

Intellectual Property in Fashion Industry

Rita Ashok Kirtishahi

Assistant Professor, M. Design & M.A (Fashion Design), Indian Institute of Food Science & Technology, Chh.Sambhajinagar (M.S.)

Abstract

Intellectual property rights protect unique designs, ideas, concepts and products from counterfeiting. Infringement of intellectual property is a loss to the company and its brand. Intellectual property rights protect intellectual property, including private brands, specifically trademarks and geographical indications. Its purpose is to promote and ensure fair competition and to protect consumers. A study on the advantages and disadvantages of intellectual property in the fashion industry Strengthening IPR in the fashion industry is crucial for fostering innovation, supporting emerging designers, and preventing unauthorized copying. A well-balanced legal approach can help protect creativity while allowing for the natural evolution of fashion trends.

Keywords: Intellectuals property, Fashion Industry

Introduction

Fashion design is a form of art dedicated to the creation of clothing and other lifestyle accessories. To work as a designer, one must possess an artistic and creative personality. Fashion designers have a good visual imagination and put their ideas into garments. Fashion designers should not only show their interest in learning new things, reading magazines, journals and books on fashion design history and new trends. They need to be aware of the fashion market requirements such as protecting their Intellectual Property (IP). IP is the result of applying your mind or intellect to create something new or original. The fashion industry is an IP intensive industry, continually generating and commercially exploiting creative ideas and innovation.

In fashion industry creativity is not only limited to the act of designing, but also includes the ad campaign and marketing of products be it high fashion or ready-to-wear to achieve the competitive edge required for success. All of this intellectual capital linked to a unique brand becomes the greatest value of a fashion enterprise. However, many businesses do not protect their IP, especially those in the fashion industry. For an industry that generates hundreds of billions of dollars every year, and which prides itself on innovation and aspiration, it has become common practice for designers to ‘steal’ ideas from each other because the IP laws are so lax. Business managers need to identify such valuable intangible assets in a timely manner, determine their business relevance, and agree on those to be protected and leveraged through the IP system.

Fashion Design and IPR

Copying is endemic in the fashion industry, but the effects are particularly acute for emerging designers for whom every sale counts. “The damage auctioned by knock-offs is twofold,” noted Gary Assim, partner and intellectual property specialist at London law firm Shoo smiths. “Firstly it robs

the designer of the proceeds from the sale of his or her product, which will often have been the result of a considerable research and development investment”. “In addition, it denies the designer the rightful recognition as the original creator.”

- **Protection:** They can stop someone else benefiting from your hard work by copying or using your textile or product without your permission; and
- **Exploitation:** They can generate revenue from your designs by allowing you to enter into licensing agreements for your designs with third parties.

IP rights are not just about protection against copying. Instead they may be viewed as performing a more subtle function, identifying the creator of content. By adopting an approach more akin to that taken within the media and entertainment industries, fashion brands can reach that next level of sophistication whereby they are strategically managing their IP rights distinctly from their commercial operations.

Intellectual property law offers a raft of rights to fashion designers. Some of these will arise automatically, such as copyright, while others require registration, such as trademarks.

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.

Trade Mark

Trademark is a word, phrase, symbol or design, or a combination of the same associated with a product or service which is used as market differentiators from similar products or services. Any product or service will always be identified with a name and logo in order to distinguish it from other similar products on the market. Designs are not the exception, as they will always bear a label distinguishing them from other creations.

These names and logos can be trademarked based on the type of products (clothing, shoes, accessories, fabrics, etc.). The slogans of advertising campaigns for each product can also be protected through trademark registration. Recently trademarks that generally do not fall within the standard categories but include marks based on visible signs (colours, shapes, moving images, and holograms) or non-visible signs (sounds, scents) considered as Non-conventional Trademarks or Non-traditional Trademarks can also be trademarked. Therefore, perfumes, fragrances and other aromatic products that play an important role within the world of fashion can also gain IP protection. Trademark law not only protects a brand's right to revenue, but also helps consumers distinguish between genuine products and counterfeit products.

Copyright

Copyright protects original artistic works. A design can be protected as an artistic work; specifically as a graphic work which includes a painting or a drawing. Textile designs may benefit from copyright protection but an actual dress (when made) does not. In this situation, it will be necessary to rely on the Designs Act 2003 for protection. Copyright protection is also likely to be available for works of

artistic craftsmanship, such as one-off fashion garments and jewellery. However, for producing or making multiple copies of items, design law should be relied rather than copyright law.

Copyright protects artistic expressions “that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” This is commonly referred to as the reparability rule, which was developed from the 1954 case of *Mazer v. Stein*. In this case, the Supreme Court ruled that Balinese statuettes that formed the bases of lamps were copyrightable because the aesthetic work (the statuette) was separable from the functional article (the lamp). Even though they could be used as lamp bases, the statuettes had their own artistic merit and could be protected as such.

With regard to copyright in fashion industry, in February 2008, Marc Jacobs was accused of plagiarizing an amateur Swedish artist named Gösta Olofsson. Who passed away in 1982, ran a petrol station in a small village and made a living by selling postcards, scarves, and other tourist paraphernalia. Marc Jacobs (or rather one of his accessories designers) ripped off the design. The matter was eventually settled outside court when Jacobs offered monetary compensation to Gösta Olofsson’s son. In this case the artistic work—Olofsson’s original painting—exists beyond and entirely separate from the utilitarian aspects of the scarf. Hence design is subject to copyright laws.

However, some cases aren’t as straightforward. It can be argued that the panthers and pansies on Givenchy t-shirts are aesthetic works that exist separate from the utilitarian function of the garment (covering the body and dressing the human form). And yet we still see countless copies! What about a flower motif rendered by sequins on a Chanel dress? Or an ornate zipper on a Balenciaga backpack? Is the zipper “artistic” enough to be considered separate from its functional purpose, or does the purpose—to open and close the bag—supersede its aesthetic character? In most cases, the courts will decide that the reparability rule does not apply to apparel because creative expression is usually inextricably tied into the functional elements of the garment.

Patent

Patents protect new technologies that are incorporated into products. Some examples of Patents include the technology used to manufacture CROCS shoes, wrinkle-free fabrics, UV-filtering textiles that are resistant to fire and water-repelling textiles.^[10] Patents are essential to the successful commercialization of inventions particularly that require large investments to complete development to the commercial stage. The artistic creations cannot be patented, so not many designers have a need for patents.

Adding devices to clothing is fast becoming a trend in this age of technology, which means patents for new devices and new methods of use for devices are an option worth considering. American designer Lauren Scott is currently adding radio frequency identification tags to her line of children’s wear. The tags have previously been used to track shipments of freight. In clothes, the tags could carry medical information in case of an accident or emergency and could also prevent abductions by triggering an alarm if a certain perimeter is breached (e.g. tags inside pyjamas could trigger readers placed at various locations in a house if the child leaves the premises).

Conclusion

In conclusion, intellectual property rights (IPR) play a significant in the fashion industry, providing both benefits and challenges. The positive effects of IPR in the fashion industry include the protection of

creativity, incentive for innovation, economic growth, prevention of counterfeiting and piracy, and opportunities for collaboration and licensing. IPR safeguards the rights of designers, encourages investment in the industry, and contributes to a vibrant and thriving fashion ecosystem.

The fashion industry invests huge sums every season to create new and original designs. Despite this significant investment, the fashion designers are reluctant in protecting their IP. However, a frequently cited explanation for not registering fashion designs is that the short product life cycle – often no more than one six-to-twelve month, season – does not justify the considerable time and financial cost involved. The arguments for registering a new design have to be considered on a case-by-case basis. Registering a design should help to deter others from copying it, and to fight unscrupulous competitors who do so. Moreover, design protection is not always a major financial burden, at least to begin with. For fashion items with a long life span, protecting the IP may be the best way to prevent others from using the design.

Reference

1. <http://www.fashion-enterprise.com/files/2010/09/CFE-IP-Copyright-Download1.pdf> on 16 th Oct, 2014
2. <http://www.lexology.com/library/detail.aspx?g=6c596a24-e79b-4d39-a73f-9837529d9a78> on 18 th Oct, 2014
3. <http://antwerpsex.wordpress.com/2013/09/03/fashion-101-intellectual-property-laws/> on 16 th Oct, 2014
4. WIPO Magazine/May-June 2005
5. <http://www.businessoffashion.com/2011/07/fashions-intellectual-property-conundrum.html> on 18 th Oct, 2014
6. <http://www.businessoffashion.com/2011/07/fashions-intellectual-property-conundrum.html> as viewed on 20th October, 2014
7. <https://antwerpsex.wordpress.com/2013/09/03/fashion-101-intellectual-property-laws/>
8. <http://www.lexology.com/library/detail.aspx?g=6c596a24-e79b-4d39-a73f-9837529d9a78>
9. <http://www.wipo.int/edocs/lexdocs/laws/en/au/au332en.pdf> as on 21st October, 2014
10. http://www.wipo.int/export/sites/www/sme/en/documents/guides/customization/stitch_in_time_pa.pdf as on 29th October, 2014
11. http://www.wipo.int/wipo_magazine/en/2005/03/article_0009.html as on 29th October,
12. WIPO Magazine/May-June 2005
13. http://www.wipo.int/wipo_magazine/en/2005/03/article_0009.html
14. <https://www.altacit.com/ip-management/ipr-in-fashion-industry/>