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Intellectual Property Rights: Crucial for Fashion Industry

NAMAN PRIYADARSHI¹

ABSTRACT

Intellectual Property Rights are a set of rights that provide and protect creators for their creation for a stipulated period of time. It consists of trademark, patents, copyrights and trade secrets. On the other hand, Fashion industry is an emerging sector which is responsible for setting up new trends, changing the perspective of viewers. Fashion Industry consist of clothing, shoes, bags, jewellery and much more. Every year, Fashion industry comes up with new design and products. Thus, it is important to safeguard these products and ideas in order to get its original owners, the respect and benefits, they hope for. The researcher in this paper has tried to explain two very famous concepts, Intellectual Property Rights and Fashion Industry, which are very much prevalent in and around the country. The researcher has tried to focus on the idea that IPR and Fashion industry are complementary to each other. Many different concepts of IPR like patent and trademark protect the components of Fashion Industry and will play even greater part in future via Job Opportunities and Indian economy. Along with popular and recent case laws, the author has also presented conclusion to this article.

I. INTRODUCTION

Technology and fashion are both fickle in nature. They change frequently and drastically in no time. The Fashion industry is an emerging and upcoming industry which consists of new ideas and original products. The Fashion industry is not only restricted to clothing but to a variety of brands and trendy shoes, bags, accessories and the list goes on.

Intellectual Property Rights are a set of rights that provide and protect creators for their creation for a stipulated period of time². Intellectual Property Rights (“IPR”) contains numerous types of intellectual properties like copyright, trademarks, and patents to name a few and all of them have a relation with respect to Fashion Industry.

IPR serves an important role in Fashion Industry. The Fashion industry is coming up with new

¹ Author is a student at Symbiosis Law School, Hyderabad, India.

² Ministry of commerce and Industry, *Vision and mission*, Intellectual Property India, (Jan 20 2021, 11:01 AM), <https://www.ipindia.gov.in>.

designs and products. The IPR greatly impacts the industry by protecting the original work of designers and manufacturers. Without IPR, it will be difficult to protect and safeguard these ideas and creations of the creators, and they will not get the special attention and benefits that one would hope for. When a creator's work or creations are plagiarized, all customers and potential innovators would be at a grave loss. If it is brought to the notice that a product is available in another shop with a massive price difference, this will without a doubt eradicate the competition among the two sellers. Likewise, if one cannot protect the same, no innovator, developer or designer can come forward to showcase their creation. It is important to note that Fashion Industry is an important contributor to the world economy and will adversely affect if not protected via IPR.³ Ultimately, it will lead to vanishing world's fashion business and a downfall will be observed in the economy as well.

The IPR has a crucial role to play in order to defend products from plagiarism or being copied and to safeguard the fashion world. Only when protection is provided to the innovators or creators for their work and from being copied, then only will the fashion industry will flourish in its true sense. There are 3 forms of IPR that can and have proven to be incredibly useful for the apparel tsector in question. There are copyrights, trademark and patents.

II. FASHION AND TRADEMARK

Trademark is a vital part of IPR which protects logos, signs, symbols, brand names, images, and quotes.⁴ It distinguishes between the original and the copied work. An authentic and original work will guarantee quality and certification from manufacturing units. However, there have been cases where big brands have copied the trademark of smaller brands and fought over theft of a trademark. One of the well-known instances is the case of ***Romag Fasteners, Inc. v. Fossil, Inc.***⁵ Romag, a nutshell company in USA gained attention in a shot span of time after it filed a trademark and patent violation against a big brand in watches, Fossil. A trademark is usually used to perceive the interest and attention of the customers as the products are unique and new in concepts. Though they have a limited role in logos and symbols, many creators and designers in India, often use trademark protections instead of designs and patents. The reason behind this is that fashion patents are hard to get and brands will go to any limit to protect their product. Moreover, the advantage of Trademark is that they are cheaper, convenient, and saves time of the innovators and fashion designers. One has to fill the e-trademark application of

³ Sandeep Raghuvanshi, *Fast fashion industry wants cheap, disposable & trendy clothes, but it comes at a price*, The Economic Times, (Jan21 2021,9:00 AM), <https://economictimes.indiatimes.com>.

⁴ Suneeth Katarki , Aditi Verma Thakur, Harshitha Vasanth, *India: Brand Logos – To Trademark Or Copyright*, Mondaq.com, (Jan21 2021,10:30AM), <https://www.mondaq.com>.

⁵ Romag Fasteners, Inc. v. Fossil, Inc., August 9, 2017, Dyk, T.

Trademark Registry on Intellectual Property India website under Trademark Act to get his/her products registered for the very same⁶.

III. FASHION AND COPYRIGHT

Copyright refers to the legal right of the ownership of intellectual property. In simpler terms, copyright is the right to copy⁷. This ensures that the only the one with the sole right to replicate the work are the actual producers of goods and those to whom they grant permission Copyright includes all the artistic, pattern, musical, and literary work.⁸ The fashion industry is the industry where the creation of an artist is deeply respected and recognition is paid to the artist for the work. Therefore, it becomes important that the creation of the artist is safeguarded and hence, his/her work is provided the protection under copyright laws. In India, the **section 2(c) of the Copyright Act, 1957**, which defines artistic work as a painting, sculpture, drawing, an engraving photograph, work of architecture, or any other work of artistic craftsmanship⁹. However, in the Fashion Industry case, the clothes, Shoes, or any other product related to the fashion industry cannot be provided the protection under this act but only the artistic design or architecture can be protected. In case of *Unicolors, Inc. v. Urban Outfitters, Inc.*,¹⁰ The court stated that the print pattern in a woman's dress can be copyrighted and hence, if any company, copies the design or pattern, will face an infringement suit. This means that a print pattern in clothes or certain designs in shoes can only be copyrighted. Generally, duration of copyright is the lifetime of the author or artist, and 60 years counted from the year following the death of the author.¹¹

IV. FASHION INDUSTRY AND PATENTS

A patent is a property right issued by a government authority allowing the holder exclusive rights to the invention for a certain period of time. There are three types of patents: utility patents, plant patents, and design patents. This grant means that the creator has the legal right to eliminate others from selling, making or using the invention for a fixed period of time¹². But to get patents, the product has to be novel, useful, and innovative. It should be an absolute new invention and creation. But when we say try to associate fashion industry with that of patent, it turns out that they cannot be linked because artistic creations are not inventions just

⁶ Trademark Registry, Intellectual Property India, (Jan 21 2021, 11:30), <https://ipindiaonline.gov.in>.

⁷ Will Kenton, *Copyright*, Investopedia.com, (Jan 21 2021, 11:45), <https://www.investopedia.com>.

⁸ The Copyright (Amendment) Act, 1992, No. 14, Acts of Parliament, 1992 (India)

⁹ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

¹⁰ *Unicolors, Inc. v. Urban Outfitters, Inc.*, April 3, 2017, Orrick, H.

¹¹ Vijay Pal Dalmia, *India: Copyright Law In India*, Mondaq, (Jan 21 2021, 12:01), <https://www.mondaq.com>.

¹² Will Kenton, *Patent*, Investopedia.com, (Jan 21 2021, 12:15), <https://www.investopedia.com>

new creations. A pair of shoes cannot be patented if we never had one, but the design in the shoes is not a novel creation and hence, it will not be counted under patents. Moreover, Patents are generally offered in the manufacturing and technology sector due to immense research and investment thus, patents are expensive. Moreover, fashion is a variable, and getting patents every year will not serve the purpose and will not be feasible. Thus, Patents may not be the best option when considering Fashion Industry¹³.

Although getting patent over accessories present in the fashion industry is a tough call, there are cases where patent violation in relation to fashion industry has happened in the past. One such case is of ***NIKE, Inc. v. SKECHERS USA.***¹⁴ In this case Nike Inc. filed a Patent infringement Lawsuit against Skechers USA, claiming that Skechers's Skech-Air Jumpin'Dots and Mega shoes used a footwear cushioning invention that was originally developed by Nike. This was Nike's 4th lawsuit for Patent violation against Skechers. Before the mentioned lawsuit, Nike also claimed VaporMax and Air Max 270 designs as being copied by Skechers. In the line of fashion industry, such accusations are considered to be serious and grave in nature.

V. CONCLUSION

After globalization and liberalization, the fashion industry has constantly shown us an upward growth and is expected to become a major contributor in the Nation's economy. According to *Business of Fashion* (BoF) Report, there is an economic growth observed in Asia, specifically in India which indicates towards powerful manufacturing sector and talented Designers. The country's GDP is expected to grow 8% from 2018 to 2022. Over the same period, India's middle class is expected to grow by 1.4 percent a year, outpacing China, Mexico, and Brazil. As a result, India is set to evolve from an increasingly important sourcing hub into one of the most attractive consumer markets outside the Western world.¹⁵ Thus, it is the duty of the government to protect and apply stringent laws in order to avoid any plagiarism or copy in the creations and innovations. There is also now, more than ever important to enforce fashion laws in India which describes and safeguards the designers for their products and accessories. The owners of the product also play a vital part and have to remain alert all the time. In case their product is being copied, the owner or his designated agent of any copyright can give notice in writing to the Commissioner of Customs, or to any other officer authorized in this behalf by

¹³ Aisha Amjad, *IP and Business: Intellectual Property in the Fashion Industry*, WIPO MAGAZINE, (Jan 21 01:10PM), <https://www.wipo.int>.

¹⁴ Angela P. Tam, *Scuffed Chucks: Converse's Scuffle, the Federal Circuit's Overstep, and the Court's Stance on Trademark Infringement*, 40 LOY. L.A. ENT. L. REV. 203 (2019).

¹⁵ Imran Amed, Anita Balchandani, Marco Beltrami, Achim Berg, Saskia Hedrich, Felix Rölkens, India's ascent could change the fashion industry, McKinsey&Company, (Jan 21 2021, 1:19), <https://www.mckinsey.com>.

the Central Board of excise and Customs. In the years ahead, India is expected to gain more outsourcing and more brand-owned stores with Indian partners. It is expected that strong economic growth, increase in manufacturing sector, and growing tech-savvy will converge to make the nation the next major global fashion and apparel opportunity. It means, The Indian market can be the next big hope.

So, now there is even more protection and guarantee is required by the government and laws. Eradication of plagiarised products is difficult but not impossible. If it is protected in a correct manner, violation of IPR will be next to impossible.
