

IPR and Indian Fashion Industry: Challenges and Possibility

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Received: 11th January 2023; revised: 11th May 2023

The fashion industry is principally driven by creation and innovation. The connection that the Global fashion industry has with Intellectual Property Rights is well documented, however, in India; the comprehensive understanding of the link between fashion and IPR laws is still at a nascent stage. The big fashion houses can exercise control over their creations through the right choice of IPR laws but the local, smaller, and emerging sector is more deserted in protecting their intellectual assets. Also, ignorance about IPR infringement among fashion firms and a lack of stringent reprimands from policymakers have accelerated consumerism among fashion-conscious consumers by serving counterfeiting products, building confusion, and devaluing creativity. This article is segmented into three major parts to shed light on the challenges encountered by small fashion firms, designers, fashion start-ups, and rural textile artisans with respect to protecting intellectual property. The initial segment will give a short insight into the IPR options like copyrights, design registration, patents, and trademark, available for the fashion domain and their applicability, moving towards the specific challenges faced by the local design houses and craftsmen, and finally compiling the possibility of amendments required in IPR laws for the Indian fashion, apparel, and handicraft sectors.

Keywords: Intellectual Property Rights, Indian Fashion Industry, Indian Fashion Laws, Creativity and Innovation, Consumerism, Counterfeit Fashion

Innovation and creativity are at the heart of the fashion industry. It is fuelled by the imagination of designers and directed by the ever-changing demand of consumers for new trends. Just like the multiplicity of our country India, the Indian fashion industry is versatile too. Not specific to apparel, shoes, and accessories, it caters to a variety of brands and lifestyle commodities as well.¹ Traditional skill and art forms are also an indistinctive part of this industry as they provide localized yet exclusive designs and knowledge that further assist in scaling up the global market value for this sector. The fashion and apparel industry holds a strong position in gearing up the Indian economy and is actively serving as a focal point for many international fashion-forward allies. An industry that is swamped with new ideas on a regular basis is also at high risk of losing ownership of its creations to counterfeiting.² Bootlegging of designs is a budding subject in the fashion industry.³ It would be wrong to assume that the flow of lifting is always from top to bottom and it is the small fashion houses and designers who are thinning creativity. Sometimes big brands take advantage of the discrepancy in the law

to reproduce and produce products righteously owned by others.⁴ The dearth of mindfulness about intellectual property rights (IPR) that designers can use to protect and promote their creations is the underlying issue. In technology-intensive fields IP rights can easily be applied and confirm necessary protection cum value for right holders, however, the same is not very much understood in the fashion and apparel sector which is subjected to volatile and rapid transformations.⁵

Right from the inception of the idea to the construction of the final product, there are laws to protect a wide range of aesthetic and functional details of designs, techniques, and forms at different stages in the fashion industry. The awareness and application of Intellectual property rights can benefit designers in the following two discrete ways.³

- (i) Protection - IPR can halt someone to misuse others' original ideas/designs/symbols/articles/textiles without their permission. This not only prevents plagiarism but also brings credit recognition to the creator of the content.
- (ii) Capitalization - IPR can bring profits from one's designs by letting him/her enter into licensing agreements for their designs with third parties.^{3,6} Licensing allows individuals to rent their

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intellectual assets for an agreed period within an approved territory.

It is necessary at this point to bring into the picture, the IPR laws, relevant to the fashion industry. Though the responsiveness to IPR protection is gaining momentum in India, the law relating to the protection of fashion designers' rights remains unclear. Since the country of origin has a decisive role in framing specific rights for the creator, the further segment will help you understand IPR in the Indian context.^{7,8}

Scope of IP in Indian Fashion Industry

The IP Laws that regulate fashion and protect the rights of the creators fall under the Copyright Act of 1957, The Trademarks Act, of 1999, the Geographical Indications of Goods (Registration and Protection) Act, of 1999, and the Designs Act of 2000, however, none is adequate to provide enough support and coverage to the sector.^{9,10}

Copyright as Intellectual Property

Fashion designs start with ideas illustrated often on paper before they are transformed into creations. The artistic work of designers that is original is protected by copyright.¹¹ Further, the word 'artistic work' can refer to the following:^{11,12}

- (i) it can be a drawing, painting, a sculpture
- (ii) a work of building and architecture
- (iii) any other work of imaginative craftsmanship

Copyright does not offer full protection to utilitarian articles like clothing and only certain artistic details linked to it can be secured. Designers get the authority to materialize their 2-D designs into 3-D forms like a dress/garment. They are free to transfer their work to the public, share copies or make any edition of the work,¹² however, another dimension of the law states that the production of the dress should not exceed 50, post which the copyright protection ceases to exist.^{9,11,12} A person can obtain copyright protection for his entire life plus 60 years afterlife.¹²

Design Registration as Intellectual Property

The industrial application of the design can be protected under the Design Act. A fashion designer must have duly registered his design to protect it from piracy infringement. The term design covers the elements of shape, compositions of lines, colors, and patterns applied to any article both in two-dimensional or three-dimensional forms, and is judged solely by the visual appeal.^{5,13} Designs need to

be original, not have been disclosed to the public,¹⁴ and must be expressed in a material form to gain protection. Once registered, a design is protected for straight 10 years and protractible by an additional 5 years.¹⁵

This seems to be a more practical and robust mode of protection as compared to copyright protection, however, in most situations, designers refrain from registering their fashion designs due to the prolonged process involved in getting the protection over a shorter and unpredictable shelf life of the garments in the market, making his hard intellectual creations vulnerable for exploitation during the pendency of the application.¹³

Trademark as Intellectual Property

A trademark is an idiosyncratic sign used by a person or an enterprise for goods and services produced or provided by them and can be protected through registration.⁵ In the fashion and apparel sector, trademarks are of high value as they bring identity, visibility, and consumer recognition to legitimate producers. Many big clothing brands are seen fighting legal battles to protect their rights over their brands, designs, and patents against knock offs and counterfeiting.¹⁶ Top designers mostly cease the impact of copying by reinventing their designs from one fashion term to another and by restrictive construction and diffusion. The costs of this tactic are massive but it is sustained by a few yet loyal numbers of rich buyers who value exclusivity.¹⁷

Geographical Indications as Intellectual Property

Much of the opulence and exquisiteness of Indian fashion apparel is attributed to indigenous weaving, knitting, dyeing, printing, and embroidery techniques. These are the traditional fashion assets of modern apparel.¹⁸ The Geographical Indication (GI) brings the name and fame to special products specific to a certain region and identifies the local skills, communities, and surroundings that impart special characteristics to products originated or manufactured there. These special characteristics may be due to natural factors like raw material, soil, climate, geography, etc., or traditional production methods, and preparation techniques exclusive to that region ensuing certain quality standards.^{19,20} Chanderi fabric and Bagh prints from Madhya Pradesh, Kani shawl from Jammu & Kashmir, Mysore silk from Karnataka, and Patan patola from Gujarat are a few of the many examples of textiles protected under GI in

India.²¹ Apart from imparting recognition to a product by region/territory, protecting consumers against deception, and enhancing sales of fashion goods in a specific area, GI protection proves to be a valuable asset for native groups of weavers and designers for appreciation, promotion, and enlargement of business.¹⁸⁻²⁰

IPR Challenges and Possibilities in Indian Fashion and Apparel Sector

International luxury fashion brands Burberry, H&M, and Richemont created global headlines when they smoked their unsold products of millions of worth to protect their intellectual property and fight counterfeiting. The Indian fashion industry has evolved over the years with a huge amount of innovation and hard work put in by designers. Experimenting with local materials, indigenous techniques of coloration, and nonpareil design aesthetics created manually, all demand protection of their intellectual property. Now, as stated earlier the Indian fashion industry is segmented and has both top and bottom-line players. Some renowned designers and brands are being active for the past couple of years in getting their creations duly registered under IPR laws, however, the situation is different among the emerging designers, fashion start-ups, and textile handicraft sectors.²² This segment will precisely focus on the IPR challenges specific to the fashion entrepreneurs, and traditional textile craft units in India.

Copyright v Design Registration Dilemma

Currently, designers' most sought-after intellectual property rights are Design rights and the Copyright. In a general scenario as soon the designer's original concept is supported with a medium, for instance, an illustration on paper, it will be considered an artistic work, tenable for copyright protection, and no registration is needed. But most designers are unaware of the fact that they will lose their ownership of work if reproduced more than 50 times.²³ If the design is put to commercial use, then it can be secured under the Designs Act if registered. The process of design registration is comparatively short and simple still not faster than the dynamic fashion industry where designs are copied within a week of their appearance. Copyright protection of apparel designs and fashion accessories is still not professed as a practical option by the creators.¹² It is hard to get exact data on copyright for the fashion and apparel category as all filing is registered under the category

that is "artistic work" with no further subdivisions (Fig. 1).

A blur definition of original and creative work in these IPRs is again making it difficult to understand and pursue. To have more registrations, a discrete class of fashion design must be introduced in the design definition. Awareness about the IPR must be inculcated into the education system to help young minds seek benefits from it. Moreover, the existing timelines involved in the entire registration process may also be shortened to catch up with the pace of this fast-moving fashion industry.¹²

Fast Fashion Trends Challenge the Sustainability and Creativity

The equation of the fashion industry is constantly altering with new but short-lived trends coming one after another. Lean manufacturing, swift replacement, and just-in-time delivery systems have allowed even giant fashion firms to stock new designs on an advanced basis which surely hurts creativity.⁵ Retailers are introducing subtle changes to the existing trend and reintroducing it in the market to keep the consumer engaged. This allows little to no room for designers to IPR accumulation. Fast fashion is the root cause of unsustainability and feeble intellectual protection in the fashion industry. Supplying a mimicked and cheap copy of the most-adored fashion trends as soon as possible to the consumer at a local retail store pushes the trendsetters to look for the next new thing.²⁴ Inadequacy in exercising Intellectual property protection has increased undue pressure on earth resources and exploitation of human rights.

Surfeit Design Piracy

Unlawful reproduction and distribution of original fashion designs, logos/labels are common piracy

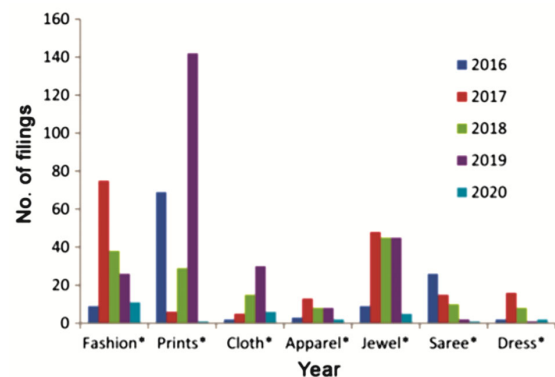


Fig. 1 — Year-wise IPR filing in different fashion-apparel category¹²

issues that happen in the fashion industry globally. Knock-offs and counterfeits are the two fashion typologies that are concerned with fashion piracy practices and are often used loosely.²⁵ Knock-offs is a similar but not exact copy of an original fashion design, made in cheap material, available at a lower price, and sold under a different label to reach the mass market. Consumers are aware that they are buying an inexpensive replica of the original product.²⁶ Counterfeit fashion merchandise is almost identical to the authentic work of the designer and is produced with the intention to cheat and persuade the buyers into purchasing the fake copy.²⁷

The protection offered under Indian fashion laws is hardly effective to protect the fashion design against stealing in the first place as the range of fashion products being counterfeit is unlimited and fashion piracy sometimes happens at such a fast pace that it can deprive the original designer of its first-mover advantage.²⁸ Designer is mostly left with the option to file an infringement case against the stealer. However, if proven guilty after a lawsuit, the defendant must pay a hefty penalty to the plaintiff.²⁶ The counterfeit apparel business has massive expansion in India owing to the mushrooming middle-class and young population that is willing to buy counterfeit branded apparel at the lowest available price.²⁹ The capital city hosts many such markets like Palika bazaar, and Sarojini market which are flooded with consumers with strong demand for counterfeit fashion products. The entry of e-commerce has further added to the complexities.³⁰ Piracy sedates the creativity of the designers and gives room to copyists to feed the short-lived fashion culture. The current fashion laws in India need a thorough inspection to combat the rising counterfeiting problem.

The Oppressed Traditional Handicraft Sector

In India, most of the high-end fashion clothing is infused with ancestral knowledge. Designers seek inspiration from our traditional inheritance.³¹ There is no specific definition for Handicrafts but they can be understood as traditional cultural expressions (TCEs) in their composition, look, and style, and can also symbolize traditional knowledge (TK) representing skills and proficiency conditioned to produce them.³² Textile handicrafts carry a cultural heritage through the use of regional motifs, coloration techniques, and design intricacies that trickled down from generation to generation.³³ But the current market practices have

exposed our traditional treasure as vulnerable to imitation, misappropriation, and other unlawful exploitation. Cheap copies undermine sales of traditional handicrafts as well as the quality reputation of original products.^{32, 33} GI has been effective in protecting certain textile crafts but there is a dire need to educate the Indian Craft communities to indulge in innovation, adaptation, and quality assurance to fight competitiveness in the global fashion market. Skilled craftspeople must extensively engage themselves in seeking the right IPR at the right time for their creation to increase their value while curtailing the jeopardies and uncertainties involved.³⁴ Strong law enforcement for malpractices must be established to preserve genuine skills and to prevent unfair competition/stealing. Schemes under IPR that provide economic incentives for innovation in the traditional textile sector must be endorsed.

Indian IPR Policy: The Road Ahead for the Fashion Industry

India has made slow but steady progress in world fashion and in the last three decades, global fashion has witnessed Indianess in fashion and apparel. Indian fashion is still profoundly influenced by cultural inheritance.⁸ Indian textiles are augmented with complex manufacturing, delicate designs, and indigenous dyeing-printing techniques that may be attributed to the unique topography of the land, and an abundance of skilled labour tied with innovative design techniques. All these have now given Indian fashion a distinct identity from the rest of the world. The field is full of creativity and extremely susceptible to piracy. In the realm of law, the existence of Fashion law is rising in India. Currently, a central governing law might be missing to cater to the fashion field specifically but the nature of activities rooted in the fashion and apparel business and its deep linkage with the environment and economy has wedged the interest of the Indian legal fraternity.³⁵

The existing fashion laws have their deficiencies and do not offer comprehensive wholesome protection to the user, but the fact that unlike in the USA and France, regulation, and implementation of fashion law in India is quite a new phenomenon, the prevailing laws are going to be amended and new laws are going to be enacted considering the input from the creators and beneficiaries of the fashion field. The Fashion Design Council of India (FDCI), a

chief unit to advocate stronger fashion laws, is proactively campaigning to revamp the position of the Indian fashion industry in the nation and overseas on sustainable grounds. It functions in collaboration with the Indian government's Textile Ministry and the Commerce & Industry Ministry. However, the administration of IPR laws to control bootlegging in fashion is further twisted with several more challenges due to a sudden boom in digital media, posing an even greater challenge to policymakers to check plagiarism. Both elite and emerging designers are facing design piracy issues due to extreme social media exposure. The road ahead is full of challenges and a strong IPR regime with a uniform code of conduct to address and rectify various issues in the Indian fashion industry is much needed. The emerging designers and local artisans should be encouraged and provided with the right guidance from the initial phase to protect their intellectual properties inch by inch.

Conclusion

IPR acquired by a country is significant for its global positioning and economic integrity. The Indian fashion industry is drawing the attention of many international partners because of its rich and rare textile heritage. The present state of IPR is facing stern contests from design piracy and copying accelerated with the new age of digital media. Existing fashion laws need necessary amendments to make them profitable for young designers, traditional craftsmen, and even top businesses. The watchfulness among the design community and manufacturers for their legal rights is an indication that IPR laws are making their impact, however, they must be reinvented, and the entire process should be made convenient for the user and stringent for the stealers.

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