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RELATIONSHIP OF INTELLECTUAL PROPERTY RIGHTS AND APPAREL LAW IN INDIA: ADDRESSING THE ISSUE OF PIRACY WHICH IS DESTROYING NEW INNOVATIONS IN THE MARKET ECONOMY.

AUTHORED BY - NISHIKA

As a young creator I hope to have a better implication of my mind and would like to share my views on the issue of piracy which is becoming normalised as per the changing trends in the society. This definitely helps few but is a serious threat for new innovations and young creators in the country.

Piracy is the greatest threat to creativity and because of such practices the efforts of the hardworking people is going into vain. Piracy is happening at all most all the stages and due to this people have stopped believing in creativity a mind new creations. In today's time we can see piracy almost everywhere. When Sabhyasachi Mukherjee launches a new collection, it becomes available in the market within few days and that too at a very cheap price. With this we can see that the rate of piracy is higher in India. There are many issues faced by the creators in our country. In this dissertation our emphasis would be on the issue of piracy faced by the fashion industry and how it is still lacking behind in terms of expansion and more unique ideas due to piracy extent in the nation.

Let's talk about the relation between Intellectual Property Rights [IPR] and fashion law in India. In India, the **intersection of fashion and intellectual property rights (IPR)** plays a crucial role in safeguarding the creative expressions within the fashion industry. Let's probe into this relationship and how it is intertwined together. The intersection of IPR laws and fashion law in India is vast as it goes hand in hand in a variety of aspects. In this particular chapter I would like to throw light on the terms which share common aspects in both the fields.

This includes a variety of terms like:

1. Design Protection:

2. Trademark Protection:

3. Copyright Protection:

4. Counterfeiting and Piracy:

5. Licensing and Royal ties:

6. International Trade Agreements:

All these terms are basically essential to navigate the complex interplay between IPR and apparel law in India. Understanding of this interplay between IPR and apparel law is essential for companies operating in India to maintain creativity, brand name, safeguard their rights against infringement, safeguard their assets and protect the uniqueness of every design. Though this industry has many flaws and issues but when both of these sectors merge together it somehow protects each other against the malpractices in India. All this is important to protect the creativity and originality of designs such as logos, prints, graphics, uniqueness of the brand and different style. So that it becomes easier for people to recognize that this is the original work of the brand and holds eccentric importance and it's distinctive in nature. It protects the exceptional and extraordinary work of the brand.

Fashion requires creativity and in India we don't have the shortage of young creators and minds but the question is that making copies of popular accessories, designs and logos have led to the mass availability of the luxury designs in a very basic and affordable rates everywhere. Designer and luxury commodities are supposed to be exclusive and should have certain importance but due to the high level of piracy in India and the skilled people who instead of creating their own designs are keener on copying the work of other creators. Fashion design piracy is a very open practice in our market and is all about the unauthorized copying and distribution of original designs at an affordable price. If we go in the market, we can easily find out that the copies of big luxury brands and designs of big designers are available at a very cheap rate and can be purchased by the common (Placeholder2)public as per their requirement. One of the most recent market trends is the availability of fast fashion retailer's work like Zara and H&M which becomes available at almost ¼ of the original price in markets. The mass counterfeiting of the original work of these famous brands have led to their significant loss and creation of a mindset in the minds of people that these expensive pieces can be available at a lesser rate.

The protection of intellectual assets is a challenge for all the big companies as the smaller markets copy the original work at a rate much faster than in what it was originally made. There has been an acceleration in the consumerism of creativity by fashion conscious people and it has led to a fast growth in the counterfeiting of original products. This might seem like a very small problem but it has atrocious consequences for the creators who invest there day and night for creating such prodigious work. Intellectual property rights is the bedrock for protecting a creator's work as well as ideas. It protects and safeguards the whole ingenious process during and after its formation. Though intellectual property rights is intangible property in nature. The ideas may not be

protected, but the articulation of the idea can be protected.

Pertinent legal provisions that protect fashion design in India are as follows:

- **The Designs Act, 2000.**
- **The Indian Copyright Act, 1957**
- **The Trademarks Act, 1999 and GI Act, 1999.**

From the perspective of fashion industry, these relevant acts don't protect the entire creation but only protect the particular/individual aspects of it like the unique shape, pattern, color etc. of the garment.

Fashion law comprises many laws like labor laws & advertising laws but it is most commonly studied in the zone of Intellectual Property Rights [IPR]. The most important part in fashion law is played by IPR laws as without its protection designers and creators would have a hard time floating afloat in the market for the innovations.

The Fashion Design Council of India [FDCI] is a not for profit organization that actively endorses the business of fashion in India and works towards better sustainable growth. The council also gets together with Textile Ministry and Commerce & Industry Ministry to improve and enhance the topography of fashion industry in our country. It organizes events and takes initiatives to promote passable fashion both in India & abroad.

As far as the sphere of fashion law is concerned, Geographical conditions play a very important role in determining the original work of a specified place. Like Lakh ki chudiyar from Rajasthan, Mysore silk from Karnataka, Kullu shawl of Assam, Pochampalli sarees from Andhra Pradesh etc. In India, fashion industry is growing like never before as the influencer era and availability of fast fashion is in great demand all over the country. When the demand of a particular thing increases then its protection also becomes a big query. This is exactly the major solicitude in our country for fashion law as with the emerging new trends and market demands, the overall protection of these creations shall also be sheltered. I would like to tell a real life experience where I saw a local vendor creating some new embroidered pieces and selling them off at a very affordable rate. I really liked the work of that artist and even appreciated him for his commendable art. We as a society should help them if possible. I went to that place again but the artist wasn't there otherwise I would have told him about his rights. With the increase in number of Fashion Designers in the country and increasing design piracy, it is important to have the active role of judiciary in this area of law & have relevant legislations. Many eminent designers like Tarun Tahiliani, Ritu Kumar and JJ Valaya have flourished in protecting their designs and have been involved in the route of litigation to do

the same.

There are two types of Piracy being practiced in the market which is noted in the fashion industry and it is:

1. **Knockoffs**: A knockoff is considered as a close copy of the original design of the ²creator and is a really close mimicry of the original one .It is sold under a different label name and creates a no connection concept kind of thing. But those who see and compare both can easily see the similarities in the original and pirated version. Nowadays Michael Kors bags are easily available in nearby markets at almost 1/3th of the original price and the quality is also not that bad.
2. **Counterfeits**: A counterfeit is basically an imitation of the original design along with its label or logo .It is basically an attempt to showcase it as the original creation only and to sell of it as the original one only. According to the organization for Economic Co-operation and Development [OECD], Nike is the most counterfeited brand in the world. After Nike next in line are Supreme, Louis Vuitton, Ray-Ban and Rolex. Though there are guidelines and instructions by original creators to recognize the copy and original ones but still the expensive rates and popularity of these vogueish creations make their mass availability in the form of counterfeits easier in the market.

Now I would like to throw light on the legislations which protect fashion law in India:

1. **PROTECTION UNDER DESIGNS ACTS**: The Designs Act, 2000 protects only those designs which are been registered and not the ones which are not. Designers who have registered their creations can only benefit from this act. The Designs Act is drafted in such a way that it protects all the non –functional aspects of a particular object ,having visual appeal, such that design that include the features of shape configuration, pattern, ornament or composition of lines or colours applied to any two dimensional or three dimensional or on both forms. Such a design right remains in force for a period of ten years, extendable subject to conditions, for a total period of 15 years.

Section 22 of The Design Act states that in the case of piracy of a registered design, the infringer shall be liable to pay the registered proprietor of the design a sum not exceeding Rs25,000 (\$451) recoverable as a contract debt; if the proprietor elects to bring a suit for the recovery of damages for any contravention of the rights conferred to him and for an injunction against repetition of it, damages may be awarded and the person may be restrained by

injunction. The design registration system in India is time bound and the fastest of all IP registration procedures. Moreover, in view of the resources invested in creating a new design, the registration procedure is economical and cost effective.

- **PROTECTION UNDER COPYRIGHT ACT:** The Copyright and Design act overlap each other on the issue of ³design protection. A fashion design which is capable of being registered as “design” under the Designs Act, 2000 and registered as per the provisions of the Act will get copyright protection only under the Designs Act and nowhere else. In this scenario, copyright in registered fashion design will subsist for a maximum period of fifteen years.

Section 15 of The Copyright Act provides for special provisions stating that copyright shall not subsist in any design, which is registered or capable of being registered under The Design Act. Another important parameter of this provision is that copyright in the design shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or with his licence by any other person.

The original artistic work, as contrasted with the applied artistic work i.e. the design would continue to fall within the ambit of artistic work under copyright Act and shall be entitled to full period of copyright protection. The commercial/industrial manifestation of original work such as the design derived from and founded upon the original artistic work for the purpose of industrial production of furnishings would be covered by the limitations under Section 15 of the Copyright Act.

Hence, a fashion designer seeking to protect his/her creations under the Copyright Act, 1957, needs to prove:

- 1) that his/her creation is an “original artistic work” within the meaning of the Copyright Act, 1957 and is not a “design” within the meaning of the Designs Act, 2000; and
 - 2) that the article (e.g. garment), to which the design derived from the creation has been applied, has not been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his license, by any other person.
2. **PROTECTION UNDER TRADEMARK ACT:** A Trademark is also beneficial for a fashion design in situations where it is visibly integrated into design to such an extent that it becomes an element of that particular design. There is a growing propensity among fashion designers to incorporate a trademarked logo on the outside of the garment at the time of creation of clothing and accessory designs.
 3. **PROTECTION UNDER GEOGRAPHICAL INDICATIONS ACT, 1999:** The Fourth schedule of the GI Act provides for a classification of goods protectable under the Act. The registration of geographical indications evidently depicts the protection of

fashion apparel vis-a-vis the texture and artistic value in the fabric used to create apparels and accessories. Till now about, 15 kinds of GIs have been registered in respect of textiles in India like Kasuti Embroidery from Karnataka, Kutch embroidery from Gujarat, and Sujini embroidery works from Bihar, etc. This Act provides discernment to specific geographies which make a particular style or fashion.

The fashion industry is booming at a very high rate and thus it is important to have legislations which provide protection to the Fashion Law in our country. There are many evils prevailing in this industry mainly duplicity and piracy. There are endless cases where the original work of designers is copied. Most of the upcoming and struggling designers don't have the means to protect their designs or take the litigation route due to financial issues. It's very important to find resolution for these designers so that we can enhance creative sector in our nation for a more fashionable and exceptional industry in the country.

Fashion law can be considered as an amalgamation of various kinds of laws viz. Contract Law, Employment Law, Consumer Protection Law but most importantly Intellectual Property Law, which can be regarded as the major tenet of Fashion Law.

As with any field that experiences the kind of economic boom that the fashion industry did, laws were brought in to protect the industry's legal and especially IP portfolio and to regulate every step of a garment's life cycle, from the yarn to the shop windows. Instances of design piracy and copying are not news to people; however, the gaining awareness of intellectual property laws has instilled vigilance within IP creators who previously felt helpless in the face of a colossal counterfeit market. It has now pushed designers and manufacturers alike to become aware of their legal rights and accordingly take necessary steps to protect their interests.

The debate regarding the fine line between inspiration and piracy rages on in the fashion world. As the industry continues to grow and bloom new laws will be introduced, and older ones will be revised with input from the stakeholders of the fashion business so that better establishments can be done in the fashion industry.

THE EMERGENCE OF FASHION LAW IN INDIA:

Fashion law has been in practice both in-house and in law firms for decades, particularly in France, which is a no-brainer being the fashion capital, where protection of designs has been in place for over a century. We have heard of new terms like Fashion-specific copyrights and trademarks which is a very recent establishment in the field of design industry. Laws in fashion

industry is an emerging field and is developing with time to meet the needs of the creators and developers.

While fashion law comprises a variety of legal fields, such as labour laws and advertising laws, it is most commonly studied and administered within the sphere of intellectual property laws, categorically the production of knockoff goods with and without the original brand logo, as well as outright copying of design elements by one manufacturer of another.

Without legal recognition and protection of their own on their designs and trademarks, the brands and designers that lead creative and technical innovation in the fashion industry would have a difficult time staying afloat and creativity would be a big issue for them because without good measures and protection of these designs and creations they would be worthless.

A major sign of the augmenting interest in fashion law from across the legal, industrial, and academic spectrum came in 2011 when the New York Bar Association established the Fashion Law Committee to "study and comment on a wide range of legal issues associated with the fashion industry".

Today, several law institutes offer courses and programs in the field of fashion law, and the legal side of the industry has become a main point of education in fashion and design institutes across the world, as the need to be aware of one's rights, becomes increasingly obvious to succeed in this business and have a business in this line. Fashion Law in India is a very recent field and has not yet done all the establishments it still has to cover. It has a long journey to cover yet.

As we all aware the Indian textile Industry has been developing since many years ago and it is continue developing by creating the new innovation,

Now day's people attract more towards the trending item and buying unique product that they are not bought before.

In the film industry the actors are using or promote the more attractive product and unique both off and on screen and their fan try to follow their favourite actor which result in the increase of economy. In addition to being a rich source of intellectual property, the fashion industry is continually inventing and pushing fresh concepts and developments. The creative process goes beyond the design phase and include product marketing and advertising campaigns, regardless of whether it is for ready-to-wear or haute fashion.

This is necessary in order to achieve the requisite competitive distinction that is necessary for success in the fashion business. It is only very recently that society has accepted fashion as a valid creative activity, despite the fact that it has been around for a very long time and has had a significant impact on significant historical events. The one who exhibits a creative and artistic tendency is referred to as a designer. The rich visual imagination that fashion designers possess enables them to manifest their ideas and thoughts into clothing, which is a significant feature of their work.

The creation of intellectual property (IP) takes place when an individual makes use of their intelligence and creativity to generate a work that is unique, distinctive, or innovative which is a result of their determination and hard work and should be protected at all costs.. IP in fashion industry is very important so that fair opportunities and real competition for creativity can be seen in the market. A fair and true competition spirit can take the Apparel Industry in India to greater height and better platforms.

As fashion is derived from the person intellect and by his creativity thus it is come under the ambit of Intellectual property law. However, a result of counterfeiting, the company that originally owned the item suffers both financial loss and damage to their recognition as well as place in the fashion market. In order to aid in putting an end to such piracy and counterfeiting, it is now necessary to use or manage intellectual property in an efficient manner which will enable the creators to enjoy 100% credit and benefits of their original work and hardwork. From the very beginning, fashion designers have a responsibility to make certain that their intellectual property rights are protected and handled in an acceptable manner where there would be less issues and problems for the particular collection.

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