

IPR Registration in Fashion Industry of India

Vishaka Agarwal[†]

National Institute of Fashion Technology, MP Bhoj (Open) University Campus, Kolar Rd, Bhopal,
Madhya Pradesh - 462 016, India

Received: 25 April 2017; accepted: 15 June 2019

Fashion industry plays an important role in Indian Economy. The paper aims to identify the reasons for low rate of registration of Industrial Design, Copyright, Patent and Trademark by the Indian fashion industry. With wide range of products of Fashion apparel, Accessories and Life style products being produced in India and exported to the world but the designers and export houses do not actively do registration of IPR of 'New' Product developed. Field survey was conducted and questionnaire was administered to respondents to collect response from them regarding their awareness towards IPR registration and its benefits. From the study it was concluded that though many sectors are unaware of IPR registration, Designers and corporate who are aware are still slow in registration due to complication in filing procedure of IPR registration, cost involved and having less knowledge about the benefits of registration. However, due to efforts of Indian Government the IPR registration rate are increasing but still due to complexity in IPR registration law the 'Inventor' is still not clear of his rights.

Keywords: Fashion industry, trademark, industrial design, copyright, newness, innovation, Community Design Protection System, Innovative Design Protection and Piracy Prevention Act, Theory of 'Piracy Paradox'

Intellectual Property Right is a tool to protect ideas and innovations. Creative ideas involving thought or idea of creation of music, story, dramatization, writing lyrics and artworks are the intangible imaginary ideas of the creative persons which have to be put in some medium like books, CDs, DVD, films and canvas so that it can be shared/ circulated to the masses to see, read and appreciate. These creative works are protected by registration under copyright.¹ Ideas having 'Newness' and 'Innovation' like technological innovation are tangible and registered under 'patent' and 3D- product having lines, forms, shape having visual appeal are registered under 'industrial design'.¹ For the marketing of the product, there needs to be a brand name which must be unique and identifiable and not similar to any brand name already existing. These brand, logos and taglines of any brand are registered under 'trademark'. This is a very important mark as it helps the customer to associate and identify the product of particular quality and gives assurance.¹ For agricultural products like fruits, textiles, artwork, craftwork which are produced in a particular region they are registered under 'geographical indication', which identifies that

the product originally belongs to a particular geographical region.

Fashion industry creates products like apparels, bags, shoes, jewellery, life style accessories and craft products. These products are created through the creative thought process of the designers by combining 'ideas and materials' to create some new look for the product. Some of these 'new looks' become a big success in the market. Therefore, to protect against copying by other competitors and reap monetary benefits for their creation, 'industrial design' registration is required to have a legal right over this creative asset and also the 'trademark' becomes very important.¹ For the fashion industry, the IPR which are most important to protect the creative ideas are the copyright, industrial design and trademark.¹

In the apparel sector, the fashion cycle changes thrice in a year majorly. Therefore, the limitation lies in the registration time required which is minimum 18 months. Hence, in most cases it becomes irrelevant to register the new designs. And also in creating fashion silhouettes, every season what is primarily done is 'slight variation' in the silhouette. This "slight variation" cannot be considered as a "new" idea.¹

Fashion design industry is different from other type of creative industry and receives the highest revenues

[†]Email: vishaka.agarwal@nift.ac.in

from all other creative industry. Better IPR laws for protecting designs, would not only increase the cost on the fashion designers but also trickle down to the consumers. To overcome these uncertainty enterprises should devise their own brand strategies.¹ Fashion design industry has become an important part of the economy. The fashion industry creates entrepreneurs and creative asset. They create job and contribute to the development of the economy. But there are no specific laws which cover fashion design.¹

Various IPR relevant to fashion design industry are modified in some countries as per country laws. The European Union has Laws defined under Community Design Protection System since 2003, which provides for two stage design protection – automatic rights when design enters the public domain and then design registration through a quick registration procedure valid for 5 years followed by four 5 year renewals. This kind of two level registrations is good for fashion design industry which have short life cycle and also it gives time to the designer to gauge the potential of design of product and then file registration. There is an increased pressure on the US Congress to make amendment in the IP laws for the fashion design industry specifically by the Council of Fashion Designers of America (CFDA) or United States can also follow the European Union's Community Design Protection System.¹

In July 2011, the US Congress amended the Title 17 of United States Code to extend protection to fashion design and introduced the Innovative Design Protection and Piracy Prevention Act (IDPPPA). It redefined the word 'fashion design' and proposes to protect the design for an initial period of three years from the date when the design was made public. 'Infringement' has been defined as one when someone without the consent of owner of the potential design makes, distributes, sells or exports the design. The only drawback of this IDPPPA is that due to lack of registration there is no public database to search for design.¹

The Indian Government is aiming to raise the GDP from current 16% in 2011 to 25% in the manufacturing sector. To achieve this, it refers to the report of the Confederation of Indian Industry (CII) which recommends to the Indian Government, to boost design development capacity and intellectual property rights regime to achieve the growth in GDP.²

Original and creative expression is the primary source of competitive advantage in the business

environment including the fashion industry. It also states that the most frequently given explanation for not registering fashion design is the short product life ranging to maximum 12 months. Due to this, registration of IPR is not possible which takes minimum 18 months for registration.³ Individuals desire strong individual IPR, firms aim at strong 'corporate' IPR, whereas creative communities require weak IPR, or even no IPR at all, in order to easily use and recombine existing art, which is raw material of the activity of creation. This leads to IPR dilemma in creative industry. However, firms usually need strong IPR to prevent free riding and to be able to commercialise art.⁴

Proponents of theory of 'Piracy paradox' believe that copying instigates new design as old design is no longer distinct and exclusive because the designers desire to be different and ahead of copycats. Copying is also a measure of popularity of the particular design. Copying accelerates fashion cycle because fashion designers add small changes to previous designs and people begin to recognize it as trend. And as more and more designer move toward this trend, the look becomes overdone and the most fashion forward consumers move on to next trend.⁵ The registration bureaucracy of IPR needs to be simplified to create the opportunity of regional registration. TRIPS-WTO has not fully provided the protection over the fashion products of the creative industry.⁶

Current Indian perspective to Trademark, Copyright and Design Patent

Creation and protection are two sides of the same coin. Protection of intellectual property is as important as creating it. Intellectual property is contributing significantly to the development and upgradation of standards of living of everyone. But we are not very much aware of about this form of Intangible asset- Creativity and Innovation.⁷ When ideas are transformed into creation and innovation, then they are commercially valuable and become Intellectual Property. The report further states that for India to grow at rate of 9-10% per annum we have to drive our manufacturing sector. To achieve this, India has to become an "Innovation led Economy".⁷

The status of IPR registration, awareness, registration processes and accessibility to the database of various IPR have undergone a drastic change over the last five years. Some of the recent development taken up by the Indian Government is:

- i) India has become the member of the Madrid protocol.
- ii) Online filing of forms has been started for Patent and Trademark.
- iii) More transparency in operations.
- iv) State or Art official at IP Offices-Mumbai, Delhi, Kolkata and Chennai.
- v) India has become a signatory of TRIPS Agreement and Indian IP laws are fully TRIPS compliant.
- vi) Recruitment of a number of examiners to clear backlog.

With India becoming a signatory to the Madrid Protocol, anyone in India, with one single application and single fees can apply in 90 countries. Also, with India becoming 15th country in the world to work as an International Searching Authority since October 2013, an Indian applicant can get access to the benefit of International search report before filing an international application.⁷

Registration of IPR by Designers

The survey was conducted in Bhopal, Madhya Pradesh with a sample size of 50 people belonging and involved in creation, production and marketing of new designs craft product and apparels. Bhopal was chosen, as it is a home of artisans and craftsmen involved in the creation of artworks, lifestyle products and fabric prints and styles. A structured questionnaire was developed with closed end dichotomous questions, open end questions and Likert scale to understand about the problems of IPR registration among young designers (10), boutique owners (10), craftsmen (10), artisans (10) and the small unit owners (10) doing creative works and marketing either self or through some Govt. agency or private manufacturers. The respondents were chosen by the researcher as the questionnaire required responses from people who had some awareness of IPR and IPR registration. They were self-administered the questionnaire by either meeting them at their workshop or offices while with some unit owners (4) discussion was done over telephone and questionnaire shared over email. The data is represented through various data interpretation chart to come to conclusion. Secondary data was collected from the internet /websites and research journals were referred to collect the statistic of registration of IPR in India in the last few years. On the basis of response received in the questionnaire, the following results were obtained:

Protection for Creative Ideas and Knowledge

All the respondents either ‘strongly agree’ or ‘agree’ that the creative knowledge and ideas should be protected by law (Fig. 1).

Awareness of IPR and Registration Process

Nearly 82% of the respondents were aware of the IPRs and their registration processes. They include designers, boutique owners and small enterprises owners. 18% of respondents, mostly artisans and craftsmen, are not aware about IPR and registration process (Fig. 2).

Cost of IPR Registration

Around 53% of the respondents are only partially satisfied with the cost involved in registration of IPRs. 41 % are fully satisfied and 6% are not satisfied with the cost involved in registration (Fig. 3).

Filing Procedure and Time taken for Registration

63% of the respondents are partially satisfied with the filing procedure and time taken for

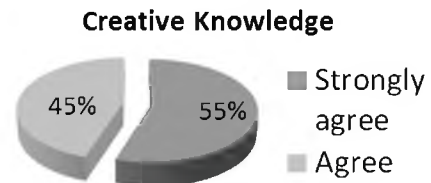


Fig. 1 — Response of respondents on protection for creative ideas and knowledge



Fig. 2 — Respondents aware of IPRs and their registration processes

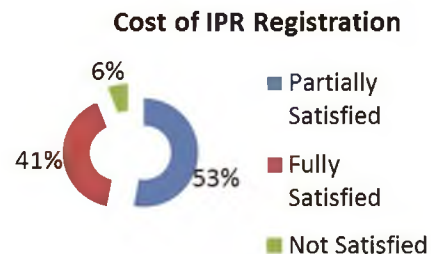


Fig. 3 — Respondents satisfied with the cost involved in registration of IPRs

registration while the rest 27% are not satisfied with the filing procedure and time taken for registration (Fig. 4).

Suggestions on Increasing Awareness about IPR

To increase the awareness of IPR and registration process the following were suggested:

- Organise seminars/workshops on the IPRs and invite organisation, entrepreneurs/manufacturers designers, artisans and craftsmen
- Should be included in design, management institute curriculum – theory and practical and guest lecture by personnel IP office and lawyer
- Information may be circulated on social media, advertisement on television, design and business magazine
- Workshops in craft cluster

Suggestions to make Registration Process Easy

To make registration process easy, the following were suggested:

- Legal guidance to be provided by IP offices
- Time for grant of registration should be reduced
- Filing procedure should be made easy
- The cost of registration should be reduced
- Number of IP offices to be increased

Registration status of Trademark and Design in India

The number of applications filed over years have increased in Design (Table 1), Trademark (Table 2), Copyright (Table 3) and Patent (Table 4).⁷ The details regarding number of application filed, number of application examined and number of application registered in various IPR since 2006 -2007 to 2017-18 are listed below:

The data shows that maximum number of applications are received for trademarks and patent protection among all other IPRs. In design, the number of applications filed is still low in comparison to trademark and copyright.⁷

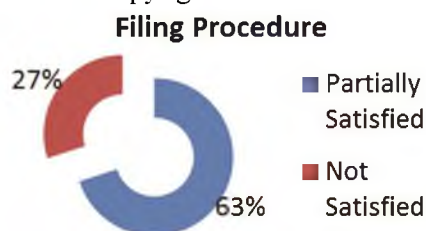


Fig. 4 — Respondent's satisfaction with the filing procedure and time taken for registration of IPRs

Table 1 — Number of applications filed for designs since 2006

Year	Filed	Examined	Registered
2006-07	5521	4976	4250
2007-08	6402	6183	4928
2008-09	6557	6446	4772
2009-10	6092	6266	6025
2010-11	7589	6277	9206
2011-12	8373	6511	6590
2012-13	8337	6771	7250
2013-14	8533	7281	7178
2014-15	9327	7459	7147
2015-16	11108	9426	7904
2016-17	10213	11940	8276
2017-18 (up to 31.12.2017)	8521	8597	7406

Source: <https://dipp.gov.in/annual-report/annual-report-2017-18>

Table 2 — Number of applications filed for trademarks since 2006

Year	Filed	Examined	Registered	Disposal
2006-07	103419	85185	109361	NA
2007-08	123514	63605	100857	NA
2008-09	130172	105219	102257	126540
2009-10	141943	25875	67490	76310
2010-11	179317	205065	115472	132507
2011-12	183588	116263	51765	57867
2012-13	194216	202385	44361	69736
2013-14	200005	203086	67873	104753
2014-15	210501	168026	41583	83652
2015-16	283060	267861	65045	116167
2016-17	278170	532230	250070	290444
2017-18 (up to 31.12.2017)	195705	217176	218383	408406

Source: <https://dipp.gov.in/annual-report/annual-report-2017-18>

Table 3 — Number of applications filed for copyrights since 2015

Year	Filed	Examined	Registered	Disposal
2015-16	14812	9325	4505	16203
2016-17	16617	16584	3596	16236
2017-18 (up to 31.12.2017)	18584	21250	15017	26576

Source: <https://dipp.gov.in/annual-report/annual-report-2017-18>

Table 4 — Number of applications filed for patents since 2005

Year	Filed	Examined	Granted	Disposal
2005-06	24505	11569	4320	NA
2006-07	28940	14119	7539	NA
2007-08	35218	11751	15316	15795
2008-09	36812	10296	16061	17136
2009-10	34287	6069	6168	11339
2010-11	39400	11208	7509	12851
2011-12	43197	11031	4381	8488
2012-13	43674	12268	4126	9027
2013-14	42950	18306	4225	11672
2014-15	42763	22631	5978	14328
2015-16	46904	16851	6326	21987
2016-17	45444	28967	9847	30271
2017-18 (up to 31-12-2017)	35511	40790	8940	35433

Source: <https://dipp.gov.in/annual-report/annual-report-2017-18>

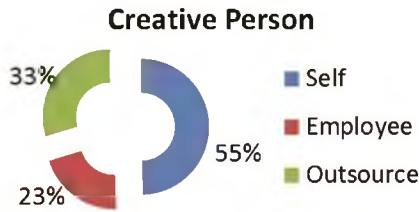


Fig. 5 — Type of creative persons

Agreement or Contract

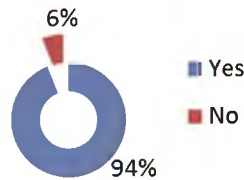


Fig. 6 — Persons in favour of the agreement or contract while hiring or outsourcing designs

Benefits of IPR Registration in India

Based on the survey conducted through the structured questionnaire about the benefits of IPR registration among designers, boutique owners, craftsmen, artisans and the small unit owners involved in creative works and marketing either self or through some Govt. agency or private manufacturers, the following results were obtained:

Creative Persons behind the Product

55% of the respondents were found to be creative head, 23% were employees in the organisation and 33% have outsourced designs (Fig. 5).

Agreement or Contract in case of Hiring or Outsourcing Design

Out of all the respondents 94% were found to be in favour of the agreement or contract while 6% didn't approve of any agreement in case of hiring or outsourcing designs (Fig. 6).

Mode of Royalty on Works/Products

42% of all the creative persons surveyed were found to be in favour of the royalty to be included in the salary, 37% said it should be on the volume of sale and the rest 21 % said that it should be one time royalty (Fig. 7).

Legal Action against Copying of Design

The submissions of the respondents reveal that 82% are on favour of some legal action against

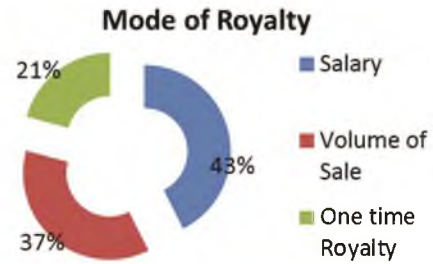


Fig. 7 — Different mode of royalty payment to the creative persons

Legal Action Against Piracy

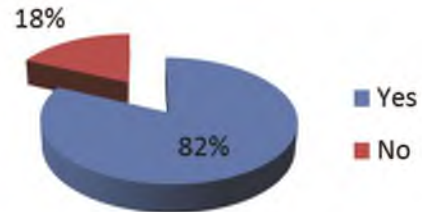


Fig. 8 — Percentage of creative people for legal action against infringers

copyright violation while 18% didn't want any legal action against the violators (Fig. 8).

Benefits of IPR registration are protection on piracy and monetary benefits by virtue of royalty when entered into contract or agreement with others for new innovation and creativity by the owner of the creative asset. Credibility and recognition should be given to the owner of creative assets.

Conclusion

From the above results, it is clear that India has a long way to go towards creation of awareness about IPR among the creative community. The rate of registration in design is still low. The time taken for grant of IP rights needs to be reworked upon as is by European Community in order to safeguard the creative asset of our country. In order to curb piracy, India needs to redefine laws as per Indian context, to safeguard and accord credibility to the creator of such works. With the "commodification of Knowledge" and Knowledge becoming a strategic asset, awareness about IP knowledge has to travel to the grassroots level – to artisan and craftsmen.⁹

In order to attain growth in economy, Government needs to take measures and IP India offices need to be equipped with enough personnel so that enough assistance can be provided to people applying for it. In order to increase registration in design, registration laws need to be simplified so that it can adequately

safeguard and protect the requirement of design society and its creation.

The filing procedure needs to be simplified according to the literacy levels in the country and training programme needs to be undertaken at academic level, and in cluster where craftsmen are creating products. The benefits arising out of IPR registration needs to be educated and live demonstration of online registration to be done so that people can access easily. With the idea of becoming one of the centre for Creative Knowledge and in today's global context, IPR is becoming a way for economic development. It is time Indian Government take measures to boost IPR registration in the Fashion Design Industry.

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