradox

The fashion industry's battle with large-scale copying and replication is neither new nor near resolution. From ancient Roman marketplaces to modern digital storefronts, knockoffs have trailed the evolution of fashion like a shadow. While industrialization and technology have brought many benefits to the fashion world, they have also empowered counterfeiters to work faster, smarter, and on a broader scale than ever before.

Despite concerted efforts from brands, governments, and tech innovators, knockoff culture remains deeply embedded in fashion's global ecosystem. Ultimately, the solution may lie not only in stricter enforcement but in consumer education—encouraging people to value authenticity over imitation and understand the broader impact of their fashion choices.

2.2.3 The Birth of Modern Fashion Houses

2.2.3.1 Establishment of haute couture in France

On a frosty evening in December 1859, fate and fashion converged as Charles Frederick Worth, then an aspiring designer, glimpsed Princess Pauline de Metternich en route to the imperial court at the Tuileries Palace. The brief encounter ignited a bold plan in Worth's mind—a vision that would soon revolutionize fashion itself. Days later, his wife Marie nervously presented his designs to the Princess, who was so enchanted that she commissioned a gown and promised to debut it at the upcoming court ball. With that simple act of aristocratic endorsement, the House of Worth—history's first official Haute Couture establishment—was born.

Charles Frederick Worth, an Englishman from humble beginnings, had defied expectations from the outset. After a rocky childhood and early years apprenticing in London's textile trade, he moved to Paris in 1845 and rose through the ranks at the fabric house Gagelin and Opigez. His breakthrough came not only from his design talent but from an unorthodox vision: he didn't merely sew dresses; he sculpted statements of power and grace, often worn by his wife as living advertisements. By 1858, Worth had launched his own atelier with Otto Bobergh, laying the foundation for a fashion empire.

Everything changed with Princess Metternich's introduction of Worth to Empress Eugénie.

ISSN: 2582-6433

The Empress, though not initially fashion-obsessed, understood the symbolic power of image in a media-driven era. Soon, Worth became her exclusive designer, crafting garments that blended elegance with imperial grandeur. With each court appearance, Eugénie became a living canvas for Worth's vision—transforming fashion from a practical craft into a performance of cultural and political identity.

Worth's designs went beyond silhouettes and fabrics; they ushered in a new era of fashion as art and enterprise. Together, he and Eugénie retired the unwieldy crinoline, introduced the bustle, and made even the smallest wardrobe choices subject to global scrutiny. At a time when press coverage, diplomatic appearances, and royal protocol dictated public perception, the Empress's wardrobe became both a spectacle and a statement, her couturier's name whispered in salons across continents.

The House of Worth not only redefined fashion; it pioneered modern business practices within the industry. Worth introduced innovations like garment labeling, seasonal collections, and global distribution through department stores and licensed replicas. His opulent Paris showroom offered a theatrical experience where clients could witness models showcasing designs in custom-lit salons. These strategies laid the groundwork for the modern fashion industry, where branding, exclusivity, and presentation became as important as the clothing itself.

Though the fall of the Second Empire in 1870 dimmed the court's glamour, the legacy of Worth endured. He missed the intimate creative partnership he shared with Eugénie, yet his influence had already spread across Europe and America. Fashion had evolved from an individualized craft to a global phenomenon—and Charles Frederick Worth had stitched that transformation into history. Even in exile, the Empress received from Worth, year after year, a bouquet of Parma violets—an enduring symbol of loyalty to the woman who helped launch his legacy.

By the time of his death in 1895, Charles Frederick Worth had become the uncontested father of Haute Couture. The boy from Lincolnshire had not only conquered the Parisian fashion world but reshaped it into a modern, international industry—forever altering the trajectory of design, commerce, and cultural identity.

2.2.3.2*: The Role of Fashion Weeks, Branding, and Exclusivity*

"Fashion is like eating—you shouldn't stick to the same menu." This analogy captures the essence of an industry that thrives on constant reinvention. Fashion is an ever-evolving realm of creativity, innovation, and bold expression. Its dynamism is unmatched, and nowhere is this more evident than in the phenomenon of Fashion Week.

ISSN: 2582-6433

Fashion Weeks are more than just extravagant runways and celebrity sightings; they are vital strategic events that define the direction of brands, influence global trends, and embody exclusivity. For a brand to achieve visibility and prestige—what many refer to as "brand fame"—being attuned to the happenings on the catwalk is essential. The collections unveiled during Fashion Weeks not only dictate the aesthetics of the current season but also forecast the creative pulse of the seasons ahead.

Traditionally, the fashion calendar is divided into four primary seasons—Spring, Fall, Winter, and Pre-Fall— with major fashion capitals like New York, London, Paris, and Milan hosting globally recognized Fashion Weeks. In addition to these flagship events, hundreds of smaller, regional fashion weeks have emerged, spotlighting local talent and distinct cultural styles. These events serve as vital arenas for new designers and independent labels to gain industry exposure, offering a platform where innovation meets visibility.

From a historical perspective, the origins of Fashion Week trace back to the mid-19th century in Paris, when fashion parades became a novel way for designers to showcase their latest creations. Charles Frederick Worth, often regarded as the father of haute couture, pioneered the use of live models—what he called "living mannequins"—to present his designs, laying the groundwork for what would evolve into the modern runway show. By the early 20th century, these events had evolved from private showcases to ticketed public spectacles, cementing their place as a key marketing tool for fashion houses.

Fashion Weeks became globally decentralized due to the disruptions of World War II, which hindered transatlantic travel and prompted the birth of new fashion hubs. As a result, diverse fashion scenes developed, each contributing unique voices to the global fashion narrative.

In contemporary times, Fashion Week is a powerful branding instrument. It offers designers a chance to narrate their stories, define their aesthetic, and solidify their market position. As Dries Van Noten eloquently stated, "For me the show is the only moment when I can tell my story." It is a stage not just for garments, but for ideas. These shows are theatrical expressions of identity, showcasing everything from intricate craftsmanship to avant-garde themes that transcend functionality.

The runway serves as a convergence point for key industry players—editors, buyers, influencers, and media. It is where future trends are born and where the careers of designers and models can be catapulted to new heights. As PR expert Nate Hinton emphasizes, Fashion Week is the space where emerging talents are discovered and elevated, given the critical mass of decision-makers and media attention.

For small and mid-sized labels, Fashion Week provides a transformative opportunity.

ISSN: 2582-6433

Participation can lead to lucrative collaborations, retail partnerships, and increased media visibility. These shows allow brands to engage not only with industry insiders but also, increasingly, with consumers. With the advent of digital platforms, brands can livestream their shows globally, democratizing access while retaining an air of exclusivity. This digital shift became especially pivotal during the COVID-19 pandemic, when physical events were curtailed, and brands had to reinvent their presentation strategies. Jeremy Scott's 2020 puppet-themed digital show in Milan is a prime example of how creativity can transcend logistical constraints, providing a memorable experience without a physical audience.

Despite these changes, the allure of the physical runway remains unparalleled. The immersive atmosphere, the anticipation in the audience, the firsthand viewing of fabric movement and detail—these are experiences that cannot be fully replicated online. However, the fusion of live and digital elements presents a hybrid model that caters to both traditionalists and a tech-savvy global audience.

Fashion Weeks also play a pivotal role in reinforcing brand exclusivity—a core tenet of luxury branding. By showcasing limited-edition designs or conceptual pieces that may never enter mass production, brands heighten their mystique and desirability. Exclusivity in fashion isn't just about owning something rare; it's about experiencing something few others can. Members-only access, invitation-only events, and curated guest lists add layers of prestige that resonate with luxury consumers.

In the modern branding landscape, fashion shows are carefully orchestrated experiences. From model selection to music, set design, and social media integration, every element is curated to reinforce a brand's identity. A show that aligns with the brand's ethos—such as Paco Rabanne's Spring 2019 show by Julien Dossena—can translate into not just cultural relevance but direct commercial success.

Moreover, fashion shows serve as trend incubators. They inform not only what people wear but how they perceive beauty, gender, and identity. With social media playing an ever-increasing role, fashion brands now collaborate with influencers and digital creators to amplify their reach. This symbiotic relationship ensures that the brand's message resonates across demographics, transcending the physical event to live on through content and conversation.

Importantly, the pandemic exposed the need for adaptability. While physical shows may have been momentarily halted, the spirit of Fashion Week endured through virtual runways and innovative formats. This period urged the industry to rethink not just how it presents fashion, but why it does so. Moving forward, sustainability, inclusivity, and digital fluency will be as critical as the clothes themselves.

ISSN: 2582-6433

In conclusion, Fashion Weeks remain an indispensable element of fashion branding and exclusivity. They are not merely showcases—they are statements. Through spectacle and storytelling, they shape brand narratives, influence consumer perception, and solidify a brand's place in an increasingly competitive market. In a world where consumer attention is fragmented and fleeting, Fashion Week offers a rare moment where all eyes converge—making it one of the most powerful branding tools in the fashion industry.

2.3 Fashion in the Contemporary Era

2.3.1: The Globalization of Fashion

Globalization has undeniably reshaped the modern fashion industry, transforming how garments are designed, produced, marketed, and consumed across the world. This sweeping phenomenon extends beyond mere trade—it weaves together economic, cultural, and technological threads that collectively redefine the way fashion functions on a global scale. From the rapid rise of fast fashion to the blending of cultural aesthetics and the quest for sustainability, globalization's influence has both propelled innovation and triggered complex challenges. This section explores the multidimensional impact of globalization on the fashion industry, highlighting its key drivers, transformative effects, and emerging directions.

Understanding Globalization in the Fashion Context

At its core, globalization refers to the increasing interconnectivity of economies, societies, and cultures across national boundaries. In the realm of fashion, this interconnectedness has enabled the free flow of ideas, styles, and production processes. Designers and brands today operate in an environment where a trend born in Tokyo can influence a collection in Paris and be mass-produced in Bangladesh—all within a matter of weeks.

The global nature of trade and communication has created an expansive, fluid marketplace, where fashion brands can tap into diverse resources and reach consumers worldwide. This cross-border collaboration and competition have accelerated innovation while also fostering a more homogenized global fashion culture— one where trends transcend geography and cultural boundaries increasingly blur.

Economic Forces and Global Supply Chains

One of globalization's most tangible effects on fashion lies in the realm of economics. Brands have taken advantage of international trade to reduce production costs by outsourcing manufacturing to countries with cheaper labor and raw materials. Nations like China, Vietnam,

ISSN: 2582-6433

India, and Bangladesh have emerged as pivotal production hubs, supplying high-quality garments at prices that support competitive retail models.

This economic shift has fueled the expansion of global supply chains, particularly benefiting the fast fashion industry. Brands such as Zara and H&M have capitalized on these global networks to deliver fresh collections at unprecedented speeds. The economic impact of globalization on fashion can be understood through several key trends:

- Cost Optimization: Outsourcing to lower-cost countries enables brands to cut production expenses significantly.
- Global Market Access: E-commerce has unlocked international consumer bases, allowing even small brands to operate on a global scale.
- Job Creation—With Caveats: While globalization has created employment opportunities in developing nations, these often come under exploitative conditions, marked by low wages, unsafe environments, and lack of labor protections.

Cultural Fusion and Global Style Influences

Globalization has also sparked a vibrant cultural exchange, enriching fashion with influences from diverse traditions and aesthetics. Designers today often draw on global inspirations, incorporating indigenous textiles, embroidery techniques, and regional motifs into their collections. This cultural cross-pollination has become a hallmark of contemporary fashion, reflecting an increasingly cosmopolitan world.

Digital platforms have further accelerated this exchange. Social media, online fashion shows, and influencer culture have turned the fashion world into a truly global dialogue. Consumers can now engage with styles from other cultures at the click of a button—discovering, admiring, and purchasing designs that might once have been geographically or culturally out of reach.

However, this fusion also raises ethical concerns around cultural appropriation. The commercial use of traditional designs without proper acknowledgment or respect for their origins can strip these expressions of their cultural significance. The challenge lies in navigating this exchange respectfully—celebrating cultural diversity without commodifying it.

Technology: The Engine Behind Global Fashion

The role of technology in globalizing fashion cannot be overstated. Digital innovation has revolutionized how trends emerge, how consumers shop, and how brands operate. Platforms like Instagram, TikTok, and Pinterest have become modern runways, where trends are born and

ISSN: 2582-6433

disseminated globally within hours.

Online shopping and virtual stores enable brands to bypass traditional brick-and-mortar limitations, giving them direct access to consumers across continents. At the same time, technology has streamlined production and logistics, making fast fashion feasible through data-driven inventory management, AI-powered trend forecasting, and agile manufacturing systems.

Yet, while technology has made global fashion more accessible, it also contributes to overconsumption and the rapid turnover of trends—issues that feed into the darker side of globalization.

The Fast Fashion Boom: A Double-Edged Sword

Arguably, the most prominent byproduct of globalization in fashion is the rise of fast fashion. This model thrives on rapid production cycles, low costs, and constant consumer engagement. Retail giants like Forever 21, Uniqlo, and Boohoo epitomize the ability to turn runway inspiration into retail reality within weeks.

Fast fashion has democratized style, offering consumers access to affordable, on-trend clothing. However, it has also introduced serious environmental and ethical concerns:

- Environmental Toll: The industry is one of the largest global polluters, generating vast amounts of textile waste, depleting water resources, and emitting greenhouse gases.
- Labor Exploitation: Many fast fashion items are produced under poor working conditions, where labor rights are frequently ignored in the pursuit of lower costs.
- Cultural Homogenization: As Western trends dominate global markets, local fashion traditions and artisanal practices often get sidelined or diluted.

The Sustainability Imperative

The growing awareness of these negative consequences has led to a consumer-driven push for greater sustainability in global fashion. More buyers now seek transparency, ethical labor practices, and eco-conscious products. In response, many brands are evolving their models to integrate sustainability, not just as a marketing tactic but as a core business strategy.

Emerging sustainable practices include:

- Ethical Sourcing: Brands are partnering with suppliers who provide safe working conditions and fair wages.
- Green Manufacturing: Techniques such as waterless dyeing, recycling, and use of biodegradable fabrics are gaining traction.

ISSN: 2582-6433

- Supply Chain Transparency: Labels are increasingly disclosing where and how their products are made, aiming to build trust with informed consumers.

Looking Forward: Technology and Ethics at the Forefront

As globalization continues to shape fashion, future trends will be defined by the integration of advanced technologies and heightened ethical awareness. Innovations like blockchain can ensure supply chain transparency, enabling customers to trace a product's journey from raw material to retail. Similarly, AI is transforming how brands anticipate demand, helping reduce overproduction and waste.

In this evolving landscape, brands must balance global expansion with responsibility—embracing digital tools while committing to sustainability and cultural respect. The pressure is on not just to adapt, but to lead change.

Conclusion

Globalization has transformed the fashion industry into a powerful, borderless force—one that enables creativity to flourish across cultures, boosts economic growth, and delivers global access to style. Yet, this transformation has come with significant trade-offs: environmental degradation, labor injustices, and the erosion of cultural authenticity.

The fashion industry now stands at a crossroads. To sustain its global momentum without compromising on ethics or the planet's health, it must adopt a more conscientious path. By leveraging technology, fostering cultural respect, and championing sustainability, fashion can evolve into a more inclusive and responsible global enterprise.

In sum:

- Globalization has enabled cost-efficient global production and distribution.
- It has enriched fashion through cultural exchange while introducing concerns over appropriation.
- Fast fashion exemplifies both the benefits and pitfalls of globalization—offering accessibility but at significant environmental and social costs.
- The future lies in technology-driven transparency, ethical innovation, and sustainable practices.

The globalized fashion industry of tomorrow must not only look good but do good—and that transformation is already underway.

ISSN: 2582-6433

2.3.2: The Lingering Cost of Instant Fashion

Over the past thirty years, fashion has been dramatically reshaped by three major waves of technological advancement. The early 2000s saw the rise of fast fashion, fueled by advanced data analytics, RFID tracking, and regionally integrated supply chains. This was followed in the next decade by the explosive growth of internet-based direct-to-consumer (DTC) retail models. Today, we are witnessing a new evolution—what can aptly be termed "instant fashion"—driven by mobile commerce, artificial intelligence, real-time design and production, and live-stream shopping experiences.

At the forefront of this latest revolution is Shein, a Chinese-founded fashion retailer that epitomizes the speed, affordability, and disposability associated with instant fashion. Since entering the U.S. market less than six years ago, Shein has experienced meteoric growth, with annual sales skyrocketing from $1.5 billion to a projected $50 billion by 2025—eclipsing H&M and closing in on Zara. But behind this astronomical success lies a troubling reality: the environmental and social costs of this model are steep, and they are largely hidden from public view.

The Drivers Behind Instant Fashion

Two main forces power the instant fashion model: the ubiquity of smartphones and the changing behavior of Gen Z consumers. Over the past seven years, global smartphone usage has nearly doubled to over six billion users. As e-commerce transitioned from desktop to mobile, nearly half of all transactions are now conducted on mobile devices. This shift has created a culture of constant connectivity and rapid consumption, especially among younger users.

ISSN: 2582-6433

Gen Z, in particular, plays a pivotal role. This cohort spends more time than any other generation on their phones—and more money on clothing. Their purchasing habits are defined by "discovery buying," in which items are found rather than searched for. Influenced by creators and live-streamed shopping events, these consumers often buy on impulse, making decisions in seconds with little thought about long-term value or sustainability.

Unlike previous generations who shopped with intent, Gen Z's fashion journey is often spontaneous and socially influenced. As Joanna Williams, CEO of the Moore Collective, observes, today's consumers "don't choose from what they can find, but rather discover what they never knew they wanted." This creates an environment of volatile, unpredictable demand, driven more by entertainment than need.

Inside the Machinery of Instant Fashion

To cater to this new kind of consumer, companies like Shein have constructed an ecosystem optimized for speed and novelty. This model, perfected by Shein and now emulated by rivals like Temu, Urbanic, and Trendyol, relies on a few key pillars.

1. *Real-Time Product Creation*

While Zara pioneered fast fashion with its agile supply chains and data-driven inventory management, Shein has escalated the process to an entirely new level. Zara releases about 35,000 styles annually; Shein releases that many in just weeks. A recent analysis revealed Shein launched a staggering 1.3 million new products in a single year.

This hyper-productivity is enabled by sophisticated algorithms that scrape social media and e-commerce platforms for trends. Shein's 250 in-house designers and thousands of contract manufacturers—mostly based in Guangzhou—respond in real time, producing test batches of 100–200 units. These factories operate with constant digital communication, sharing capacity and material availability, allowing Shein to move from design to sale in as little as 10 days—a fraction of the time traditional brands require.

However, this model has sparked controversy. Since 2018, over 90 lawsuits have been filed in U.S. courts by brands like Uniqlo and Zara, accusing Shein of intellectual property violations.

2. *Real-Cheap Pricing*

Affordability is essential to Shein's appeal. Their price points routinely undercut competitors like H&M and Zara, with $8 blouses and $9 dresses being commonplace. This is largely due to Shein's reliance on polyester— a synthetic fiber derived from fossil fuels. Around two-thirds

ISSN: 2582-6433

of Shein's inventory is polyester-based, compared to 27% at Zara and 21% at H&M. Polyester's low cost makes it ideal for disposable fashion, but its environmental toll is immense.

3. *Real-Time Marketing*

To sell its avalanche of new items, Shein invests heavily in digital advertising, particularly on Facebook and Google—so much so that its ad spend has significantly boosted Meta's revenues. But the brand's true marketing edge lies in its influencer ecosystem.

Thousands of influencers, especially on TikTok and Instagram, promote Shein "haul" videos, showcasing dozens of items at once. This constant stream of visual content creates urgency and keeps Shein at the top of consumers' minds. On TikTok, Shein was the most discussed brand globally last year, and it boasts over 30 million followers on Instagram.

The Hidden Costs of Instant Fashion

For many legacy fashion retailers, the emergence of instant fashion is an existential threat. Brands like Forever 21 and Missguided have gone bankrupt, while others like Gap and H&M have acknowledged Shein's disruptive impact during investor calls. But beyond corporate shakeups, the real concern is the model's broader societal and environmental cost.

1. *Social Exploitation*

The question lingers: How can Shein sell three clothing items for less than $11? The company's opacity makes this difficult to answer. While Shein claims efficiency and tight margins, investigative reports have uncovered troubling labor practices. A UK exposé revealed that some Shein factory workers toiled up to 18 hours a day for less than $0.04 per garment. A Bloomberg report also found links between Shein and cotton sourced from China's Xinjiang region—a violation of U.S. laws against forced labor.

The U.S. Congress is currently investigating Shein and Temu for their use of forced labor and exploitation of a legal loophole—the de minimis rule—which exempts shipments under $800 from tariffs. In 2022, this loophole allowed Shein and Temu to pay zero tariffs while H&M paid $205 million and Gap $700 million.

While competitors like Nike and Zara have implemented robust third-party auditing systems to monitor suppliers, Shein's self-reported data shows that less than half of its suppliers were audited in 2022. Alarmingly, 11% of those received failing grades.

ISSN: 2582-6433

2. *Environmental Impact*

Consumer surveys often reflect a desire for sustainable fashion. Yet, when faced with unclear information and lower prices, most shoppers still choose convenience and cost. Instant fashion thrives in this space of cognitive dissonance.

Fashion waste occurs at three points: during production (unused materials), in storage (unsold stock), and post- consumption (landfill overflow). Shein may minimize warehouse surplus through small batch production, but its reliance on polyester and fleeting trends amplifies waste elsewhere.

The rise of synthetic fibers—particularly plastic-based ones—has reshaped the fashion industry. Once dominated by cotton and wool, fashion now leans heavily on cheap synthetics, aligning with fossil fuel producers seeking new markets amid renewable energy growth. While polyester garments are durable and colorful, they also shed microplastics, emit greenhouse gases during production, and take centuries to decompose—releasing methane as they do.

One study found that 15% of Shein's products exceeded EU safety thresholds for hazardous chemicals. And with estimated annual shipments between 2–3 billion items, Shein's contribution to global fashion pollution is massive.

What Comes Next?

Shein's confidential IPO filing in late 2023 has reignited scrutiny over its practices. In response, the company has ramped up public relations, emphasizing its "test and learn" production model and arguing that it prevents overproduction. It has also made token investments in sustainability, including partnerships with NGOs, a $15 million pledge to the Or Foundation, and donations to groups like the Apparel Impact Institute. Yet, these contributions amount to less than 1% of its annual sales—hardly enough to offset its environmental impact.

Despite a promise to cut carbon emissions by 25% by 2030 (from 2021 levels), Shein's emissions rose by 52% in 2022 alone, hitting over 9 million tons—comparable to nearly a million long-haul flights. These figures do not include emissions from garment use or disposal.

The broader fashion industry has long relied on voluntary initiatives, sustainability pledges, and soft regulation. But these efforts have failed to produce real change. Now, with instant fashion pushing the boundaries of consumption and environmental degradation, there are only two viable paths forward: a cultural shift toward mindful consumption or the imposition of strict regulations to curb the industry's most damaging practices.

Instant fashion may be fast and accessible, but its costs—borne not by its makers but by society

ISSN: 2582-6433

and the planet—are far from fleeting.[1]

2.3.2.1*: Design Theft and its Effect on Creativity in the Fashion Industry*

In today's fashion landscape, the rise of fast fashion has brought with it a troubling trend: the widespread appropriation of original designs by major retailers, often at the expense of independent creators and smaller brands. This phenomenon, commonly referred to as design theft, is more than just an ethical misstep—it represents a systemic challenge that erodes creativity, undermines innovation, and perpetuates a cycle of disposability in fashion.

At its core, design theft involves fast fashion brands copying, replicating, or closely mimicking the original work of designers without credit or compensation. While the legality of such practices remains murky— particularly in jurisdictions like the United States where fashion designs are not comprehensively protected under copyright law—the moral implications are clear. This behavior not only disrespects the intellectual labor of designers but also normalizes a culture where plagiarism is overlooked, if not outright accepted.

The pressure this creates is especially harsh for small businesses and independent designers. These creators are already navigating a saturated and fast-paced market where the demand for fresh, trend-responsive fashion is relentless. While they struggle to maintain originality and craftsmanship, fast fashion giants swoop in to mass-produce cheap imitations of their work, leaving little recourse for the original creators. The result is an environment where innovation is stifled, and genuine artistry is devalued.

But what exactly constitutes design theft in such a creative field? It can be a fine line—artists

[1] **Kenneth P. Pucker, The Lingering Cost of Instant Fashion, HBR, (Feb. 28, 2024), https://hbr.org/2024/02/the-lingering- cost-of-instant-fashion.**

ISSN: 2582-6433

frequently draw inspiration from existing works, after all. However, as Malcolm Gladwell aptly puts it in *The New Yorker* article "Something Borrowed": "Under copyright law, what matters is not that you copied someone else's work. What matters is what you copied, and how much you copied." In fashion, this can range from outright duplication of entire designs to the replication of distinctive stylistic elements or overall aesthetics. Fast fashion's business model, built around speed and affordability, makes it particularly prone to this kind of plagiarism. These companies churn out garments that mirror original designs but are made with inferior materials and production methods to keep costs low and shelves full.

A deeper look into this issue reveals the stark power imbalance between the plagiarist and the plagiarized. An article from *Vox* titled *"Fashion brands steal design ideas all the time. And it's completely legal."* highlights just how powerless small designers are when their work is copied. Mounting a legal challenge is prohibitively expensive and time-consuming, especially when the odds are stacked against the creators by outdated American copyright laws that don't afford fashion designers adequate protection. Because the law doesn't treat fashion design as a fully creative industry, brands are free to mimic each other's work without meaningful legal consequences.

An ironic yet illuminating example is the case of Gucci and Dapper Dan. Decades ago, Dapper Dan made a name for himself by incorporating counterfeit luxury brand logos—including Gucci's—into his own designs. Eventually, Gucci and other brands sued him. Fast-forward to recent years, Gucci found itself accused of copying one of Dapper Dan's original styles. Instead of facing a backlash, Gucci chose to collaborate with him—one of the few instances where design appropriation led to a mutually beneficial outcome. Still, one might wonder whether such a collaboration was a genuine gesture of creative respect or a convenient way to

 ISSN: 2582-6433

sidestep accountability.

[Pictured: Elexia's design on the left and SHIEN's direct copy of that design on the right.]

The harm of design theft is perhaps most evident when looking at real-world examples involving small, ethically driven brands. The Black-owned fashion label Elexia publicly accused Shein—a titan in the fast fashion industry—of stealing its "Amelia sweater" design. On social media, the brand's designer shared their heartbreak, explaining how the piece took days to crochet by hand, only to be copied by a machine and sold en masse with no acknowledgment of the original work. Elexia's story is just one among many. In another incident, Massachusetts-based graphic designer Krista Perry accused Shein of selling one of her original graphics without permission. When she approached the company, it reportedly tried to settle the case for a mere $500, a sum that barely scratches the surface of the value of her intellectual labor.

These cases underscore the devastating emotional and financial toll design theft takes on small creators. Often, these businesses are deeply committed to ethical practices, sustainability, and community-oriented values. When consumers choose to support such enterprises, they are not only purchasing a product—they are investing in a vision of fashion that values fairness, creativity, and long-term impact over profit margins.

Critics of this perspective might argue that fast fashion plays an important role in democratizing style, offering trendy clothing at prices accessible to a broader population. While affordability and access are certainly valid concerns, they cannot justify the ongoing exploitation of creative talent and labor. Fast fashion often crosses the line from inspiration into direct imitation, mass-producing designs that are nearly indistinguishable from the originals. These brands reap the benefits of trend-chasing while paying no respect to the creative minds behind the original concepts.

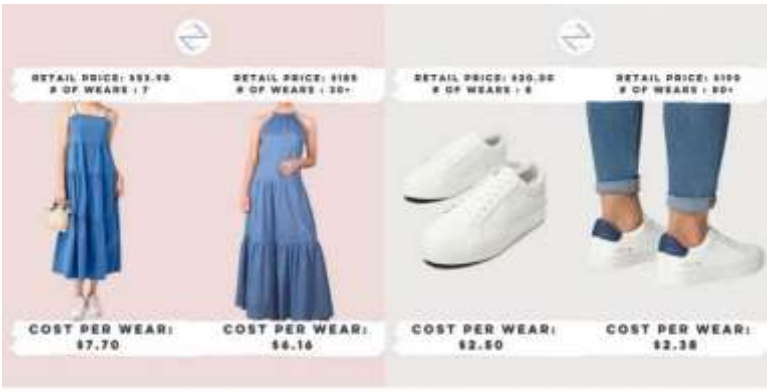
ISSN: 2582-6433

[Pictured: The working conditions of SHIEN workers in sweatshops.]

Moreover, the very model of fast fashion promotes unethical manufacturing practices and unsustainable consumption. Speed and volume are prioritized at the expense of fair wages, safe working conditions, and environmental stewardship. By purchasing from these brands, consumers inadvertently support a system that values profits over people—and imitation over innovation.

Addressing the issue of design theft is therefore essential to building a more ethical and sustainable fashion industry. Consumers who have the means can play a powerful role in this transformation. Rather than purchasing fleeting, poorly made items that will be discarded after a few wears, individuals can shift toward investing in timeless, well-constructed garments—pieces meant to last. This not only supports creators who value quality and originality but also helps reduce the environmental and social impact of disposable fashion.

ISSN: 2582-6433



[Pictured: a comparison of fast fashion clothing items and sustainable clothing items. Though costs may be much lower upfront, better quality items provide a longer usage and is therefore cheaper per wear.]

In conclusion, the appropriation of original designs by fast fashion brands represents a widespread and deeply problematic issue. It hinders creativity, stifles innovation, and exacerbates the inequalities already present in the industry. However, consumers hold considerable power. By demanding transparency, prioritizing ethical brands, and refusing to support companies that routinely exploit creative labor, we can foster a fashion ecosystem that rewards originality, respects intellectual property, and nurtures a more sustainable future. The change begins not just with designers and policymakers, but with all of us—and the choices we make about the clothes we wear.

2.3.2.2 – *Legal Concerns with Short Trend Cycles and Rapid Imitation*

The fast fashion industry is evolving at a breakneck pace, feeding off rapidly changing trends and consumer demand for affordable style. However, this relentless cycle of imitation and quick turnover is not without serious legal and ethical challenges. From intellectual property violations and counterfeit goods to cybersecurity risks and labor exploitation, fast fashion raises numerous red flags that cannot be ignored.

Counterfeiting and Intellectual Property Violations

One of the most pressing legal issues in the fast fashion landscape is **counterfeiting**—the reproduction and sale of fake designer items. Fast fashion thrives on mimicry, replicating high-end fashion at low prices, often without the consent of original creators. This practice is particularly rampant in countries with large consumer markets like India, where counterfeit goods make up an estimated 25–30% of retail offerings.

India has several laws intended to combat counterfeiting, such as the **Patent Act**, **Copyright Act**, **Trademark Act**, **Designs Act**, and the **Information Technology Act**. These legislations offer remedies like injunctions, damages, and even imprisonment in severe cases. Yet,

ISSN: 2582-6433

enforcement remains weak. Counterfeit products continue to flood the market due to persistent consumer demand and the affordability they offer.

Small and independent fashion brands are disproportionately affected. Lacking the financial muscle and legal resources to take action, these designers often watch helplessly as their ideas are replicated and sold for a fraction of the cost, stripping them of both recognition and revenue. In this way, the widespread counterfeiting enabled by fast fashion undercuts the very innovation that fuels the industry.

Cybersecurity and Online Fraud

Most fast fashion operations today exist primarily in the digital realm. With no physical storefronts, these brands often operate through unofficial or unverified websites that lack transparency. Many of these sites fail to provide clear consumer policies, leaving customers exposed to various online threats—ranging from data theft and phishing scams to payment fraud and identity breaches.

India's **Information Technology Act of 2000** offers some protection, categorizing acts like data theft, online misrepresentation, and breaches of privacy as punishable offenses. However, tracking down digital offenders remains a complex challenge, especially when companies omit crucial information such as return policies or supply chain transparency.

The lack of accountability on these platforms not only erodes consumer trust but also allows unethical practices—like design theft and vendor misuse—to go unchecked. This legal grey area underscores the urgent need for robust cybersecurity protocols and stricter e-commerce verification systems.

Labor Exploitation and Working Conditions

Fast fashion's affordability comes at a heavy human cost. To churn out garments at record speeds and rock- bottom prices, brands outsource production to low-cost labor markets—often in developing nations where labor laws are poorly enforced or outright ignored.

Workers, many of whom are women, endure **long hours, unsafe conditions, and meager wages**. Exposure to harmful chemicals without protective gear, verbal and sexual abuse, and even the use of **child labor** have been documented. Factories are often unregistered and operate without legal oversight, making them fertile ground for exploitation.

In India, the **Factories Act of 1948** and the **Minimum Wages Act of 1948** are intended to safeguard labor rights. These laws regulate work hours, health and safety conditions, and pay scales. Yet in reality, violations are rampant. Many workers put in 14 to 16 hours daily, often

ISSN: 2582-6433

without rest, and receive wages that barely meet subsistence levels—especially as inflation outpaces minimum wage rates.

Workplace accidents are disturbingly common, and injured workers rarely receive adequate medical care or compensation. These practices are not only illegal but represent severe breaches of basic human rights, making labor exploitation a critical concern in the fast fashion supply chain.

Environmental Degradation

Beyond legal and ethical violations, fast fashion is a major environmental offender. The industry relies heavily on **low-cost synthetic fabrics** like polyester, nylon, and spandex. These materials are not only cheap and non- biodegradable but also **shed microplastics** into water systems with every wash—posing grave risks to marine ecosystems and human health.

Fast fashion promotes a culture of disposability. Poor-quality garments are designed to wear out quickly, encouraging frequent purchases and generating enormous textile waste. Most of these clothes end up in **landfills or are incinerated**, releasing **toxic gases** that contribute significantly to air pollution. Shockingly, the greenhouse gases emitted by the fashion industry exceed those from aviation and shipping combined.

Moreover, the production process is extremely **water-intensive and polluting**. According to the **United Nations**, fashion ranks as the **second-largest consumer of water globally**. Chemical dyes used in textile manufacturing often end up dumped into rivers and lakes, contaminating water supplies and harming aquatic life. Nearly **20% of global clean water pollution** can be traced back to fashion-related waste.

Case Studies: Fast Fashion's Legal Reckoning

Several high-profile incidents have spotlighted the devastating consequences of unchecked fast fashion:

1. **Rana Plaza Collapse (Bangladesh, 2013):** One of the deadliest industrial disasters in history, this factory collapse killed over 1,000 workers. The tragedy drew global attention to the inhumane and dangerous conditions in garment factories that supply major fast fashion brands. Despite international outrage, many of these hazardous conditions remain unaddressed.
2. **Shein's Controversies:** Perhaps no brand has become more synonymous with fast fashion's darker side than Shein. Known for underpaying workers and producing designer knock-offs, the brand has been linked to **forced labor practices** in China. A

ISSN: 2582-6433

Swiss NGO investigation revealed Shein workers logging **75-hour work weeks**. Further, **Greenpeace Germany** found dangerous chemical residues in Shein products, many of which violated European safety standards.

3. **Copyright Infringement Lawsuits:** Shein has also been repeatedly sued by **small business owners and independent designers** who accuse the brand of copying and mass-producing their work without permission. These lawsuits highlight a broader issue of how fast production cycles facilitate intellectual property theft.
4. **Living Wage Protests (Bangladesh, 2023):** As inflation skyrocketed, thousands of garment workers in **Dhaka** took to the streets demanding a fair, living wage. Despite existing labor laws, many workers still earn only the legal minimum, which remains far below a sustainable living standard. Several protestors were injured, underscoring the intense struggles faced by the very people powering the fast fashion industry.

2.4 The Fashion Industry's Relationship with Intellectual Property Law

2.4.1 Fashion as a Non-Traditional Subject of IP Protection: Functional vs. Aesthetic Dilemma

In the ever-evolving world of fashion, intellectual property protection increasingly hinges not only on logos and brand names, but on the nuanced visual cues that define a brand's identity—what is legally termed as **trade dress**. Trade dress extends to the overall aesthetic of a product or its packaging, encompassing elements like shapes, color palettes, textures, and even store layouts.

It functions as a silent ambassador for the brand, instantly signaling the origin of a product to discerning consumers. In an industry defined by image, emotion, and exclusivity, trade dress plays a vital role in carving out and defending market identity.

What distinguishes fashion as a unique subject within IP law is its reliance on visual distinctiveness rather than functional superiority. While trademarks traditionally protect words and logos, trade dress enables brands to legally shield more subtle visual elements—like the robin's egg blue of a Tiffany's box or the signature red soles of Christian Louboutin heels. These are not merely decorative choices; they are key components of the consumer experience and brand recognition. Yet, fashion's reliance on visual flair invites a central legal quandary: **where do we draw the line between aesthetic design and functional necessity?**

Understanding Trade Dress in Fashion

Trade dress refers to the total image or visual appearance of a product that allows consumers

ISSN: 2582-6433

to identify its source. It includes non-verbal features such as design, shape, color, texture, and even the arrangement of a retail space. In the fashion context, this can range from a distinctive pattern on a handbag to the ambiance of a flagship store. For instance, the iconic woven design of Bottega Veneta's leather goods and the structural design of the Hermès Birkin bag—including its silhouette, stitching, and choice of material—are all crucial markers of the brand's aesthetic DNA.

To qualify for trade dress protection, three key conditions must be satisfied:

1. **Distinctiveness** – the design must either be inherently unique or have acquired a "secondary meaning," such that consumers directly associate it with a specific brand.
2. **Non-functionality** – the design must not serve a utilitarian purpose.
3. **Lack of consumer confusion** – the design must not mislead consumers into believing that the product originates from another brand.

These requirements are designed to ensure that trade dress fosters originality and brand differentiation without stifling fair competition.

Non-Traditional Marks: The Fashion Industry's Visual Arsenal

Fashion brands increasingly rely on **non-traditional marks**—elements other than words or logos—to distinguish themselves in a saturated market. These might include specific color combinations, distinctive textures, or even the interior decor of retail spaces. For example, Tiffany's signature blue, Burberry's classic plaid, and the minimalist architectural aesthetic of Apple stores all serve as powerful visual identifiers.

Such marks are pivotal in maintaining brand consistency and safeguarding against dilution in a marketplace plagued by imitation and fast fashion. Legal recognition of these non-traditional marks allows designers to protect their creative vision, which often walks the tightrope between art and utility.

Legal Standards: Navigating the Functional vs. Aesthetic Divide

Trade dress protection operates within a strict legal framework that often clashes with the inherently hybrid nature of fashion. While the law requires that protected elements be non-functional, the reality of fashion design often involves an interplay between form and function. This creates a recurring tension: how do we protect what is beautiful without monopolizing what is useful?

Take, for example, Christian Louboutin's red sole. In *Christian Louboutin v. Yves Saint Laurent* (2012), the U.S. Court of Appeals ruled in favor of Louboutin, recognizing that the

ISSN: 2582-6433

red sole had acquired secondary meaning and did not serve a functional role, thus qualifying for trade dress protection. Conversely, a shoe sole designed to enhance grip, regardless of its appearance, would likely be disqualified on the grounds of functionality.

The standard of distinctiveness also presents challenges. Demonstrating secondary meaning can require exhaustive evidence—from consumer surveys to advertising campaigns—demonstrating that the public links a particular design with a specific brand. Tiffany & Co. succeeded in this regard, proving that its signature blue color was not merely decorative but a key element of its brand identity.

Landmark Cases Shaping the Legal Landscape

Several high-profile cases have expanded the legal contours of trade dress in fashion:

- **Christian Louboutin v. Yves Saint Laurent (2012):** The court affirmed the protectability of Louboutin's red sole as a distinctive, non-functional element associated with the brand, thereby setting a precedent for color-based trade dress claims.
- **Tiffany & Co. v. Costco Wholesale Corp. (2015):** Costco was found liable for using the name "Tiffany" to describe engagement rings not manufactured by Tiffany & Co., thereby misleading consumers and violating trade dress protections through deceptive branding.[2]
- **Hermès v. Rothschild (2021):** This case marked a foray into the digital realm, where Hermès successfully sued an artist for creating "MetaBirkins"—NFTs that mimicked the brand's iconic handbag designs. The court found a high likelihood of consumer confusion, reaffirming trade dress protections in both physical and digital contexts.

Challenges in Protecting Fashion's Visual Identity

Despite its growing importance, trade dress protection is fraught with difficulties, particularly for non- traditional marks. Establishing distinctiveness is both time-consuming and resource-intensive. Brands must build strong consumer associations over time and gather concrete proof to back their claims. Meanwhile, the requirement of non-functionality remains a complex hurdle—especially in an industry where aesthetics and function are often inseparable.

Another layer of complexity is added by the international scope of the fashion industry. Trade dress laws vary widely across jurisdictions, making it difficult for global brands to enforce

[2] **Milan Sharma, Trade Dress Protection for Non-Traditional Marks in the Fashion Industry, IPLF, (Dec. 16, 2024), https://www.ipandlegalfilings.com/trade-dress-protection-for-non-traditional-marks-in-the-fashion-industry/.**

ISSN: 2582-6433

protections uniformly. Counterfeiting, rapid trend cycles, and the short shelf life of designs further erode the effectiveness of traditional legal tools. The surge of fast fashion and the increasing digitization of fashion also present unprecedented enforcement challenges.

Digital Fashion & NFTs: Trade Dress in the Virtual Realm

The rise of **digital fashion** and **non-fungible tokens (NFTs)** has introduced new dimensions to the debate around trade dress. Virtual apparel—used in online games, social media, and the metaverse—now carries substantial brand value. Examples include Balenciaga's virtual outfits in *Fortnite*, which are marketed much like physical luxury goods.

While digital assets can theoretically qualify for trade dress protection if they meet existing criteria, proving distinctiveness and non-functionality in the fast-moving virtual space is difficult. NFTs can help establish ownership and origin, but enforcement remains elusive due to the ease of copying and sharing digital content. The current legal framework struggles to adapt, prompting calls for updated laws that reflect the hybrid nature of physical and virtual fashion.

Implications for Fashion Brands

Trade dress serves as a cornerstone of brand identity for fashion houses. Whether it's Louis Vuitton's iconic monogram, the structured elegance of the Birkin bag, or the atmospheric minimalism of a flagship store, visual elements are crucial to brand storytelling and consumer loyalty.

Yet, as fashion becomes more digitized and globally accessible, brands must recalibrate their IP strategies. They need to secure protection for both physical and digital assets, balance creativity with legal requirements, and stay vigilant in a world where imitation is just a click away.

2.4.2 Fragmented Protection Across IP Types

2.4.2.1 – Overview of IP Tools: Copyright, Design Law, Trademarks, and Patents

Intellectual Property (IP) is fundamentally about protecting creativity. It encompasses the legal rights granted to individuals or businesses over their intangible creations—whether literary, artistic, industrial, or scientific. These creations include everything from books and designs to brand identifiers and innovative processes. The purpose of IP law is to ensure that creators and innovators receive proper recognition and control over the use of their work, and importantly, are able to benefit financially from their intellectual efforts.

ISSN: 2582-6433

To achieve this, IP protection is categorized into several distinct legal mechanisms. The four most recognized forms are **patents, copyrights, trademarks,** and **trade secrets**. Each of these tools serves a specific function and is applied based on the nature of the intellectual output involved.

Patents: Safeguarding Innovation and Invention

A patent is a legal right that offers inventors exclusive control over their inventions for a specific period. This includes rights to prevent others from making, using, selling, or importing the patented invention without consent. Patents are particularly relevant for inventions that involve a novel method, process, device, or composition of matter.

To qualify for patent protection, an invention must be new, useful, and non-obvious. In exchange for this protection, the inventor is required to disclose comprehensive technical details about the invention to the public. This trade-off ensures a balance between innovation incentives and public knowledge expansion.

There are **three primary types of patents**:

- **Utility patents** cover functional inventions, including machines, processes, manufactured items, or chemical compositions.
- **Design patents** protect the ornamental design of a functional item—essentially, the way it looks, not how it works.
- **Plant patents** apply to new, distinct plant varieties reproduced asexually, commonly used in agriculture, pharmaceuticals, and biotechnology.

In the United States, utility and plant patents typically last **20 years**, while design patents are granted for **15 years**, both calculated from the date of application (with possible extensions for administrative delays). Throughout this period, the patent holder enjoys exclusive rights to commercialize the invention, including licensing opportunities.

Copyright: Protecting Creative Expression

Copyright protects original works of authorship that fall within the realm of creative expression. This includes literary works (books, articles), visual art (photographs, paintings), music, dramatic compositions, software code, films, and more.

One critical aspect of copyright is that it **protects the expression of an idea, not the idea itself**. For example, a plot concept cannot be copyrighted, but a novel that creatively expresses it can. Similarly, a basic recipe isn’t eligible for protection unless it's accompanied by narrative

ISSN: 2582-6433

content or creative expression, such as in a cookbook.

Copyright ownership gives creators the exclusive right to:

- Reproduce their work,
- Create derivative works (such as turning a novel into a screenplay),
- Distribute copies, and
- Publicly perform or display the work.

In most jurisdictions, copyright protection lasts for the **author's lifetime plus 70 years**. While copyright registration is not mandatory for protection, it is essential when pursuing infringement claims in court, especially in jurisdictions like the United States.

Trademarks: Defining Brand Identity

A **trademark** is a signifier—a word, logo, phrase, symbol, or even a color or sound—that distinguishes the goods or services of one business from those of others. It plays a vital role in brand identity and helps consumers associate a product or service with a particular quality or origin.

Unlike patents and copyrights, trademarks can **last indefinitely**, provided they continue to be used in commerce and are renewed periodically—typically every **ten years**. Trademarks protect against consumer confusion and prevent unfair competition by ensuring that the goodwill associated with a brand is not misappropriated by others.

In the fashion industry, for instance, logos such as the Nike "swoosh" or Chanel's interlocking Cs are trademarks that not only denote authenticity but also embody prestige and lifestyle associations.

Trade Secrets: Guarding Confidential Business Information

Trade secrets refer to confidential business information that provides a company with a **competitive advantage**. This could include formulas (like the Coca-Cola recipe), manufacturing processes, algorithms, client lists, or marketing strategies.

To qualify as a trade secret, the information must:

1. Have **commercial value** precisely because it's not publicly known,
2. *Be **known only to a limited group of people**, and*
3. Be subject to **reasonable steps** by the owner to maintain its secrecy—such as through non-disclosure agreements or data security protocols.

Unlike other IP protections, trade secrets are not registered. Instead, they are protected through **confidentiality measures and legal remedies** when misappropriation occurs. A trade secret

ISSN: 2582-6433

is considered violated when someone acquires, discloses, or uses it without authorization and in breach of a duty of confidentiality or through improper means.

The **Uniform Trade Secrets Act** and the **Defend Trade Secrets Act** in the U.S., alongside similar statutes in other jurisdictions, provide robust frameworks for legal recourse.

2.4.2.2 – *How Each of Them Applies—and Often Fails to Fully Protect—Fashion Designs*

The world of fashion thrives on originality, constant reinvention, and visual impact. Yet, despite its reliance on creativity, the legal frameworks designed to protect intellectual property (IP)—namely copyright, design law, trademarks, and patents—often fall short when applied to fashion designs. While these tools are foundational to safeguarding innovation in many industries, their application in fashion is riddled with limitations, grey areas, and enforcement challenges.

1. *Copyright: Limited Protection for Fashion's Functional Art*

Copyright law is traditionally associated with protecting original works of authorship such as books, music, and visual art. In theory, fashion would seem a perfect candidate for such protection, especially given its expressive and artistic nature. However, copyright protection in fashion is **narrow in scope** because it does not extend to *useful articles*—a category under which most clothing items fall.

According to copyright doctrine, functional elements—like sleeves, collars, or pant legs—are not eligible for protection. Only the **original, separable artistic elements** (such as unique prints, embroidery, or fabric patterns) may qualify. This means that while a fabric's floral design might be protected, the overall silhouette or construction of a garment is not.

This limited coverage creates a loophole that allows fast fashion companies to **copy runway designs almost verbatim**, provided they make minor changes or avoid exact replication of protected prints or patterns. Consequently, copyright law often offers little deterrent to fashion piracy.

2. *Design Law: A Better Fit, But Still Imperfect*

Design law, where available, is perhaps the most directly relevant form of IP protection for fashion designs. It provides legal rights over the **visual and ornamental aspects** of a product—essentially, how something looks rather than how it works.

In jurisdictions like the **European Union**, design rights offer relatively strong protection. The EU allows for both **registered and unregistered design rights**, the latter giving designers

ISSN: 2582-6433

automatic but short-term protection (usually three years) against copying. Registered design rights, on the other hand, provide a longer duration—up to **25 years**, subject to renewal every five years—but require proactive registration.

In contrast, in the **United States**, fashion designers face an uphill battle. U.S. law does not provide a standalone design right for fashion. Instead, designers must rely on **design patents**, which are costly, time-consuming (often taking over a year to grant), and unsuitable for a fast-paced industry where trends change every season. This delay renders the protection nearly obsolete by the time it's granted.

Thus, while design law offers better alignment with fashion's needs, **jurisdictional inconsistencies** and practical hurdles limit its effectiveness globally.

3. *Trademarks: Excellent for Brand, Not for Design*

Trademarks are immensely valuable in fashion—but for protecting **brand identity**, not garment design. Logos, brand names, slogans, and distinctive packaging are all protectable under trademark law. This explains why iconic marks like **Louis Vuitton's monogram**, **Nike's swoosh**, or **Chanel's interlocking Cs** enjoy robust legal shields.

Trademark law is instrumental in **preventing consumer confusion** and preserving the prestige and recognition associated with a brand. It also allows for **trade dress protection**, which can cover the overall look and feel of a product or packaging—like the red soles of Louboutin shoes or the Tiffany blue box.

However, trademarks do **not protect the cut, shape, or artistic features of a fashion design itself**, unless those features have acquired **distinctiveness** and are closely linked to the brand's identity over time. For emerging designers or new collections, this threshold is difficult to reach. Therefore, while trademark law is a powerful brand protection tool, it does little to shield the actual aesthetic of new fashion designs from imitation.

4. *Patents: Too Slow and Impractical for Fast Fashion*

Patents are designed to protect inventions—new and useful processes, machines, or compositions. In fashion, **utility patents** might apply to functional innovations such as a self-heating jacket or a new method of weaving fabric, while **design patents** can protect the ornamental design of an article.

Yet in reality, patents are rarely used in fashion, especially by smaller designers. The process of securing a patent is **lengthy (often over 12 months), expensive**, and requires full public disclosure of the invention. For a designer working within the fast fashion cycle—where

ISSN: 2582-6433

products must move from sketch to store shelf in a matter of weeks—patent protection is simply not practical.

Moreover, the **short life span of trends** in the fashion industry makes the long-term protection of patents ill- suited to the industry's rapid turnover. By the time a patent is granted, the design it protects may already be out of vogue.

Conclusion: A Patchwork of Imperfect Protections

When it comes to fashion, intellectual property law offers a patchwork of protections—each covering a small piece of the puzzle, but none offering full coverage. Copyright is too limited. Design rights vary across jurisdictions. Trademarks protect brands, not designs. Patents are too slow for an industry built on speed and reinvention.

This fragmented approach leaves fashion designers—especially independents and emerging creators— **vulnerable to imitation and commercial exploitation**. Meanwhile, large corporations with ample legal resources are better positioned to enforce what protections do exist.

As fashion continues to evolve with digital technologies, AI-generated designs, and global distribution, the gap between the industry's needs and the protection afforded by current IP laws becomes more apparent. There is an urgent call for reform—perhaps a unified, specialized legal framework that better understands the **creative, fast-moving, and highly visual nature** of the fashion world.

ISSN: 2582-6433

CHAPTER 3: THE IP TOOLBOX – LEGAL MECHANISMS FOR PROTECTING FASHION DESIGNS

3.1 Copyright in Fashion: Creative Expression or Functional Utility?

3.1.1 Nature and Scope of Copyright Protection

3.1.1.1 – Definition and Basic Elements: Originality, Fixation, Expression

At its core, **copyright** is a legal safeguard that grants creators exclusive control over the use and dissemination of their original works. It sits under the broader umbrella of intellectual property law and plays a vital role in preserving the fruits of creativity—whether in the form of literature, music, film, software, or visual art. In the Indian legal landscape, copyright protection is anchored in the **Copyright Act of 1957**, which has evolved over time to meet the challenges of new media, digital technologies, and global norms.

What is Copyright?

Copyright is fundamentally the **right to control and authorize the use of an original work**. It allows creators to reproduce, distribute, publicly perform, adapt, and monetize their work, while simultaneously ensuring that others do not use it without permission. However, this protection applies **only to the *expression* of an idea**, not the idea itself. In other words, one cannot copyright a general concept or thought, but one can protect the unique way it is expressed—be it through words, images, sounds, or movement.

In India, copyright covers a wide range of creative categories:

- Literary works (novels, poems, software)
- Dramatic and musical works
- Artistic works (paintings, photographs, designs)
- Cinematographic films
- Sound recordings

Once created, copyright **automatically vests in the author**—registration is optional, not mandatory. This makes Indian copyright law particularly accessible to creators, especially those operating independently or in non-institutional settings.

The Three Basic Elements of Copyright

For a work to be eligible for copyright protection, it must fulfill three foundational requirements: **originality**, **fixation**, and **expression**.

ISSN: 2582-6433

1. *Originality: The Creative Spark*

Originality is the heart of copyright. It doesn't mean the work has to be novel or groundbreaking in a historical sense—it simply has to be **independently created** and exhibit a minimum degree of creativity. Indian courts have consistently interpreted this standard to mean that the work should not be a mere copy or mechanical reproduction of another.

The *Eastern Book Company v. D.B. Modak* case in 2008 was instrumental in defining originality. The Supreme Court ruled that **originality lies in the application of skill and judgment**, and not simply labor. This case clarified that while compilations, such as law reports, can be protected, their protection extends only to the original components—the creative arrangement or commentary, not the raw data.

Thus, originality ensures that protection is afforded only to those works that reflect the **intellectual effort** and **individual expression** of the author.

2. *Fixation: Capturing the Work in Tangible Form*

The principle of fixation requires that a work be **expressed in a concrete, physical form**—whether written, recorded, filmed, or stored digitally. In other words, ideas must be captured in a **permanent and perceptible medium** before they can be protected. This could mean anything from typing a manuscript to saving a song file on a device or sketching a design on paper.

Indian copyright law implicitly adopts the fixation requirement, although it is not as explicitly stated as in jurisdictions like the United States. However, courts and administrative authorities in India have consistently required proof of the work's existence in a tangible form to adjudicate infringement claims or grant remedies.

3. *Expression: Beyond Ideas, Into Form*

Perhaps the most misunderstood element of copyright is that it does not protect **ideas**, **facts**, or **concepts**— only their **expression**. This principle was clarified as early as 1978 in the landmark case of *R.G. Anand v. Deluxe Films*, where the Supreme Court held that "where the same idea is developed in a different manner, there is no copyright infringement."

This distinction is essential in safeguarding the **creative diversity** of society. Multiple creators can be inspired by the same idea (a star-crossed romance, a dystopian future, or a heroic journey), but each one must develop and present it in their own original way to be entitled to protection.

ISSN: 2582-6433

In fashion design, for instance, while the general idea of a flowing evening gown or a geometric pattern may not be protected, the unique visual execution—such as color combinations, intricate embroidery, or fabric manipulation—can qualify for copyright if it meets the threshold of originality and is fixed in a tangible medium.

Automatic Protection and Term

A crucial feature of Indian copyright law is that **protection is automatic**. The moment an original work is created and expressed in a tangible form, it is protected. There's no need for formal registration, although registering the work can serve as valuable evidence in disputes.

The duration of copyright protection in India depends on the nature of the work:

- For literary, dramatic, musical, and artistic works: **Lifetime of the author + 60 years**
- For cinematographic films and sound recordings: **60 years from the year of publication**

Conclusion

In sum, copyright law in India is built around the pillars of **originality, fixation, and expression**. These elements ensure that genuine creative works are protected, without extending monopolies over ideas or facts. Indian law—while influenced by British origins—has adapted over the decades to support modern creativity, balance public interest, and align with international standards.

This foundational framework not only empowers creators with legal rights but also encourages a vibrant ecosystem where new works can flourish without fear of unfair appropriation. As society becomes increasingly digital, these core principles continue to guide the evolution of copyright in India, ensuring its relevance across new platforms and creative industries.

Topic 3.1.2 – Application of Copyright in the Fashion Industry

The interplay between **copyright law and fashion design** in India presents a fascinating but complex legal landscape. While copyright protection is traditionally associated with creative fields such as literature, music, and film, it also extends—under specific conditions—to the domain of fashion, particularly where **designs possess artistic merit**.

Legal Framework: How Copyright Applies to Fashion Designs

Under Indian law, fashion and garment designs can potentially qualify for protection as **artistic works**, provided they satisfy the conditions set out in the **Copyright Act, 1957**. The key

ISSN: 2582-6433

provisions that shape this framework are found in **Sections 13, 14, 15, and 22** of the Act.

- **Section 13(1)** of the Act explicitly states that copyright shall subsist in original artistic works.
- According to **Section 2(c)**, the term "artistic work" includes paintings, drawings, sculptures, and even works of architecture—an expansive definition that has come to encompass **fashion sketches, patterns, embroidery, and ornamental designs** when they exhibit originality.
- As per **Section 14**, the copyright owner of an artistic work enjoys **exclusive rights** to:
    - Reproduce the work in any material form, including digital formats;
    - Convert two-dimensional works into three-dimensional representations (and vice versa);
    - Distribute or communicate the work to the public;
    - Create derivative versions or adaptations of the original work.

This legal structure allows Indian fashion designers to **secure rights over their unique creations**, provided they can prove that their designs are original and fixed in a tangible form.

Judicial Support: Upholding Moral Rights in the Fashion Context

A pivotal Indian case that highlighted the strength of copyright law in protecting creative integrity was **Amarnath Sehgal v. Union of India**. The case revolved around a mural created by Sehgal that was installed at Vigyan Bhawan. When the government unceremoniously removed and damaged the mural, Sehgal invoked his **moral rights** under the Copyright Act—specifically, his right to protect the integrity and attribution of his work.

Though the mural could not be salvaged by the time the case was heard in 1992, the **Delhi High Court issued an interim order** to prevent any further damage. The presiding Judge, known for his appreciation of art, recognized the creator's dignity and reputation as being intrinsically tied to the work. This case established a powerful precedent for **moral rights** in India and offered hope to designers and artists facing misappropriation of their work.

Fashion Design and the Copyright–Designs Act Overlap

The legal scenario becomes more intricate when fashion designs are analyzed through the lens of **industrial design law**. **Section 15 of the Copyright Act, 1957**, read together with the **Designs Act, 2000**, outlines the boundary between copyright and industrial design protection:

1. **Registered industrial designs** are protected exclusively under the Designs Act, 2000.

ISSN: 2582-6433

2. Designs that **qualify for registration** under the Designs Act, but are **not yet registered**, may still receive temporary protection under copyright.
3. Conversely, **copyright protection** can cover designs that do **not fall under the scope of the Designs Act**—especially those not intended for mass production or commercial replication.

This separation is crucial because once a fashion design is **commercially exploited (i.e., reproduced more than 50 times)**, the copyright protection under the 1957 Act **ceases**, and the designer must seek protection under the Designs Act.

The **Designs Act of 2000** itself was crafted to protect the *aesthetic and visual appeal* of products. For fashion designers, this means protection of garment shape, surface patterns, prints, embroidery, or ornamental elements—provided they meet the criteria of **novelty and originality**.

The Challenge of Classification and Registration

Although copyright law appears to be a viable route for protecting fashion designs, practical hurdles remain. One significant issue is the **lack of transparency and classification** in the Indian copyright registration system. As of 2016, data on registered copyrights was limited to **monthly registration logs** without a searchable or categorized database.

Furthermore, when works are registered, they're often **broadly categorized**—for example, under "literary works," "software," or "creative works"—with little granularity that distinguishes fashion-related works. The absence of a dedicated fashion category makes it difficult to track how many fashion designs are actually being registered or protected under copyright.

Despite these limitations, researchers have combed through artistic work registrations by looking for keywords such as:

- *Garments, clothes, apparel designs, sarees, dresses, textiles, jewelry, bags,* and *handbags*—all of which are common in fashion.
- *Prints and fabrics* used in fashion products were also explored to understand how the system is being used by designers seeking legal protection.

Conclusion: The Role of Copyright in Fashion Protection

In India, copyright serves as a **limited but valuable tool** for protecting fashion designs—especially those that are **artistically expressive and not mass-produced**. Sections 13, 14, and 15 of the Copyright Act provide the necessary legal scaffold to support original designs, while

ISSN: 2582-6433

the Designs Act of 2000 steps in to cover commercial and industrially reproducible works.

The **interplay between both laws** demands strategic decision-making by fashion creators: whether to rely on automatic copyright or seek formal design registration. While judicial decisions like *Amarnath Sehgal* have bolstered moral rights and creator integrity, the **lack of proper classification, registration clarity, and enforcement mechanisms** continues to challenge the full potential of copyright in India's fashion sector.

As the fashion industry grows increasingly digital and global, a **more robust, transparent, and nuanced legal framework** will be necessary to truly empower Indian designers and uphold their rights in both domestic and international markets.

3.1.2.1 – Case Studies

Ritika Private Limited v. Biba Apparels Private Limited: A Case Commentary

In a landmark dispute between two major players in the Indian fashion industry, **Ritika Private Limited**, the company behind the designer label *Ritu Kumar*, filed a lawsuit against **Biba Apparels Private Limited**, alleging infringement of copyrighted clothing designs. The case illuminated the grey zone between **copyright protection** and **design registration** in the context of fashion, raising important questions about the legal remedies available to designers. Ritika claimed that Biba had **copied and commercially exploited its original designs**, by reproducing and distributing garments that bore a striking resemblance to their proprietary artwork. The plaintiff further argued that former employees, who were privy to confidential sketches and design concepts, had violated **trade secrets** by transferring these to Biba.

To assess the merits of the case, the **Delhi High Court** turned to precedent—specifically, the decision in *Microfibres Inc. v. Girdhar & Co. & Anr.*, which established a critical limitation: **If an artistic work used in clothing has been reproduced more than 50 times, it loses its copyright protection unless registered under the Designs Act**. This principle, grounded in **Section 15(2)** of the **Copyright Act, 1957**, became central to the judgment.

The court emphasized that merely invoking copyright law without securing **design registration under the Designs Act, 2000**, would serve little purpose. Since fashion designs inherently serve as **intermediate products** meant for commercial replication, they fall within the scope of **industrial design**, not pure artistic expression.

Interestingly, the court did not find that Biba was replicating garments *as a whole* via industrial means. Instead, it noted that the defendant had **affixed prints inspired by Ritika's copyrighted works** onto garments it had designed independently. This nuance prompted the court to consider whether this constituted a direct infringement or a permissible use under

ISSN: 2582-6433

existing law.

Nonetheless, Biba's defense was firm: the garments based on the plaintiff's designs had already been **reproduced more than 50 times**, triggering Section 15(2) and **nullifying any copyright claims**. Since the design was not protected under the Designs Act, the copyright, by law, had ceased to exist.

In its final ruling, the court sided with Biba. It concluded that **Ritika Private Limited's rights had extinguished under Section 15(2)**, and that **copyright in the designs was no longer enforceable**. Moreover, the court stressed that **artistic works** used as fashion prints must be registered under the Designs Act if they are to benefit from continued protection beyond the 50-use threshold.

This case serves as a critical reminder for fashion designers and businesses: **artistic value alone is insufficient when designs are mass-produced**. The legal system seeks to strike a balance—protecting innovation without enabling perpetual monopolies over functional and widely used designs. However, the exclusion of "artistic work" from the definition of "design" under the Designs Act also exposes a gap in legal coverage—leaving creators navigating an uncertain regulatory overlap.

3.1.3 Limitations and Legal Challenges

3.1.3.1 : Exclusion of Functional Designs Once Reproduced More Than 50 Times (Section 15)

In India, the intersection of copyright and design protection is shaped by the legal framework set out in Section 15(2) of the Copyright Act, 1957. This provision plays a crucial role in determining when an artistic work, if used industrially, loses its copyright protection—particularly after it has been replicated more than fifty times using an industrial process. The aim is to draw a clear line between artistic expression and commercial utility, preventing creators from indefinitely monopolising mass-produced designs under the longer tenure of copyright protection.

This section has been tested in multiple judicial decisions, offering insights into how courts interpret the overlapping realms of copyright and design law. One of the most pivotal decisions in this context is Microfibres Inc. v. Girdhar & Co., which explored whether industrially applied fabric designs could retain their status as "artistic works" protected under copyright law.

Understanding the Terminology: Artistic Works vs. Industrial Designs

Before delving into the implications of Section 15(2), it's essential to distinguish between two

ISSN: 2582-6433

closely related, yet legally distinct concepts: artistic works and designs.

1. Artistic Works: Defined under Section 2(c) of the Copyright Act, 1957, artistic works encompass paintings, sculptures, photographs, drawings, and other creative visual expressions. These works are protected based on originality, regardless of their commercial application. Crucially, copyright protection extends for a significant period—throughout the life of the author plus an additional 60 years.
2. Designs: As per Section 2(d) of the Designs Act, 2000, a design refers to the features of shape, configuration, pattern, ornament, or composition of lines or colours applied to any article through an industrial process, provided they appeal solely to the eye. These designs enjoy protection for a much shorter period—up to 15 years—and are aimed specifically at safeguarding commercially manufactured articles.

The key difference lies in purpose and application: while artistic works may stand alone as aesthetic expressions, designs are intended for mass replication and industrial utility.

Section 15(2): The Legal Cut-off for Copyright Protection

Section 15(2) of the Copyright Act introduces a critical limitation. It stipulates that if an artistic work is capable of being registered under the Designs Act and is reproduced industrially more than 50 times, the copyright in that work ceases—unless it is registered as a design under the Designs Act.

This clause ensures that creators intending to use their works for commercial purposes cannot exploit the longer duration of copyright to gain an unfair advantage. Instead, they must register their designs under the appropriate statute, thereby subjecting themselves to a different set of legal requirements and a much shorter term of protection.

Judicial Interpretation: Microfibres Inc. v. Girdhar & Co.

The Microfibres case is a landmark decision that brings much-needed clarity to the application of Section

15(2). In this case, Microfibres Inc., a company specialising in upholstery fabrics, claimed copyright protection over certain textile designs used on their fabrics. The core legal question was whether these designs qualified as artistic works under the Copyright Act or if they were actually industrial designs, more appropriately protected (or unprotected, if unregistered) under the Designs Act.

ISSN: 2582-6433

1. Are Fabric Designs Artistic Works?

Microfibres argued that their textile patterns were original artistic creations, either made by their employees or acquired through assignment, and therefore deserved copyright protection. They insisted that these designs were not merely functional but creative expressions worthy of protection under Section 2(c) of the Copyright Act.

However, the Court took a more nuanced approach. While acknowledging that the designs required skill and creativity, it noted that they were created specifically for application to fabrics destined for mass production. Since the designs lacked an independent artistic existence outside their functional context, they did not qualify as standalone artistic works under the Copyright Act.

2. Industrial Intent and the Designs Act

The Court emphasised the intent behind the creation and use of the designs. Referencing Section 2(d) of the Designs Act, it concluded that the patterns were clearly intended for industrial use and fell squarely within the scope of registrable industrial designs. Textile patterns, particularly those used in upholstery, were recognised as falling under Class 05 of the Design Rules, 2001, confirming that such works are eligible for registration under the Designs Act.

The judgment made it clear: when a design is meant for commercial application and industrial reproduction, it falls under the protective ambit of the Designs Act—not the Copyright Act.

3. Navigating the Copyright–Design Overlap

One of the most critical aspects of the decision was the Court's interpretation of Section 15(2). It reaffirmed that this provision was inserted precisely to avoid dual protection. If a design is suitable for registration under the Designs Act and is reproduced more than fifty times through industrial means, copyright protection automatically ends unless a valid design registration is obtained.

The Court warned against using copyright law as a backdoor to prolong monopolistic control over mass- produced designs. Since Microfibres had not registered their designs under the Designs Act—even though they had done so in the UK—they had effectively forfeited any right to copyright protection after the threshold of fifty reproductions was crossed.

4. Requirements for Design Registration

The judgment also discussed the procedural and substantive criteria for securing protection

ISSN: 2582-6433

under the Designs Act. A design must be original, novel, and undisclosed to the public before registration. Since Microfibres had failed to register their designs in India, despite their eligibility and registration abroad, they could not claim the benefits available under Indian design law.

5. Clarifying Section 2(d) of the Designs Act

Microfibres contended that their patterns were artistic works and thus excluded from the Designs Act's definition of "design" under Section 2(d). However, the Court rejected this argument, explaining that the exclusion clause in the Designs Act applies only to artistic works in the classical sense—like paintings and sculptures—not to utilitarian works created for mass production.

By drawing a clear line between fine art (e.g., a painting by M.F. Husain) and commercially produced textile patterns, the Court made a compelling case for the application of design law in the industrial context.

3.1.3.2 – *Star Athletica v. Varsity Brands (U.S.)*

The U.S. Supreme Court's ruling in *Star Athletica, LLC v. Varsity Brands, Inc.* marked a significant moment in the evolving intersection of copyright law and fashion design. This landmark case addressed a long-standing debate: can design elements on "useful articles," such as clothing, be protected under copyright law? Specifically, the case revolved around cheerleading uniforms—functional garments—that incorporated creative elements such as patterns, stripes, and color arrangements. The decision helped define the legal contours for when artistic features applied to functional items can enjoy copyright protection.

Facts of the Case

Varsity Brands, Inc., a company known for its specialization in designing and manufacturing cheerleading uniforms and accessories, held copyright registrations for several two-dimensional graphic designs used on its uniforms. These designs incorporated elements like chevrons, zigzags, stripes, and color-blocked patterns— stylistic choices that were visually distinct and arguably artistic.

Star Athletica, LLC, a competing business, began marketing cheerleading uniforms that bore striking resemblance to Varsity's designs. Varsity responded by filing a lawsuit, claiming copyright infringement under the Copyright Act. In turn, Star Athletica challenged the validity of Varsity's copyrights, arguing that the designs in question were not eligible for

ISSN: 2582-6433

protection because they were inherently tied to the uniforms—a "useful article"—and thus lacked the necessary separability from the garment itself.

The crux of the case lay in whether Varsity's uniform designs were merely decorative or whether they could be seen as independent artistic expressions capable of standing alone—thus qualifying for copyright protection.

Legal Question Before the Court

The central issue was to determine the appropriate legal test under the Copyright Act for deciding whether a design element of a useful article—like clothing—can be protected by copyright. In essence, the Court needed to interpret when and how a decorative element could be "separated" from the function of the article itself.

The Supreme Court's Conclusion

In a 6–2 decision, the Supreme Court ruled in favor of Varsity Brands, setting forth a clear and standardized test for determining the copyrightability of features in useful articles. Writing for the majority, Justice Clarence Thomas laid out the two-part test that must be satisfied:

1. **Separate Identification**: The feature must be recognizable as a two- or three-dimensional work of art with pictorial, graphic, or sculptural qualities.
2. **Independent Existence**: The feature must be capable of existing on its own as a standalone artwork, not merely as a copy or extension of the useful article itself.

Justice Thomas emphasized that under this interpretation, Varsity's designs—although appearing on functional garments—could be perceived separately from the uniform. They retained their graphic character even when viewed independently and would still be eligible for copyright if applied to a different medium, such as a canvas or wall print. The designs, therefore, satisfied both prongs of the test.

Importantly, the Court dismissed the notion that retaining the general outline of the cheerleading uniform invalidated the separability. Just because a design fits a particular shape or article doesn't mean it replicates that object when transferred to another format.

This approach aligned with both the text and the legislative history of the Copyright Act, providing much- needed clarity in an area fraught with inconsistency.

Concurring and Dissenting Opinions

Justice Ruth Bader Ginsburg concurred in the judgment but took a different path in her reasoning. She argued that the issue of "separability" need not even be considered here. For

ISSN: 2582-6433

her, the designs in question were clearly copyrightable two-dimensional works that happened to be applied to uniforms. The act of reproducing a validly copyrighted graphic design on clothing did not change the fundamental nature of the work or its eligibility for protection.

On the other hand, Justice Stephen Breyer dissented, joined by Justice Anthony Kennedy. While agreeing with the general framework of the majority's test, Breyer contended that Varsity's designs failed the "independent existence" requirement. According to him, the designs could not be separated from the uniforms without merely replicating the uniforms in another form. Thus, they were too embedded in the functional garment to qualify as protectable artworks. Breyer emphasized that a feature cannot be considered separable if its extraction merely results in a recognizable copy of the useful article, such as an image of the uniform itself.

Significance of the Ruling

Star Athletica v. Varsity Brands is a pivotal case in the jurisprudence of copyright law and its application to the fashion industry. By articulating a consistent test for assessing the copyrightability of features in useful articles, the Supreme Court provided a clearer framework for designers seeking legal protection for their creations. The ruling affirmed that creative elements integrated into clothing and other functional products could indeed be protected—so long as they can exist independently as works of art.

For industries like fashion, which frequently navigate the blurry line between functionality and aesthetics, this judgment affirms that the law does recognize and protect creativity—even when it's stitched into fabric.

3.2 Trademark and Trade Dress in Indian Fashion

3.2.1 – Concept of Trade Dress in India

The concept of **trade dress** plays a vital role in the legal protection of the visual identity of products in the marketplace. At its core, trade dress refers to the overall look and feel of a product or its packaging—elements such as shape, color combinations, design, and layout—that help consumers distinguish one brand from another. While this concept has its roots in U.S. law, particularly under **Section 43(a) of the Lanham Act of 1946**, it has been gradually gaining recognition and importance within the Indian legal framework as well.

Understanding Trade Dress: Origin and Evolution

In the United States, trade dress was initially understood to apply solely to the packaging of products. Over time, however, judicial interpretations broadened this scope to include the actual

ISSN: 2582-6433

design and appearance of the product itself. According to U.S. case law from 2000, trade dress encompasses more than just packaging—it can also include features like a product's shape, color scheme, or any other non-functional visual detail that serves to identify its source in the minds of consumers.

Importantly, under the Lanham Act, trade dress can be protected even in the absence of formal registration, provided it meets certain legal criteria. These include:

- **Distinctiveness** – the trade dress must be capable of identifying the product as originating from a particular source.
- **Likelihood of Confusion** – if a competitor adopts a similar trade dress, it must be likely to confuse an average consumer.
- **Non-functionality** – the trade dress must not be essential to the use or purpose of the product, or affect cost or quality.

Trade Dress under the Indian Trademark Act

Unlike the explicit recognition provided under the Lanham Act, Indian law does not define "trade dress" per se. However, its protection is implied through various provisions of the **Trade Marks Act, 1999**.

- **Section 2(zb)** defines a trademark as a mark that can be graphically represented and is capable of distinguishing goods or services of one entity from another.
- **Section 2(m)** elaborates on the term "mark" to include devices, labels, names, shapes of goods, packaging, and combinations of colors.
- **Section 2(q)** further defines "package" to cover a wide array of containers and wrappings used in commerce, including bottles, boxes, wrappers, and lids.

When these provisions are read collectively, they provide a legal basis for protecting trade dress in India, even in the absence of a standalone definition. Indian courts have consistently recognized and enforced trade dress rights by interpreting these provisions in line with global practices.

Judicial Recognition of Trade Dress in India

Indian jurisprudence on trade dress has matured through several important decisions:

- In **Colgate Palmolive Co. v. Anchor Health and Beauty Care**, the court dealt with a dispute involving similar color schemes on toothpaste packaging. The ruling highlighted that trade dress serves as a visual identifier of a product's origin. It emphasized that even without closely inspecting the product, if a consumer could be

ISSN: 2582-6433

misled at first glance due to similar packaging, it constitutes unfair competition and amounts to *passing off*.

- The **Delhi High Court's ruling in Cadbury India Ltd. & Ors. v. Neeraj Food Products** is another critical precedent. The defendant was restrained from using the name "James Bond" and packaging that closely imitated Cadbury's famous "Perk" chocolate bars. The Court held that the similarities could deceive customers into believing the products shared a common origin.
- In **Skechers USA Inc. & Ors. v. Pure Play Sports**, the Court addressed the issue of lookalike footwear designs. It recognized that while direct evidence of confusion might be absent, the overall resemblance of the product could mislead unsuspecting consumers, thereby harming the brand's goodwill.
- Further clarity came in **N. Ranga Rao & Sons v. Anil Garg & Ors**, where the court outlined key factors for evaluating trade dress infringement: the degree of similarity between the trade dresses, the distinctiveness and strength of the original, the nature of the goods, and the level of care likely to be exercised by consumers.

However, the Indian courts have also shown discernment in drawing the line between legitimate trade dress claims and overbroad assertions. In **Cipla Ltd. v. MK Pharmaceutical**, the court refused to grant protection over the shape and color of oval-shaped, orange tablets. It held that in the case of pharmaceuticals, distinctiveness stems from composition and formula, not from external appearance or packaging alone.

Conclusion

The protection of trade dress is crucial in a competitive commercial landscape where visual branding significantly influences consumer perception and brand loyalty. It serves as a safeguard against counterfeiting and misrepresentation, both of which can unfairly benefit copycats at the expense of original creators.

Although the Indian Trade Marks Act does not provide an explicit statutory definition of trade dress, the interpretative approach adopted by Indian courts—using definitions under Section 2 and aligning with international standards—has effectively filled the gap. The growing body of case law demonstrates a strong judicial commitment to recognizing and enforcing trade dress rights in India.

That said, the inclusion of an express statutory provision for trade dress would help clarify and strengthen its legal standing. Until such an amendment is made, courts will continue to rely on creative judicial interpretation and case precedents to uphold the principles of fair competition

ISSN: 2582-6433

and consumer protection in India's dynamic marketplace.

3.2.2 – Trade Dress Protection in India: Cease and Desist Letters vs. Demand Letters

In the realm of intellectual property enforcement, particularly concerning trade dress, two essential legal tools are frequently employed by rights holders—**cease and desist letters** and **demand letters**. Though both serve as mechanisms to assert and protect trade dress rights, they differ significantly in tone, purpose, and legal consequence. Understanding their distinctions is key for businesses aiming to address infringement effectively while navigating the legal landscape with strategic precision.

1. ***Cease and Desist Letters: A Warning Shot***

A **cease and desist letter** is typically the first step taken by a trade dress owner upon detecting a possible infringement. It acts as a formal warning to the alleged infringer, putting them on notice that their actions are violating the sender's intellectual property rights.

- **Objective:** The main intent behind such a letter is to demand the immediate cessation of the infringing activity. It is a proactive measure, often deployed to prevent the matter from escalating to litigation.
- **Contents:** This letter generally includes a clear identification of the trade dress in question, a description of how it is being infringed, supporting evidence (such as examples of consumer confusion or visual similarities), and a direct request to stop the infringing behavior.
- **Legal Implications:** While a cease and desist letter does not constitute legal action by itself, it often serves as a formal prelude to potential litigation. It warns the recipient that failure to comply may lead to court proceedings.
- **Scope for Amicable Settlement:** Importantly, these letters provide an opportunity to resolve disputes informally. They are often effective in encouraging compliance, especially when the infringer is unaware of the violation or wishes to avoid costly legal battles.

Example:

If a local snack company begins using packaging that closely resembles the color, shape, and layout of a popular national brand's chips, the established brand may issue a cease and desist letter, alerting the smaller entity of the infringement and requesting that they discontinue use of the lookalike packaging to prevent consumer deception.

ISSN: 2582-6433

2. ***Demand Letters: A Stronger Legal Stand***

While similar in structure, a **demand letter** takes a firmer stance than a cease and desist letter. It not only asks the infringer to stop the unauthorized activity but also usually includes **claims for compensation** or other remedies.

- **Purpose:** Demand letters are often used when the rights holder seeks more than just cessation—they might request financial restitution, royalties, or reimbursement for damages suffered as a result of the infringement.
- **Detailed Legal Grounding:** These letters are more comprehensive in their articulation of legal claims. They elaborate on the legal grounds supporting the infringement claim, specify what the sender wants (e.g., damages, account of profits), and clearly state that legal action will be taken if the demands are not met.
- **Preparation for Litigation:** Demand letters often serve as formal documentation that the rights holder attempted to resolve the dispute out of court. They are frequently used as evidence in later legal proceedings to demonstrate the sender's diligence and good faith efforts to resolve the matter.
- **Potential Outcomes:** Demand letters may lead to settlement discussions, licensing arrangements, or modifications in product design. They can also serve as a final warning before initiating formal litigation.

Example:

If a rival brand uses an identical logo and packaging design that closely mirrors a well-established company's trade dress, the aggrieved party may issue a demand letter not only asking the competitor to stop using the disputed design but also seeking monetary compensation for loss of revenue and brand dilution.

In a fiercely competitive marketplace, protecting trade dress is vital for preserving brand identity, consumer trust, and market share. Cease and desist letters and demand letters are indispensable tools in a brand's enforcement arsenal, but their strategic use depends on the circumstances at hand.

While cease and desist letters act as a preliminary measure to halt infringement and possibly initiate dialogue, demand letters carry more weight and often set the stage for legal action. Both approaches offer businesses a chance to protect their visual identity without immediately resorting to litigation—a benefit in terms of cost, time, and reputation management.

For Indian businesses, especially in sectors like fashion, food, and consumer goods where visual branding plays a critical role, it is essential to adopt a proactive approach to trade dress

ISSN: 2582-6433

protection. Even though Indian law does not provide a standalone statutory definition of trade dress, it is increasingly recognized and enforced by courts through a combination of trademark provisions and judicial interpretation. Using cease and desist or demand letters effectively can be a powerful first step in asserting those rights and ensuring that brand identity remains distinct and uncompromised.

3.3 Design and Patent Protection in Indian Fashion

3.3.1 The Designs Act, 2000 Introduction

In today's consumer-driven economy, the visual appeal of a product plays a pivotal role in its commercial success. Recognizing this, India enacted the **Designs Act, 2000** to provide robust protection for innovative industrial designs. The Act replaced the outdated provisions under the Patents and Designs Act of 1911, aligning India's domestic laws with international obligations, particularly the TRIPS Agreement, following its accession to the World Trade Organization in 1995. The Designs Act came into effect on **11 May 2001**, bringing a more structured and globally compliant framework for design protection in India.

The Locarno Classification

A major reform under the new Act was the adoption of the **Locarno Classification**, a globally accepted system administered by the World Intellectual Property Organization (WIPO). This system organizes designs into **32 main classes and 219 subclasses**, covering approximately **6,797 types of products**. Prior to this, India classified designs based on the material used. With the 2000 Act, classification shifted to the subject matter of the design, ensuring harmonization with global standards and making Indian registrations more accessible and comparable worldwide.

Objectives of the Designs Act, 2000

The Act was enacted with several key goals:

- **Harmonization with international design law** and simplification of earlier statutes.
- **Protection of original, novel, and innovative designs** from unauthorized copying.
- **Ensuring fair rewards** for the creators or proprietors of designs, recognizing their intellectual contributions.
- **Prevention of unfair competition**, especially by larger players misappropriating the designs of smaller or independent creators.
- **Enhancement of product value** through aesthetic innovation, thereby increasing

ISSN: 2582-6433

marketability and consumer attention.

Understanding "Design" Under the Act

Section 2(d) of the Act defines "design" as the visual features of shape, configuration, pattern, ornament, or composition of lines or colors applied to an article. This could be in **two or three dimensions (or both)** and must be perceived **solely by the eye** in the finished product. Importantly, it excludes:

- *Any **mode or principle of construction**,*
- Purely **mechanical devices**,
- **Trademarks**, **property marks**, and **artistic works** protected under other laws such as the Trademark Act, the Indian Penal Code, and the Copyright Act.

An "article" under Section 2(a) is broadly defined as anything made by manufacture, wholly or partially artificial, and includes parts capable of being made and sold separately.

Salient Features of the Act

- **Novelty Requirement**: As per Section 4, a design must be new and original. It must not have been previously published or disclosed to the public.
- **Copyright Protection**: Upon registration, the proprietor receives **design copyright** for 10 years, extendable by 5 more years (Section 11).
- **Jurisdiction**: Disputes involving the validity of design registration can be escalated from the District Court to the High Court (Section 36).
- **Penalties for Infringement**: Under Section 22(2), infringements can lead to imprisonment of up to **three years** or fines ranging from **₹50,000 to ₹10 lakhs**.
- **Inspection Rights**: After publication, any person can inspect or request a certified copy of the registered design (Section 21).
- **Public Record**: Licenses and assignments of designs can be publicly recorded, offering transparency and legal clarity.
- **Administrative Oversight**: The Act delegates responsibilities to the **Controller of Designs** and **examiners**, ensuring streamlined processing (Chapter 7).

Prerequisites for Design Registration

A design must satisfy several key criteria:

- **Novelty and Originality**: Section 4 bars registration of previously published or disclosed designs. Section 2(g) elaborates on originality, stating that even previously

ISSN: 2582-6433

existing shapes can be protected if applied in a new and innovative way.

- **Non-Publication Clause**: As per Section 16, if a design is disclosed in confidence and the trust is breached, such disclosure will not count as publication. Similarly, Section 21 protects disclosures made solely for exhibition purposes.
- ***Judicial Interpretations****:*
    - In *Hello Mineral Water Pvt. Ltd. v. ThermoKing California Pure*, the court emphasized that novelty must go beyond mere shape and involve an inventive concept or arrangement.
    - In *Kemp & Company v. Prima Plastics Ltd.*, disclosure made in confidence was not considered publication, reinforcing Section 16 protections.

Non-Registrable Designs

Certain items are explicitly excluded from protection under the Act:

- ***National emblems, flags****, and* ***official insignia****,*
- Mere **size variations**,
- **Architectural structures**,
- **Trademarks or logos**,
- **Mechanical inventions or workshop improvements**, and
- Components **not sold separately**

Infringement of Industrial Designs

In *Disney Enterprises Inc. v. Prime Houseware Ltd.*, a Mumbai-based company reproduced characters like Mickey Mouse and Donald Duck on household products, leading Disney to sue for design infringement. Although trademarks were not enforceable, the court ordered that all infringing materials be surrendered to Disney, illustrating the importance of industrial design rights in transnational cases.

Piracy of Registered Designs

Section 22 of the Act addresses design piracy, defining it as the **fraudulent or unauthorized imitation** of a registered design. It penalizes both **exact copies** and **closely resembling variants**. The maximum statutory damages are **₹50,000 per contravention**.

In *Bharat Glass Tube Ltd. v. Gopal Glass Works Ltd.*, the appellant used a design developed in collaboration with a German company. Despite claims of prior international use, the court upheld the registration in India, emphasizing that **foreign disclosure does not always negate**

ISSN: 2582-6433

originality under Indian law.

Registration Procedure

According to **Chapter II of the Act**, design registration involves:

1. **Filing an application** in the prescribed form with a fee to the Controller at the Patent Office.
2. Ensuring the design is:
    - New or original,
    - Not previously published,
    - Not contrary to morality or public order.
3. The design must be filed under a **single class** as per Locarno Classification (Section 5).
4. In case of rejection, the aggrieved party may **appeal to the High Court**.

Who Can Register?

As defined in Section 2(j), a "proprietor" includes:

- The **author** of the design,
- Anyone who has acquired it for **valuable consideration**, or
- A person to whom rights have devolved legally.

Design vs. Copyright

The interface between design law and copyright is addressed under **Section 15(2) of the Copyright Act, 1957**. If a design capable of registration under the Designs Act is **not registered**, but more than **50 copies** are made for sale, the copyright protection ceases.

In *Mattel Inc. v. Jayant Agarwal*, Mattel lost copyright over its Scrabble board because it failed to register the design and produced more than 50 copies. The court ruled that once mass production begins, registration under the Designs Act becomes essential to retain enforceable rights.

3.3.2 Landmark Judgments Relating to the Designs Act, 2000

The Designs Act, 2000, as a relatively modern piece of legislation, has been shaped significantly through judicial interpretation. Several landmark judgments have clarified its scope, the nature of design protection, and the complex interplay between design and copyright laws. Below is a detailed overview of some pivotal cases that have influenced the understanding and enforcement of the Designs Act in India.

ISSN: 2582-6433

Microfibers Incorporation v. Giri and Co. & Anr.

In this notable Delhi High Court decision, the court drew a clear distinction between **copyright** and **design protection**. It highlighted that copyright protection does not automatically guarantee design protection. The court conceptualized copyright as protection for a **"work of art,"** emphasizing creative expression, whereas design protection is viewed as a **"work of commerce,"** focusing on industrial utility and commercial application. The judgment explained that once a work of art crosses into commercial use through industrial application, it ceases to enjoy copyright protection and falls exclusively under the realm of design rights. This nuanced separation has been crucial for delineating the boundaries between these two intellectual property regimes.

Tarun Sethi & Ors. v. Vikas Budhiraja & Ors.

The Delhi High Court in this case examined what constitutes **novelty** under the Designs Act. The court held that **minor displacements or slight modifications** made to an already registered design—if they do not substantially change the overall design—cannot be considered novel. It further emphasized that mere availability of the design in some private publication does not prove novelty sufficient to qualify for registration. The judgment relied on earlier precedent from **Kestos Ltd. v. Kempat Ltd. & Vivian Fitch Kemp** and **Allen West & Co. Ltd. v. British Westinghouse Electric and Manufacturing Co. Ltd.**, reinforcing that novelty demands a significant departure from existing designs, not trivial changes.

Troikaa Pharmaceuticals Ltd. v. Pro Laboratories Ltd.

This case revolved around the question of whether a **D-shaped tablet** design was eligible for registration. The court acknowledged that the design of the tablet, as an industrial product, could indeed be registered under the Designs Act. However, it ruled that the shape must be genuinely **novel and original**—not identical or substantially similar to prior designs. The evaluation hinged on the ability to visually distinguish the design by the **eye through all its components**. Thus, a shape identical to existing designs cannot pass the novelty test.

Reckitt Benckiser Case

One of the most significant decisions came from the **Reckitt Benckiser** case, where the court extended the understanding of **prior disclosure** under Section 4(b) of the Designs Act. The ruling clarified that **prior registration of a design in foreign countries** like the UK, USA, or

ISSN: 2582-6433

Australia counts as prior disclosure and can affect novelty in India. The division bench affirmed that if an application to register the same design is **not made in India within six months** of the foreign filing, the design effectively falls into the **public domain** under Sections 44(2) and 4(b). This interpretation underscores the importance of timely registration in India following international filings and harmonizes Indian law with global IP practices. The court also referred to prior rulings such as **Gopal Glass Works** and **Dabur**, reinforcing this principle.

Sree Vishnu Bottles v. The State of Tamil Nadu

This case tackled an important issue regarding the **rights of resellers**. The petitioners were engaged in collecting branded beer and brandy bottles from retail shops in Tamil Nadu and transporting them to other states for resale, a business they had conducted uninterruptedly for three decades. However, police enforcement agencies intervened, citing that some bottles were protected under the Designs Act, 2000, making the interstate transport illegal. The court, however, held that the petitioners' plea was **valid** and that such a sweeping prohibition could not be sustained. This judgment clarified that registered design protection cannot be wielded to arbitrarily restrict lawful trade and movement of goods, balancing IP rights with commercial realities.

M/s Whirlpool of India Ltd. v. M/s Videocon Industries Ltd.

This judgment dealt with an intense dispute over design infringement and passing off. Whirlpool held registrations for two designs covering specific shapes and configurations of their products. Videocon, on the other hand, had registered a design that bore a striking resemblance to Whirlpool's registered designs. Videocon claimed immunity from infringement accusations, asserting that its design registration was valid and barred any claim against it. The court rejected this defense outright, noting the **clear similarity** between the two designs at first glance. It ruled Videocon liable for both **infringement** and **passing off**, underscoring that registration alone does not guarantee freedom to copy if the design substantially replicates another registered design.

These landmark judgments collectively emphasize several critical aspects of the Designs Act, 2000:

- The **distinct yet overlapping** domains of copyright and design protection.
- The **high threshold of novelty** required to secure design registration.
- The need for **timely domestic registration** following international filings to safeguard

ISSN: 2582-6433

design rights in India.

- The careful balancing of IP protection with **commercial and trade freedoms**.
- The courts' firm stance against **design piracy and unfair competition**, especially where visual identity and consumer confusion arise.

Together, these rulings have shaped the practical contours of design law enforcement in India, reinforcing the Act's objective to foster innovation while ensuring fairness in the competitive marketplace.

3.3.3 Fashion Law and Patent in India

The fashion industry has experienced tremendous growth in recent years, turning innovation into a critical asset for designers and brands alike. With globalization, the explosion of e-commerce, and the persistent threat of counterfeit goods, protecting intellectual property has never been more essential. As fashion houses expand beyond borders, securing rights over groundbreaking fabric technologies and inventive design processes is becoming increasingly crucial.

What is a Patent?

A patent is a legal right granted to inventors, giving them exclusive control to manufacture, use, sell, or license their invention for a defined period—usually 20 years. To qualify for patent protection, an invention must be new, inventive (non-obvious), and useful. In fashion, patents typically cover technical breakthroughs such as novel fabric compositions, innovative garment production techniques, or wearable technologies. For example, a designer who develops a fabric with self-cleaning abilities or pioneers a sustainable textile manufacturing process can seek patent protection to safeguard these innovations.

Legal Framework for Patents in India

Patent law in India is governed by the Indian Patent Act of 1970, amended significantly by the Patents (Amendment) Act, 2005. The Indian Patent Office, under the Department for Promotion of Industry and Internal Trade (DPIIT), administers patent registration and enforcement.

To be patentable in India, an invention must satisfy three key criteria:

1. **Novelty:** The invention must be completely new and must not have been publicly disclosed before the patent application.
2. **Inventive Step:** It should demonstrate an inventive advance that is not obvious to

ISSN: 2582-6433

someone skilled in the relevant field.

3. **Industrial Applicability:** The invention must be usable in some industry or sector.

Fashion innovators can leverage these provisions by filing patents for inventions such as smart textiles, unique garment production methods, or environmental-responsive clothing.

Patentability and Fashion Law in India

While patents are an important tool for protecting innovations, not all fashion-related creations are eligible for patent protection under Indian law. The Indian Patent Act explicitly excludes aesthetic or purely decorative designs from patentability. This means that typical fashion designs, such as styles, patterns, or ornamental motifs, generally fall outside the scope of patent protection.

Nevertheless, designers can protect the **functional elements** of their creations. For example, a new manufacturing technique that minimizes fabric waste or enhances durability can be patented. Similarly, smart fabrics—like textiles with temperature regulation or antibacterial properties—are considered patentable innovations because they serve a technical purpose beyond mere aesthetics.

Challenges in Securing Patent Protection for Fashion

Securing patent rights in the fashion sector is not without hurdles. Key challenges include:

1. **Subject Matter Restrictions:** Designers must clearly demonstrate that their invention is not just visually appealing but also includes functional or technical innovations to qualify for patents.
2. **High Costs:** The patent process in India can be expensive, especially for smaller designers and startups. Filing fees, legal costs, and maintenance charges over the 20-year term can be prohibitive.
3. **Enforcement Difficulties:** Even after obtaining patents, enforcing these rights can be challenging. The Indian judicial system is known for delays, making patent infringement litigation time-consuming and costly.
4. **Limited Geographical Protection:** Patents are territorial. An Indian patent only protects an invention within India's borders. Given the global nature of fashion, designers often must apply for patents in multiple countries, increasing complexity and expense.

ISSN: 2582-6433

Patents and the Rise of Sustainable Fashion

Sustainability is rapidly transforming fashion, opening new frontiers for patent protection. Innovations like biodegradable fabrics, advanced recycling methods, and eco-friendly dyes are increasingly being patented, encouraging designers to pursue green technologies.

For instance, breakthroughs such as recycled polyester or plant-based textiles can be patented as new industrial inventions, providing legal protection while also promoting environmental responsibility in the industry. This trend highlights how patent law not only safeguards innovation but can also drive positive change toward sustainability in fashion.

Conclusion

As the fashion industry in India continues to flourish and innovate, the role of patent law is becoming more significant. While the Designs Act primarily covers the aesthetic aspects of fashion, patents provide crucial protection for technological advancements and inventive processes within the sector. For fashion innovators, understanding the patent landscape is essential to securing their competitive advantage.

Looking ahead, patent protection will likely become even more integral to fashion law in India, especially as technological and sustainable innovations reshape how fashion products are conceived and manufactured. For designers and brands, navigating this legal framework effectively will be key to thriving in a rapidly evolving global marketplace.

CHAPTER 4: RESEARCH QUESTIONS

Question 1- How Do Various IP Regimes Currently Regulate Fashion Design Protection?

Fashion design protection is a complex landscape, shaped by multiple intellectual property (IP) regimes that each tackle different aspects of creativity, innovation, and commercial use. Across the globe, these regimes provide varying degrees of legal safeguards, reflecting the unique challenges posed by fashion's blend of art, functionality, and rapid trends.

Design Protection:

At the core of fashion IP protection lies design law, which specifically targets the visual and aesthetic elements of products—such as shapes, patterns, and ornamentation. In many jurisdictions, including India under the Designs Act, 2000, designers can register their unique designs to prevent unauthorized copying. However, this protection is limited strictly to the appearance of the product and does not extend to the technical or functional aspects.

ISSN: 2582-6433

The Delhi High Court, in cases like *Microfibers Incorporation v. Giri & Co.*, highlighted an important distinction: copyright safeguards "works of art" while design registrations protect "works of commerce." Essentially, when an artistic creation is applied industrially, it may lose copyright protection but gain design protection. This distinction underlines how design law serves as a commercial shield in the fashion industry, addressing the look rather than the substance.

Copyright Law:

Copyright protects original artistic works but is generally limited when it comes to fashion. Most countries, including India, do not consider clothing styles or patterns as copyrightable because they are seen as functional or utilitarian rather than purely artistic. However, in some places, unique textile prints or fabric designs might attract copyright, offering limited scope for protection.

Patent Law:

Patents offer protection for inventions that are novel, non-obvious, and industrially applicable. For fashion, this means that technological innovations—such as new fabric compositions, wearable technology, or sustainable production methods—can be patented. India's patent framework under the Indian Patent Act supports this by allowing innovators to protect technical advancements in the fashion space.

Yet, patents exclude purely aesthetic designs, posing a challenge for fashion designers whose creativity is often visual rather than functional. Still, patent protection is crucial for innovations like smart textiles, self-cleaning fabrics, or eco-friendly manufacturing processes, where technology and fashion intersect.

Trade Marks and Branding: Trademarks protect brand names, logos, and other identifiers that distinguish one fashion label from another. This helps designers safeguard their brand identity and reputation in a highly competitive market. Branding is vital in fashion, where exclusivity and recognition can make or break a label's commercial success.

Challenges Across IP Regimes: Despite the existence of multiple legal tools, protecting fashion designs remains difficult worldwide. Designs have short commercial lifespans due to ever-changing trends, making lengthy patent processes or costly registrations less attractive. Enforcement is another hurdle, especially in markets with rampant counterfeiting and slow judicial systems.

Furthermore, IP protection is territorial—an Indian design registration or patent doesn't

ISSN: 2582-6433

automatically extend to other countries. For global fashion brands, this necessitates navigating different legal systems, increasing complexity and cost.

The Emerging Focus on Sustainability: An exciting new dimension in fashion IP is sustainability. Innovations like biodegradable fabrics, recycled materials, and environmentally friendly dyes are not only changing the industry but are increasingly eligible for patent protection. This shift incentivizes designers to invest in green technologies, combining legal protection with corporate responsibility.

In summary, fashion design protection is governed by a patchwork of IP regimes—design law shields the look, patents cover technological breakthroughs, copyrights protect certain artistic elements, and trademarks guard brand identity. Each regime plays a unique role, but together, they create a multifaceted safety net that supports innovation, creativity, and commerce in the fashion world. However, challenges remain, especially in enforcement and global coverage, pushing the industry to continually adapt its strategies for protecting intellectual property.

Question 2- What Is the Legal Threshold for Distinguishing Inspiration from Infringement?

In the vibrant world of fashion and design, creativity is a continuous dialogue—designers draw inspiration from history, culture, and each other to produce fresh works. But when does inspiration cross the line into infringement? This question is at the heart of intellectual property law and is critical for protecting innovation without stifling creativity.

The Core Legal Test: Substantial Similarity and Ordinary Observer Standard

Across various jurisdictions, courts rely on a common approach centered on the **"substantial similarity" test** combined with the **"ordinary observer" standard**. This means the court examines whether the allegedly infringing design is so alike to the protected work that an average consumer or observer would likely be confused about its origin or believe it to be the original.

- **United States:** The U.S. courts apply the "ordinary observer" test, originally developed in *Brown v. Coupland* and later refined in *Apple Computer, Inc. v. Microsoft Corp.*, asking whether the accused design creates the same overall impression on an ordinary observer as the original. Here, courts distinguish protected expression from unprotectable ideas or functional elements.
- **India:** Indian courts, such as in *Tarun Sethi & Ors. v. Vikas Budhiraja & Ors.*, similarly emphasize whether minor alterations escape infringement or whether the "substance" and "essential features" of the original design remain unchanged. The Delhi High Court

ISSN: 2582-6433

held that superficial variations do not suffice if the core design is substantially copied.

- **European Union:** Under EU Design Regulation and Community Design laws, the focus is on whether the contested design produces a different overall impression on an informed user. This "informed user" test is slightly more discerning than the ordinary observer test, focusing on a user familiar with the sector.

Functionality vs. Aesthetics: Protecting What Can Be Protected

One of the challenges in fashion law is distinguishing between functional elements and aesthetic creativity.

- In the **U.S.**, functional aspects are excluded from design patent and copyright protection. This was illustrated in *Apple v. Samsung*, where the shape and design of smartphones raised issues about functionality versus ornamental design.
- In **India**, the *Microfibers Incorporation v. Giri & Co.* case highlighted that copyright protects works of art but not designs applied commercially that are primarily functional. The court noted that if a work of art is industrially applied and serves a commercial utility, copyright protection may give way to design registration rights.
- The **EU** similarly excludes functional features from design protection to prevent monopolization of technical solutions.

Novelty and Prior Art: The Context of What Came Before

Before deciding infringement, courts investigate whether the design is novel or already in the public domain.

- In *Troikaa Pharmaceuticals Ltd. v. Pro Laboratories Ltd.* (India), the novelty of a design was scrutinized, with courts examining whether the design was distinct enough compared to existing ones.
- The **U.S.** courts similarly examine prior art to ensure that only genuinely novel designs receive protection, guarding against monopolies on common or obvious designs.
- The **UK Intellectual Property Office** and courts take into account previous disclosures and registrations worldwide to assess novelty and originality, as emphasized in India's *Reckitt Benckiser* case, which acknowledged foreign registrations in determining prior disclosure.

ISSN: 2582-6433

Balancing Protection and Competition

Intellectual property law strives to balance two competing interests:

1. **Protecting original creators** from unfair copying to incentivize innovation and investment.
2. **Allowing freedom to create** by permitting others to be inspired and to develop new works without undue restriction.

This balance means that courts are careful not to grant overly broad protections that would lock down basic styles, common shapes, or functional elements—thereby avoiding a monopoly over fundamental creative building blocks.

In Summary

The legal threshold distinguishing inspiration from infringement fundamentally rests on whether the allegedly copied design replicates the essential and distinctive features of a protected design to an extent that would confuse an ordinary (or informed) observer. Minor tweaks and changes will not shield infringers if the core creative expression is substantially duplicated. This threshold is consistently applied worldwide, from India's rigorous assessments in *Tarun Sethi* and *Microfibers* cases, to the U.S.'s "ordinary observer" test and the EU's "informed user" standard.

Ultimately, these legal principles encourage ongoing creativity, ensuring that designers can draw inspiration from the world around them while safeguarding their unique contributions against blatant imitation.

Question 3- ***How Do Fast Fashion, Digital Platforms, and Emerging Technologies Affect IP Enforcement?***

The fashion world is evolving at breakneck speed, fueled by fast fashion's rapid cycles, the omnipresence of digital platforms, and the emergence of groundbreaking technologies. While these forces have empowered designers and brands to innovate and expand globally, they've also made intellectual property (IP) enforcement a much more complex challenge.

Fast Fashion: Speed as Both Asset and Obstacle

Fast fashion brands like Zara and H&M have revolutionized the industry by shrinking the time from design to retail from months to weeks or even days. This rapid pace presents unique hurdles for IP protection:

- **The Copycat Dilemma:** Fast fashion companies often produce garments heavily

ISSN: 2582-6433

inspired by high-end designers' runway collections. For example, a Prada design might be replicated by fast fashion labels before Prada's design can even be fully registered or legally protected. This rapid copying diminishes the commercial exclusivity of the original work.

- **Enforcement Timing Is Crucial:** Designers have a narrow window to file claims or injunctions, often struggling to keep up with the sheer volume of knockoffs flooding the market.
- **Blurred Boundaries:** Because fast fashion tweaks designs slightly, courts often grapple with distinguishing between lawful "inspiration" and unlawful "infringement," as seen in cases like *Tarun Sethi v. Vikas Budhiraja*, where minor modifications did not amount to a new design.

Digital Platforms: The Global Marketplace's Double-Edged Sword

Online marketplaces and social media platforms have democratized access to fashion but complicated IP enforcement:

- **Counterfeiting Goes Global:** Platforms like Amazon, eBay, and Instagram allow counterfeit or infringing products to be sold and promoted globally with little upfront cost. This cross-border reach makes enforcement tricky and costly.
- **Social Media Virality:** Trends can explode overnight on platforms like TikTok and Instagram, accelerating copying and dissemination. For instance, a unique sneaker design might be replicated and sold online before the original brand can take legal action.
- **Platform Cooperation:** While some platforms have implemented takedown systems, enforcement remains inconsistent. Brands often must rely on proactive monitoring and rapid reporting to protect their IP.

Emerging Technologies: Innovative Tools and New Risks

Technology provides both solutions and challenges for IP enforcement:

- **Blockchain & NFTs:** Blockchain technology is increasingly used to issue digital certificates of authenticity, helping designers prove ownership and combat counterfeits. For example, luxury brands like LVMH have started using blockchain to authenticate high-end products. NFTs also offer protection for digital fashion in virtual environments, opening a new frontier for IP.
- **AI-Driven Monitoring:** Artificial intelligence tools can scan thousands of websites

ISSN: 2582-6433

and social media posts to detect potential infringement faster than manual methods. However, AI can also be used by infringers to generate rapid copies, escalating the enforcement arms race.

- **3D Printing:** This technology enables on-demand manufacturing of fashion items, disrupting traditional production but raising concerns over unauthorized reproduction of patented or registered designs.

Case Illustrations:

- **Microfibers Incorporation v. Giri and Co:** The Delhi High Court distinguished between copyright and design protection, emphasizing that design registration protects the industrial application, which is especially relevant as fast fashion companies mass-produce designs quickly.
- **Whirlpool v. Videocon:** This case illustrated how design similarity can lead to infringement liability, a principle increasingly tested as fast fashion brands produce near replicas.
- **Reckitt Benckiser Case:** Recognized that international registrations affect novelty assessments in India, showing how global digital platforms impact IP strategies and enforcement worldwide.

Conclusion

The intersection of fast fashion's speed, digital platforms' global reach, and emerging technologies has transformed IP enforcement in fashion into a complex, fast-moving landscape. Protecting innovation now requires a blend of swift legal action, technological tools like blockchain and AI, and strategic vigilance across digital marketplaces.

As the industry continues to evolve, cooperation between designers, technology platforms, and regulators will be critical to ensure that creativity and innovation receive the protection they deserve in this digital age.

Question 4- ***Can New Technologies Like Blockchain and NFTs Play a Protective Role?***

In the ever-evolving fashion landscape, where designs can be replicated and shared worldwide in the blink of an eye, emerging technologies like blockchain and Non-Fungible Tokens (NFTs) are proving to be game- changers for intellectual property (IP) protection.

ISSN: 2582-6433

Blockchain: The Immutable Digital Ledger

Blockchain acts as a decentralized and tamper-proof ledger, recording ownership and authenticity details in a transparent way. For fashion designers, this means their creations can be registered on the blockchain, creating a permanent and verifiable proof of origin.

- **Proving Originality:** By embedding a design's details on a blockchain, designers establish undeniable evidence of authorship, which is invaluable in disputes over copying or counterfeiting.
- **Combating Counterfeits:** Brands like **LVMH** and **Prada** have already partnered with blockchain platforms such as Aura Blockchain Consortium to track luxury goods from manufacture to sale. This technology lets consumers verify authenticity and reduces the market for fake products.
- **Cross-Border Protection:** Because blockchain operates globally without reliance on any single authority, it helps designers prove ownership regardless of geographic boundaries—an essential feature in a globalized fashion market.

NFTs: Digital Ownership and Scarcity

NFTs assign unique digital tokens to fashion items—whether physical garments, sketches, or purely digital wearables—guaranteeing their exclusivity and enabling secure ownership transfer.

- **Creating Digital Scarcity:** NFTs make digital fashion pieces one-of-a-kind, preventing unauthorized duplication and empowering designers to control how their digital assets are used or sold.
- **New Revenue Models:** Fashion houses like **Gucci** and designers such as **The Fabricant** are selling digital fashion NFTs that can be worn in virtual environments, opening fresh markets and monetization avenues.
- **Smart Contracts for Royalties:** NFTs can include programmable terms ensuring that creators automatically receive royalties whenever their digital asset is resold, securing ongoing income streams.

Integration with Traditional IP Law

While blockchain and NFTs provide innovative ways to prove ownership and authenticity, they do not replace traditional intellectual property protections but rather complement them:

- **Evidence in Court:** Blockchain records and NFTs can serve as robust evidence to support IP claims in infringement cases, strengthening a designer's position.

ISSN: 2582-6433

- **Bridging Gaps:** Since patents, trademarks, and design rights require formal registration processes, blockchain and NFTs offer an additional layer of protection, especially useful in the early stages before formal IP rights are granted.
- **Legal Challenges:** Some jurisdictions are still adapting their laws to recognize blockchain evidence and NFTs as valid forms of IP protection, signaling an ongoing evolution in the legal landscape.

Challenges and Considerations

Despite their promise, these technologies face hurdles:

- **Accessibility:** Smaller designers may find blockchain and NFT platforms complex or costly, emphasizing the need for user-friendly solutions.
- **Environmental Concerns:** The energy consumption of some blockchain networks has raised sustainability questions, prompting the search for greener alternatives.
- **Regulatory Clarity:** Clearer global legal standards are needed to govern blockchain and NFT-based IP protections to ensure their enforceability.

Conclusion

Blockchain and NFTs are revolutionizing fashion IP protection by providing transparent, tamper-proof proof of ownership and unlocking new commercial possibilities in both physical and digital realms. Brands like LVMH, Prada, Gucci, and The Fabricant are pioneers showing how technology can reinforce authenticity, fight counterfeiting, and enable creative monetization.

As legal systems worldwide adapt, these cutting-edge tools will increasingly complement traditional IP regimes, helping designers protect their innovations in a fast-paced, globalized, and digital fashion ecosystem.

ISSN: 2582-6433

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

Conclusion

The fashion industry today embodies a vibrant fusion of creativity, commerce, and technology, making intellectual property protection indispensable. This dissertation has explored how India's evolving legal framework, centered around the Designs Act, 2000, and the Indian Patent Act, 1970, attempts to safeguard the multifaceted innovations within fashion. Landmark judgments—such as *Microfibers Incorporation v. Giri & Co.*, *Tarun Sethi v. Vikas Budhiraja*, and *M/S Whirlpool of India Ltd. v. M/S Videocon Industries Ltd.*— highlight the judiciary's efforts to clarify the boundaries of design protection, novelty, and infringement in the Indian context. These decisions underscore that protection is contingent not merely on aesthetic appeal but on originality, novelty, and commercial applicability.

Nonetheless, challenges persist. The rapid pace of fast fashion, the borderless nature of e-commerce, and the proliferation of digital platforms have intensified the difficulty of enforcing IP rights. Cases like *Sree Vishnu Bottles v. The State of Tamil Nadu* reflect the complexities arising in the enforcement and rights of resellers within this ecosystem. Internationally, jurisdictions like the U.S., the EU, and Japan offer lessons in striking a balance between protecting design originality and fostering competitive innovation. For instance, the U.S.'s more expansive approach to design patents and the EU's sui generis database protections provide models for a more nuanced regime.

Emerging technologies, notably blockchain and NFTs, are reshaping the enforcement landscape by enabling verifiable ownership and authenticity tracking in ways previously unimaginable. These tools offer promising complements to traditional IP rights and can help fashion brands combat counterfeiting and build consumer trust, particularly in digital and luxury segments.

India's fashion law landscape is on the cusp of transformation. Aligning its IP protections more closely with industry realities and global standards will empower designers and innovators while attracting investment and enhancing India's position in the global fashion economy. The interplay between judicial pronouncements, legislative reforms, technological innovation, and global cooperation will be crucial to realizing this vision.

Recommendations

1. Refine Legislative Definitions and Expand Protection Scope India's Designs Act and Patent Act should be revisited to explicitly incorporate the unique dual nature of fashion

ISSN: 2582-6433

as both art and commerce. Clarifying the legal distinction between aesthetic designs and functional innovations—drawing from cases like *Microfibers Incorporation*—can help reduce ambiguity and support broader protection.

2. Establish a Sui Generis Fashion IP Regime Inspired by the European Union's specialized design rights and database protections, India could introduce a sui generis IP framework tailored for fashion. This would bridge gaps between copyright, design, and patent laws, addressing the fast-paced and iterative nature of fashion innovation.
3. Enhance Enforcement Infrastructure and Judicial
4. Expertise Drawing on models such as specialized IP courts in Singapore and the UK, India should consider creating dedicated fashion law benches or tribunals. This will expedite dispute resolution, improve consistency, and reduce costs for designers, especially SMEs and startups.
5. Increase Awareness and Accessibility for Emerging Designers Government agencies and industry bodies must launch targeted IP awareness campaigns and provide affordable legal aid, simplified patent/design registration processes, and subsidized fees. Such measures can empower grassroots designers to protect their creations effectively.
6. Integrate Blockchain and NFTs into IP Protection Strategies Public-private partnerships should develop scalable blockchain platforms that offer designers and brands a reliable, tamper-proof way to establish provenance and ownership. This will not only deter counterfeiters but also open up new business models, such as digital fashion collectibles and smart contracts for royalties.
7. Facilitate Cross-Border Cooperation and Harmonization Recognizing fashion's global nature, India must strengthen collaboration with international IP offices and trade organizations. Adopting international treaties and frameworks can streamline multi-jurisdictional patent/design filings and enforcement, ensuring designers' rights are protected worldwide.
8. Encourage Innovation in Sustainable Fashion through IP Incentives Fast-tracking patents for environmentally friendly textile technologies and processes—such as biodegradable fabrics and recycling methods—will promote green innovation. India can learn from global initiatives like the EU's sustainability-focused IP policies to incentivize eco-conscious fashion development.
9. Foster Ongoing Dialogue Between Stakeholders Establish forums where designers, legal experts, policymakers, and technologists regularly engage to discuss emerging

ISSN: 2582-6433

challenges and opportunities. This collaborative approach will ensure that India's fashion IP ecosystem remains dynamic, responsive, and aligned with global trends.

In summation, protecting fashion innovation in India demands a delicate synergy of law, technology, and market realities. By learning from domestic landmark cases and global best practices, while embracing emerging technological tools, India can craft an IP regime that truly supports its vibrant fashion sector. This will not only preserve the creative spirit of designers but also stimulate sustainable growth, global competitiveness, and economic prosperity in one of the world's fastest-growing fashion markets.