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THE ROLE OF INTELLECTUAL PROPERTY RIGHTS IN THE FASHION INDUSTRY

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Abstract

Intellectual property rights play a significant role in the fashion industry. It protects the design and preserves the distinctiveness of each and every design from the practice of counterfeiting. A minor breach of intellectual property rights can result in a substantial loss for the company.

Intellectual property rights are a set of legal powers provided to an individual or an inventor who has created a design. Intellectual property rights, prevent plagiarism or copying by competitors for a predetermined time period.

The inventor can use their creation without any hindrance. It is crucial to take permission from the owner of a particular creative to use it. In the fashion industry, intellectual property rights are headmost. IP's like registration of trademark provide absolute protection from copying or stealing multiple designs in the fashion industry.

Trademark law has one of the markable impacts on the fashion industry. Brands like Calvin Klein and Ralph Lauren cash in on their brand values, and a trademark registration is of foremost requirement. It protects the designs made by various fashion designers under multifold categories. This article explores the different forms of IP rights relevant to the fashion industry, their significance or importance, and the challenges related with enforcing them.

Introduction

The fashion industry is a dynamic and extremely competitive field where creativity and innovation are necessary drivers of success. Intellectual Property rights play a pivotal role in protecting the interests of the designers, manufacturers and brands. These rights help to maintain the balance between stimulating innovation and securing fair competition. In the 21st century with the modernisation of technology, IP rights are continuously evolving. They are not subjected to one single realm rather they are expanding their ambit constantly. Nowadays IP rights are working on par with the fashion industry. And the fashion industry is constantly growing and developing new

trends with a market capitalisation of 500+ billion dollars worldwide. Due to this reason, it is very crucial to protect the IP rights that are associated with the fashion industry.

These rights include trademarks associated with a specific brand and the industrial design of particular apparel. IP rights are multi-faceted. In today's world of changing fashion, big brands such as Zara and H&M invest laboriously in their IP rights. It plays a major role in uplifting the business of the fashion industry and contributes to its growth. Creation of a strong and popular brand requires any organisation to monetise their IP rights for potential growth. To monetise the IP rights, the investiture of an essential and reputable marketing value is important. This can be accomplished by planning effective marketing strategies and by allocating the brand's resources in a manner to help in achieving the maximum value and growth.

Objective

Nowadays developing trends in the fashion industry are making a powerful impact on the fashion industry globally. Fashion in today's world is not only restricted to dress and clothing. Intellectual property rights are intangible rights, they do not have any physical form. They are the intellectual creation of their respective owners. It is used to protect an ideology, a concept. The idea itself is not protected. But creations based on special ideas can be protected. IP rights are expressive and artistic in nature. They cover a range of expressions in the fashion Industry.

This article aims to provide the importance and connection of Intellectual Property Rights to the Fashion Industry and. Many designers in the fashion industry bring out new creations of designs which need protection from duplicity. Fashion is an art and all artistic work can be protected by IP rights, which are provided under different legislations, i.e, The Designs Act of 2000, The Indian Copyright Act, 1957, The Trademarks Act of 1999 and Geographical Indications Act, 1999. All such provisions relating to these rights are further discussed in this article. Intellectual property rights do not protect the complete garment but it protects a particular design, style, shape, pattern, etc of the garment. The objective of the author is to concentrate on the idea that IPR and the fashion sector are complementary to each other.

Since the fashion industry is having an innovative nature, nowadays it is not limited to fashion wear only. IP law contributes and produces a significant impact on the fashion industry. There are several elements of intellectual property rights that are applicable in the fashion industry.

A strong and popular brand stands distinguished for its good marketing and strategic assets. An image of a brand plays an important role in attracting more and more customers and it elevates the company's growth too. To create a stable brand, allocation and smart use of intellectual property rights are the prerequisites. IP rights have the potential to turn over a brand's image. There are numerous ways in which a brand can monetise its IP rights to get the improved output and development.

Types of Intellectual Property Rights in Fashion

1. Trademarks:

Trademarks protect brand names, symbols, logos and slogans that distinguish products of a company with another in the marketplace.

They help in establishing a brand identity and consumer loyalty. For instance, the distinctive red coloured soles of Christian Louboutin shoes are trademarked.

Counterfeiting and brand dilution are the most probable issues. Enforcing trademarks internationally can be difficult due to distinctive international laws.

Trademarks in India are governed under The Trademark Act of 1999, Making the mark in the competitive and dynamic fashion industry is important. The fashion business benefits from a trademark registration in this manner. The top registered brands in the fashion industry cover their registered brands on designing clothing and accessories. Since the logo functions as part of the design, trademarks provide strong protection against imitations. In addition, the Act protects trademarks which protect brand names.

2. Copyrights:

A copyright is an intellectual property that provides the exclusive and legally secured right to copy, display, distribute, adapt and perform a creative work to the creator of an original work, or to any other right holder, usually for a limited time period. Copyrights protect the originality of works of authorship, including designs, sketches, and prints of fabrics. Designers may protect their original sketches and fabric patterns. This protection automatically comes in force upon creation subject to originality requirements. Fashion designs often confront problems of functionality against artistic expression, making it difficult to acquire copyright protection in some jurisdictions. Copyrights in India are governed by The Indian Copyright Act of 1957. And Under the Design Act of 2000, fashion designs will automatically be protected by copyright. The Act of 1957 protects designs which are not registered under the Act. Under this Act they are entitled to be

protected for 15 years if they meet the artistic work criteria. Sec 15 of the Act¹ covers the commercial and industrial usage of original works for industrial production or furnishing.

To effectively enroll the design under the Act, the following aspects must be fulfilled.

The design must be an original artistic work

carrying all the required documents to prove the originality of the design to get registered under the Act.

The specific garment or design derived from the creation must be applied and must not be reproduced more than 15 times through industrial process, any other person or by the owner².

3. Design Patents:

A design patent is a legal protection for the unique visual characteristics of a manufactured item. It may be granted for products with a distinct shape, style, configuration, or surface decoration. They protect the distinguished appearance of fashion items like shoes, handbags, and jewellery. The application process is much time consuming and costly, and the protection lasts for a limited period of time, which is usually 15 years in the U.S.

The Design Act, 2000 covers the design patents in India. The Act is drafted to protect an object's non-functional features, including visual appeal. Under this Act, one can protect a specific shape, style, configuration, pattern, or composition of colours in two-dimensional and three-dimensional forms. The registered design can be protected for 15 years.

In case of any piracy of the registered design, the owner of the design can initiate legal action against the infringer and collect a contract debt of which may extend to 25000 Rs. They can also initiate legal action in case of any harm to the reputation. The design registration is time bound and one of the fastest IP registration processes.

4. Trade Secrets:

Trade secrets protect confidential business information that gives a competitive edge to a business over the other business entities present in the market. Manufacturing procedures, sourcing strategies, and marketing plans are subject to get protected as trade secrets. Maintaining secrecy is not easy, and once disclosed, the protection is lost. Legal remedies provided are limited to cases of misappropriation.

¹ The Indian copyright Act 1957, s.15, no.14, Acts of parliament, 1957

² Akash varadaraj, Intellectual Property Rights in the Fashion Industry, vakil search, (accessed July 6, 2204, 10:40 am) <https://vakilsearch.com/blog/intellectual-property-rights-in-the-fashion-industry/>

5. Geographical indications:

A geographical indication is a distinctive sign used to recognise a product whose quality, reputation or other such features or characteristics relate to its geographical origin.

Geographical Indications Act, 1999 is the legislation that provides Intellectual Property protection to the geographical indications. The Act provides recognition to geographies that create a particular fashion or style. The objective of the Act is to restrict and prohibit an unauthorised person from misusing geographical indications and to guide consumers from deception. Sec 8 of the Act³ provides for registration of geographical indication. A registered geographical indication is valid for ten years⁴. Some of the registered geographical indications in India are Kutch Embroidery from Gujarat, Sujini weaving and embroidery works from the State of Bihar, Orissa's unique Kotpad tribal textile designs, and Kasuti Embroidery from Karnataka.

A classification of items falling under the Act is provided protection in the IVth Schedule of the Geographical Indication Act, 1999. The protection of fashion clothes by their texture and creative work of fabric used to make apparel and different types of accessories is enhanced by the registration of geographical indications.

The Importance of IP in the Fashion Industry

1. Encouraging Innovation:

Intellectual property rights incentivize designers and companies to innovate by giving legal protection and financial rewards. Strong IP protection can result into increased investment in research, growth and development of new materials, designs, and technologies.

2. Brand Protection and Consumer Trust:

Trademarks help to build and protect brand identity, ensuring that consumers are able to distinguish between genuine and counterfeit products. Constant enforcement of IP rights helps in maintenance of the integrity and reputation of fashion brands. Identifying, developing as well as registering intellectual property rights are important. Nowadays in this world of fake and inferior quality products, everyone wants to gain a competitive edge through resorting to cheap methods like duplication, imitation and counterfeiting, that's why it is extremely important to register IP. IP registration in the digital world is cheap and a simple process. Investing funds for IP development results in the long-term development of a company giving appropriate recognition to a brand.

³ Geographical Indications of goods (Registration and Protection) Act 1999, s.8, no.48, Acts of parliament 1999

⁴ Geographical Indications of Goods (Registration and Protection) Act 1999, s.18, no.48, Acts of parliament 1999

3. Economic Growth:

The fashion industry plays a major role in contributing to the global economy. Intellectual property rights ensure the designers and the companies to monetize their creations, resulting in job creation and economic growth. Licensing agreements and collaborations, facilitated by powerful IP protections, may expand market reach and revenue streams. A strong and popular brand is recognised by its excellent marketing and strategic assets. Brand's image plays an important role in attracting more and more customers and increases the company's growth too. To create a stable brand, allocation and smart use of intellectual property rights are a necessity. IP rights have the potential to turn over a brand's image. There are several ways in which a brand can allocate and monetise its IP rights to get the highest output and development.

4. Global Reach and Accessibility⁵:

The digital fashion landscape offers unmatched opportunities for brands to reach global audiences, by breaking down the geographical barriers and enlarging market reach through e-commerce platforms and social media channels. A brand or an organisation should be driven in implementing intellectual property rights solutions to generate better results and higher revenue. IP rights may be effectively used in marketing messaging. Such a trademark helps in marketing of a brand with its name. Geographical indications may also add a value to a brand's image by lifting its perceived quality and by tracing its source. Perfectly defined IP rights can increase a brand's overall goodwill and can help in constructing its place in the market. It also provides a competitive edge.

Challenges in Enforcing IP Rights

1. Global Nature of Fashion:

The fashion industry is intrinsically global, with design, production, styles and sales occurring across a large number of countries. This complicates IP enforcement due to distinctive legal frameworks. Counterfeit goods usually originate from countries with weaker IP enforcement, which makes it difficult to control their spread.

2. Fast Fashion:

The rise of fast fashion, characterised by continuous production cycles and cost-cutting imitations, poses a major threat to IP holders. Fast fashion brands are often accused of copying designs from high-end designers, which results in legal battles and possible damage to original creators.

⁵ Abou naja intellectual property, <https://abounaja.com/blogs/intellectual-property-in-fashion-industry>, (last visited July 6, 2024)

3. Technological Advancements:

The digital aeon has made it easier to copy and distribute designs, with E-commerce and online platforms serving as marketplaces for counterfeit goods. Modern manufacturing technologies, including 3D printing, pose new challenges for IP enforcement, as they make practice of replication of designs much easier.

4. Counterfeit Goods⁶:

The digital fashion landscape presents a major challenge with the proliferation of counterfeit goods. E-commerce and Online platforms make it easier for counterfeiters to sell fake, cheap and inferior quality products, impairing the integrity of genuine brands and financial losses.

5. Data Privacy and Security⁷:

Online transactions and interactions in the digital fashion platform generate a huge amount of consumer data. Protecting this data information from cyber threats and ensuring conformity with privacy regulations such as GDPR and CCPA are significant challenges for fashion brands operating online.

Conclusion

In a nutshell, it can be concluded that intellectual property rights are the mainstay of the fashion industry. Fashion and IP both goes hand in hand. They both are coexisting and one cannot survive without the need for the other. IP law is needed in enlargement of the monopoly of any fashion design and serves as a safeguard that protects any design from the evils of duplicity and plagiarism.

Intellectual Property rights are a necessity in the fashion industry, providing protection for creativity and innovation. While they offer many benefits, including encouraging investment and safeguarding the brand identity, the industry faces substantial challenges too in enforcing these rights, particularly in a globalised and fast-paced environment. Constant adaptation of IP laws and international cooperation are key to address these challenges and ensure that the fashion industry can produce while respecting and protecting the creativity of designers and brands. Intellectual property rights are crucial not just for the fashion industry only but for any creative industry.

⁶ Abou naja, Supra note 5

⁷ Abou naja, Supra note 5

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