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REVISITING PEOPLE TREE VS. DIOR: BEYOND COPYRIGHT INFRINGEMENT LAWS FOR PROTECTING HANDICRAFTS

Authored by - Divya Sampath

Introduction:

According to our research: The global fashion industry is valued at \$1.7 trillion as of 2022.¹ Big fashion brands such as Louis Vuitton is valued at \$ 32.3 billion, Gucci at \$18.2 billion, Chanel at \$9.1 billion, Prada and Ralph Lauren at \$ 8.8 and \$ 6.5 billion respectively² and Christian Dior's has a net worth of \$126.54 billion as of November 2022.³ India occupies a 4% share in the global share of textiles and apparel industry generating a \$ 44.4 billion in revenue nationwide. In comparison to the above-mentioned brands with a net worth of a billion dollars, Indian handicrafts generates a far less turnover nationwide.⁴ Given the novelty in design and tradition that these handicraft clusters in India invest their time into, if pitched against any of the above-mentioned luxury brands, it shouldn't be worth any less with regards to their copyright and design creations. However, when it comes to infringement of such work, the small businesses occupy the furthest end of the negotiating table as they possess the least amount of power, monetary means and lack of knowledge regarding intellectual property. It is often seen that smaller fashion label owners and new designers are vulnerable to the detrimental effects of design piracy and the lack of protection and funds to successfully negotiate against infringement by their counterparts. Since larger businesses recognize the advantage they have over smaller businesses, there is little to deter them from copying the designs from them. Therefore, a new or smaller designer may face a loss of credibility with customers, a decline in the original design value, and ultimately suffer irreparable losses their brand.⁵

¹ Dominic-Madori Davis 'The 9 most valuable luxury brands in the world' (The insider, January 2020) <https://www.businessinsider.com/most-valuable-luxury-brands-in-the-world>

² Ibid 1

³ Macrotrend, November 2022, <https://www.macrotrends.net/stocks/charts/CHDRY/christian-dior-se/net-worth>

⁴ Indian Brand Equity Foundation, November 2022 < <https://www.ibef.org/industry/textiles>>

⁵ Vendela Dente, 'Fashion Design Piracy: An Issue of Intellectual Property or Economic Impact?' (Fordham Undergraduate Law Review, Vol 2, 11-2020)

One such case that is discussed in this paper is the well-known case of ‘People Tree vs. Dior’. A classic example of creative piracy by huge fashion brands from small boutiques. A brief background about this case: In January 2018, actor Sonam Kapoor appeared on the cover of Elle India featuring a dress with traditional Indian print. The dress was from *Dior’s 2018 cruise collection*. Orijit Sen, a designer, called out Dior on Facebook and other social media platforms alleging that the featured dress was a blatant rip off of his creation. He claimed that he began selling the print 10 years prior to Dior designing the dress and printed a similar traditional Indian design that he is still producing as of 2018. As proof he attached bills of sales and the original wood carving of textile print that he personally crated. He claims that it is one of his “well-loved creations” and is widely circulated.⁶

The designer further added that his creation is linked to the traditional ‘dabu printing’ by the communities in Kaladera whose designs are created using block prints. Orijit Sen claims that by selling a dress without giving due credit, he puts the collective efforts and careers of the artisans unacknowledged.⁷ At the outset of this case, it was alleged to be copyright infringement. As the pressure on social media built and various people began alleging Dior for copyright infringement, it brought Dior to the negotiating table with People tree. The negotiations were bound by a non-disclosure agreement (NDA) and therefore the settlement that was reached was not made public.⁸

People tree, it is opined, could have been put in a stronger negotiating capacity, if apart from copyright, other intellectual property rights linked to the dress could have been claimed. This paper seeks to explore alternative and inclusive legal protections that small businesses like people tree engaging in handicraft creation can use as a preventive measure to increase their bargaining capacity in cases of infringement. We will begin by asserting that copyright first and foremost belonged to the Indian designer.

<https://research.library.fordham.edu/cgi/viewcontent.cgi?article=1036&context=fulr> accessed 29th November 2022

⁶ Harshita Murarkar, ‘Dior and People tree reach settlement after Plagiarism Row’ (the quint, 29 May 2018) <<https://www.thequint.com/lifestyle/fashion/delhi-based-people-tree-accuses-dior-of-plagiarism>> accessed 22nd August 2020

⁷ Ibid n.1

⁸ The Fashion Law, ‘Christian Dior Pays Up After Copying Indian Designer’s Original Print’ (The Fashion Law, June 13, 2018) <<https://www.thefashionlaw.com/christian-dior-pays-up-after-copying-indian-designers-original-print/>> accessed 22nd August 2020

Claiming Copyright Infringement:

After tremendous support in the form of a social media campaigns, it became easy to assert infringement of copyright in this case, a luxury that not many people in the rural areas in the handicraft industry have. The designer of People Tree enlisted a legal counsel and asserted his claim against LVMH, which owns Dior. According to Sen, they infringed his rights in the ‘original print’ of the dress and produced evidence to back up his claim. The evidence included wooden blocks used to print his design, copies of the design on paper and sales receipts of his customer purchases from dates prior to 2018. According to the Indian Copyright Act, Orijit Sen’s work would qualify as an “artistic work”, under Section 2 of the act wherein, paintings, sculpture, drawings, engravings, photographs and any other work of artistic craftsmanship, will qualify as works to be protected under the law.⁹ Furthermore, a work needn’t be registered to qualify as copyright, the only requirement is for it to be in a “fixed” form or tangible form.

Under International Law, as per the Berne convention, which is signed by both India and France (where Dior’s Head Quarters is located) , Article 2(1) defines “artistic work” to include drawing, painting, architecture, sculpture, engraving and thus would grant the creator with exclusive rights flowing from his creation, and include both his moral and economic rights.¹⁰ In the case of people tree, Orijit Sen’s dress is not protecting the art of “Dabu printing” itself, but work inspired from the handicraft, i.e. the print on the dress. Thus, the designer has claimed copyright infringement on his print pattern, however the larger question of discrediting the makers on the “Dabu print” design is not addressed.

Looking beyond Copyright: The Argument of Cultural Appropriation

When we look at such cases, copyright infringement law seeks compensation after the damage is done unless there is proof of prior registration. Since copyright as an IP does not have to be registered for it to be protected, a lot of times, there is no proof to show that the work originally belonged to the creator of the artwork. Another point to be noted is that

⁹ The (Indian) Copyright Act, 1957, s 2

¹⁰ Sreyoshi Guha, ‘People Tree v. Dior: IP Infringement, Cultural Appropriation or Both?’ (Spicy IP, 1 February 2018) <https://spicyip.com/2018/02/people-tree-v-dior-ip-infringement-cultural-appropriation-or-both.html> accessed 22 August 2020

handicrafts are eternal and fall within the public domain, thus making copying easy. Most creations will be protected under copyright, as long as they satisfy the criteria of originality and fixation, but often handicraft struggle to fall within such parameters. Further, copyright for traditional cultural expressions is not easy to acquire as they do not have a single owner and the duration for the expiry of their exclusive rights is controversial.¹¹ Thus, it is clear that although 'art' can be protected under copyright, it does not ensure wholistic protection as a few other parameters such as technique, the know-how and authenticity related to the craft have to be protected under Intellectual Property.

The art of 'dabu printing' is practised by the *Chippa* community in Rajasthan traditionally for over 500 years. It involves carving of wooden blocks, preparing a mud paste that is unique to print and using natural dye to create the handprinted work.¹² Since it is a community activity and is historically practised in a particular region of Rajasthan, Geographical Indication will be suitable to protect this art among other IPRs. As of 2018, dabu hand block printing did not have a GI in its favour, but if it did then those who want to reproduce this handicraft, must have to seek permission from the original registered proprietor to reproduce the handicraft by procuring an authorized user certificate under Section 17(1), Rule 56(1) of the Geographical Indications of Goods (Registration and Protection) Act, 1999.¹³ Following this it will be imperative that the authorized users are from the same geographical territory/ cluster and also meet the stringent quality standards. This form of protection given to the local people practicing the craft, would ensure that the authenticity of the art would remain within the geographical area of Kaladera and other forms of reproduction of 'dabu printing' would be mere imitation of the same. Further, since a geographical indication is strictly enforced and retained by the creators of dabu printing, it would give the makers an upper hand during infringement proceedings. Furthermore, it would deter international luxury brands to pick up on designs without obtaining the license to create such work.

¹¹ WIPO Intellectual Property Handbook (2008) (WIPO Publication No. 489)
<https://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf> accessed 23 August 2020

¹² Live History India "Keeping the Akola Dabu Print Legacy Alive",
<<https://www.youtube.com/watch?v=plQjpSxoQFI>>, accessed 23 August 2020

A lot of debate surrounds the territorial nature of GI registrations. Since the international market is wide, it is argued that registered GIs have a way to monopolize the use and creation of goods and using their terms as a form of trade protectionism. Several countries have expressed concern that the EU is using GIs to impose restrictions on the use of common names for some foods—such as parmesan, feta cheese and certain wines—and limits other world economies from marketing these foods using these common names or manufacturing such cheese / wine etc.¹⁴ However, this can be seen as an exercise to increase the accountability that any non GI proprietor makes as the misnomer that they are the real and authentic creators of the work is dismissed. As any misuse, imitation or evocation of a Registered GI must use the expression of - “style,” “type,” “method,” “as produced in,” “imitation,” or similar nomenclature.¹⁵ If this is adopted and is extended to protection of GIs in Handicraft, it could be used to identify GI products from the original handicraft cluster, over a GI design created by an overseas international brand. This only increases accountability and does not deter the manufacturing itself.

Another manner of protecting Handicraft is under the designs act, S 2 (a). It defines an ‘article’ as any substance, artificial or natural capable of being made and sold, thus handicraft falls under the definition of article within the designs act. Clause 2(d) of the designs act defines ‘design’ and mentions that such rights apply only to non- functional aspects of the design, therefore protecting only handicraft’s aesthetic elements. When a creator of ‘dabu prints’ registers his work under the design act, he will be able to protect the wood block designs that is printed on the fabric.¹⁶ However, Section 4(b) of the Designs act prohibits the registration of a design which is not new or original. To address this concern, one needs to revisit S. 2(g) of Design Act which defines ‘original’ that mentions though a design is old in itself, their new application will be protected; thus handicrafts that is not new, if the reproduced design is novel through the application of the older elements can be protected. Further, since design rights are individual rights and exclusive, the act can be interpreted to

¹⁴ Every CRSReport ‘Geographical Indications (GIs) in U.S. Food and Agricultural Trade’
<https://www.everycrsreport.com/reports/R44556.html>, accessed 01/12/2022

¹⁵ K. William Watson, ‘Reign of Terroir: How to Resist Europe’s Efforts to Control Common Food Names as Geographical Indications’ (CATO institute, February 2016) < <https://www.cato.org/policy-analysis/reign-terroir-how-resist-europes-efforts-control-common-food-names-geographical> >

¹⁶ J Sai Deepak, Protection of Traditional Handicrafts under Indian Intellectual Property Laws, (2008), Vol 13 Journal of Intellectual Property Rights,
<<http://nopr.niscair.res.in/bitstream/123456789/1380/1/JIPR%2013%283%29%20%282008%29%20197-207.pdf> > accessed on 23 August 2020

protect handicrafts under copyright with fixation, and traditional handicrafts protected under designs act under section 2(g) as a new use of a traditional design.¹⁷ Thus concluding that for the art work of dabu printing, different forms of IP, i.e. copyright for the artwork, design for the aesthetic elements of the shapes and combinations of patterns and Geographical Indication for the skill linked to the craft can be used to protect its different aspects. While all separate IP elements can be interpreted to accommodate the needs of handicraft of dabu printing to be protected under the Copyright, Geographical Indication and Design rights, there is no explicit mention of such considerations. Thus, one is forced to question if a sui generis framework will enable better protection of IP as it can then be explicitly mentioned in law. Further, a few drawbacks regarding novelty and duration can be addressed in such an envisioned framework.

Towards a Sui Generis System: Holistic Protection of Dabu Printing

For handicrafts to be protected in intellectual property law, it must be interpreted as an industrial good, the concept cultural appropriation is applied to handicraft if as a cultural good it is a form of 'traditional cultural expression'. Given the holistic nature of TCEs, a sui generis system should not require the separation and isolation of its different elements but for it to take a systematic and comprehensive approach. One of the methods is to create an inventory, or compilation, or database that would describe in detail the knowledge of traditional communities, without separating its components. The idea of protecting its contents in a database is to provide protection of the data under Article 39.3 of the TRIPS Agreement, that is for undisclosed data. In this present context, the creators of 'dabu prints' could have documented the techniques followed, the various designs that the print can create (exhaustive, but not limited to) and other important features of the craft. Thus, by doing so, any third party that intervenes to use the technique will have to take a prior and informed consent from the original creator and thus, will limit the chances of infringement. This method also ensures that the creators of the dabu prints claim 'fair and equitable sharing of benefits' arising from the profit of their knowledge and skill. A sui generis system of IP protection combining the features of copyright and its related rights while protecting the know-how documented about the handicrafts allows the holder of the knowledge to exercise

¹⁷ Ibid n 9

moral and economic rights stemming from their work.¹⁸ By developing appropriate ways and empowering the holders of knowledge, a crucial right of saying “no” to third parties that engage in the unauthorized and/or distorting use of their knowledge is ensured.¹⁹

Another form of incorporating a sui generis system for the protection of traditional cultural expression can be to include new and adapted elements incorporated through amendments in the already existing IP framework by modifying some of its features so as to properly accommodate the special characteristics of its subject matter.²⁰ This method of Intellectual Property protection has been followed in New Zealand, by the ‘Maori’ community, who have ensured the mention of ‘traditional designs’, especially ‘koru’ designs by incorporating amendments to the various act with the subject matter of intellectual property law in their country. Additionally, a Waitangi Tribunal is established in New Zealand to hear claims arising out the 1840 Treaty and is based on the customary laws of the tribe.²¹ This example is a reminder especially to understand that in a diverse country like India, with 104 million as its tribal population²² and other marginal communities that engage in the creation of handicraft, representation of their interests in the form of amendments to the existing law will prove beneficial.

Sui generis protection also allows more flexibility to adapt to circumstances arising from the technical characteristics of inventions in the field. As noted above, a sui generis system could also be developed so as to comprise specific features applying to specific elements of handicrafts of a certain community and force third parties to obey their technical and artistic standards, which have been developed along generations e.g., methods of manufacture, colours used, decorative motives, etc.²³

¹⁸ Preliminary Systematic Analysis of National Experience with the Legal Protection of Expressions of Folklore, Fourth Session, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (2002)
<file:///C:/Users/divsa/OneDrive/Desktop/LRW%20Literature%20Review/wipo_grtkf_ic_4_3%20IMPORTANT%20ARTICLE.pdf> accessed 23 August 2020

¹⁹ Ibid n 11

²⁰ Ibid

²¹ Peter Shand, Scenes from the Colonial Catwalk: Cultural Appropriation, Intellectual Property Rights, and Fashion (2002), Vol 3, Cultural Analysis,

<https://www.ocf.berkeley.edu/~culturalanalysis/volume3/vol3_article3.html>, accessed 23 August 2020

²² 2011 Census <https://www.censusindia.gov.in/2011census/hlo/pca/pca_pdf/PCA-CRC-0000.pdf> accessed 23 August 2020

²³ Ibid

CONCLUSION:

Several scholars have indicated that existing mechanisms of intellectual property is sufficient for the protection of traditional handicrafts, however, the prospects of exploring a sui generis framework if carefully constructed can have its own benefits. Presently the WIPO (World Intellectual Property Organization) is creating guidelines for countries to set up its own sui generis system and thus, in future this can help countries create its own framework to protect traditional cultural expressions for handicrafts²⁴. In the same manner as patent disclosure requirements are applied, in a similar way, disclosure requirements for using traditional cultural expressions can be applied to intellectual property rights such as copyright and design rights for a more effective protection for handicrafts. As laws for the protection of traditional cultural expression evolve, some of its elements will also evolve with time. There are a few elements that are already available in existing mechanisms of IP protection, both in a traditional cultural expression context and outside it, that could be transposed into a sui generis system for the protection of Handicrafts. In sum, a strong weapon that small business owners and creators of handicraft possess is to explore alternative methods of protecting their creations, apart from using the traditional route of copyright, design rights and Geographical Indications. Working a comprehensive protection framework in the form of a sui generis system for each creation is valuable. With time as the laws surrounding Traditional Cultural Expressions are change, protecting the 'art form' or 'handicraft' itself might provide protection to the original entities that engage in creating such work vis-à-vis luxury brands that want to appropriate their work and generate billions of dollars in revenue.

People tree has indeed been put on a slightly better position in comparison to many such handicraft industry and boutique owners because they understand the value of Intellectual Property and used the power of social media to gain populist support. In reality, such instances are rare, and therefore strengthening our Intellectual Property system to protect Traditional Cultural Expressions and educate artists and artisans about sui generis protection through intellectual property is essential so that they use the defensive approach to protect their work against infringement if it occurs.

²⁴ Ibid n 11