
THREADS OF PROTECTION NAVIGATING MORAL RIGHTS AND INTELLECTUAL PROPERTY IN FASHION INNOVATION

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ABSTRACT

The purpose of this research paper is to critically analyze the junction between fashion law, IPR, and moral rights in India, explaining why the current legal structure lacks the ability to safeguard fashion designs properly. Objectives include discussing existing IPR frameworks, researching applicability of moral rights, and finally proposing actionable solutions for further improvement in designer protections. This study, through the doctrinal approach, reviews current legislation and case law with a comparative analysis with jurisdictions like the European Union.

Major lacunae persist in the Indian IPR framework, especially concerning the "useful articles" doctrine, which denies full copyright protection over fashion designs. The paper sets up the role of moral rights, like the right of attribution and integrity, for the protection of the designer's reputation and creative work. Lastly, it seeks sui generis legislation, specific to the industry of fashion, which would guarantee full protection and strengthen the mechanism of enforcement. The paper argues for changes in the law that reinforce IPR protections and further enhance public awareness with respect to the value of original designs. All these challenges addressed will enable the research to nurture a more balanced, equitable, and sustainable industry in fashion, one which is respectful of the creator's rights.

The evolving landscape of fashion law, securing intellectual property rights (IPR) for designers has become essential to protect creative innovation within the industry. Moral rights, a subset of IPR, play a crucial role in maintaining the integrity and authorship of fashion designs, especially in a competitive market where rapid replication can dilute originality. Copyright protection, though limited for fashion in many jurisdictions, is increasingly recognized as a valuable tool for safeguarding designer reputations and ensuring due credit. In India, where the fashion industry is rapidly expanding, the legal framework around designer protections remains in development, balancing traditional design norms with modern IP standards. Indian law currently provides copyright protection for registered designs, yet

gaps persist, particularly in enforcing moral rights within fashion. Through improved awareness and legal reforms, India can pave the way for robust protections that honor both the economic and moral dimensions of fashion innovation.

Keywords: Fashion law, intellectual property rights, Moral rights, useful articles, attribution, integrity and authorship.

1. Introduction

The intersection of fashion law, intellectual property rights, and moral rights in India presents a complex and evolving landscape that reflects unique challenges and opportunities in the fashion industry. As the fashion industry is one of the fastest-growing sectors in the global economy and one that is most followed, the Indian fashion industry contributes significantly to economic growth and also creativity and cultural expression among the citizens globally. But the rapid growth of innovation and of the digital platforms have boosted the issues related to the protection of original designs and the enforcement of intellectual property rights thereby making it crucial to explore the legal frameworks that govern this flamboyant field.

Intellectual property law includes a range of protections like copyrights, trademarks, and patents, which are vital for safeguarding the creative and innovative outputs of fashion developers and designers. In India, the existing IPR statute has been vastly criticized for its inadequacy in governing the specific needs of the fashion industry like the "useful articles" doctrine, which although limits the copyright protection only to functional items, presents a significant challenge for designers who are seeking to protect their artistic work. This limitation leads to an over reliance on trademark protection, which although is more accessible but does not fully cover the creative aspects of the fashion designs. And as a result, many of these designers become vulnerable to imitation and piracy, which undermines their project's costs, benefits and the creative value placed on an artist's work.

Moral rights, which mostly emphasize the personal and reputational interests of creators, is another critical aspect of fashion law in today's world which needs recognition in the fashion law. These rights, which include the right of attribution and the right to integrity, are particularly relevant in an industry where the designer's identity is entangled with the brand itself and are not given enough importance in IPR. However, the recognition and enforcement of moral rights in India remain limited which in turn leaves many designers without adequate legal recourse against unauthorized reproduction of their work. The lack of solid moral rights

protections not only does affect individual designers but also for the cultural and ethical dimensions of fashion, as it raises questions about authenticity, ownership, and the value of creative labor.

Moreover, the global nature of the fashion industry complicates the proper application of IPR and moral rights as their different jurisdictions offer different levels of protection. For instance, while the European Union has established complete IP protections, India's legal framework lags in creating an even playing field for designers operating in a global market and locally. This difference highlights the urgent need for a more firm, strong and responsive legal framework that would adapt to fast speed changes in the fashion industry and will provide adequate protections for designers at all levels.

Taking into consideration these challenges and problems, this research paper aims to critically analyze the intersection of fashion law, IPR, and moral rights in India by exploring the current legal framework and identifying the key areas for reform and creation. By examining case studies, legislative developments, and scholarly discourse, this paper will propose actionable solutions to enhance the protection of designers' rights while fostering a more equitable and sustainable fashion industry. Ultimately, the goal is to contribute to the ongoing conversations from a long time surrounding the fashion law in India and its implications for intellectual property and moral rights thereby paving the way for a more just and supportive environment for all stakeholders involved in the fashion ecosystem.

1.1. Research objective

1. Examining the current legal framework of intellectual property rights in India which is effective in safeguarding fashion designs and the challenges faced by fashion designers in securing their rights.
2. Investigating the applicability and relevance of moral rights- the rights of attribution and integrity in the fashion industry and how it could protect the designer's work and reputation.
3. Analyzing the drawbacks in the existing legal framework for the protection of the fashion designers.
4. Compare the protections that intellectual property rights and moral rights have in India

with those of the legal framework that is followed in other jurisdictions, especially the European Union, to further strengthen the Indian laws that would ensure protection for the fashion designer and the artistic work.

5. Analyze how the advancement in technology over the years influenced the making and distribution of counterfeit goods and techniques that can help regulate them effectively.
6. It also recommends the development and improvement of legal reforms for protection of the rights of the fashion designer in India.

1.2. Research question

1. What are the specific drawbacks in the existing legal framework in India that hinders the protection of the fashion designers?
2. How do moral rights- the rights of attribution and integrity apply in the fashion industry, and also how it could protect the designer's work and reputation?
3. In what ways can the legal framework of India be reformed to effectively protect the artistic works of fashion designers?
4. How does the global landscape of intellectual property rights affect Indian fashion designers, particularly counterfeiting and imitation?
5. How do these advancements in technology impact the production and distribution of counterfeit goods and how can the current legal framework adapt to the technological challenges?
6. Which best practices from other jurisdictions, such as the European Union, can be adopted to strengthen the protection of fashion designs and moral rights in India?

2. Literature Review

2.1. Fashion And Authors' Moral Rights

Heidi Härkönen,- Fashion and Authors' Moral Rights, Volume 73, No. 5, May 2024, Pages 406–420, Published by- , *GRUR International*

This article talks about the moral rights of the authors which is not a popular topic in the legal literature concerning copyrights and works of applied art. Here, the author has classified work into pure art and works of applied art. He defined works of applied art as works of combined artistic character and utilitarian purpose, which is one of the disputed categories of works. The Article 6 of Berne Convention gives authors the right of attribution (authors right to be recognised) and integrity (protect the authors interest) and Article 27(2) of Universal Declaration of Human Rights states that everyone has the right to protection of moral and material interests of the author. The article also mentions the Monistic theory which views moral and economic rights as a whole and Dualistic theory which perceives moral and economic rights as two separate and independent rights.¹

The conflict of moral rights and fashion industry is due to the notion of authorship, reserved positions of designers, existence of copyrights to apply to the item or not, and ultra capitalistic sector where moral and personal rights are entangled. The article mentions that the fashion industry often neglects to give credit especially to those designers without fame and also that protecting authors' work from alterations is challenging due to lack of laws.

The article proposed solutions for fashion designers like including designers name on labels, tags or online products, the need for clearer legislations and evolution of fashion industry's culture and practices.

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The author misses to mention the potential for tailored legal reforms or specialized intellectual property frameworks that cater to the unique intersections of commercial exploitation and artistic integrity in fashion.

2.2. Role Of Intellectual Property Law In The Fashion Industry

Poorvi Singh Chaudhary & Udiksha Chhikara,-Role Of Intellectual Property Law In The Fashion Industry, Volume iii Issue ii, 2021, Published By- *Indian Journal Of Law And*

¹ Heidi Härkönen,- Fashion and Authors' Moral Rights, Volume 73, No. 5, May 2024, Pages 406–420, Published by- , GRUR International <https://academic.oup.com/grurint/article/73/5/406/7642377#448270290>

Legal Research²

The article deals with the role of Intellectual property (IP) law in the Fashion industry. The authors consider the issues of IP regarding the fragile nature of fashion designers, which are quite susceptible to imitation and piracy. Through the article, an outline is given to show what aspects of the law will be applied regarding copyrights, trademarks, patents, designs, and geographical indications within the apparel industry as they relate to IP and their importance to encourage creation and protect economic interests among designers.

The authors go into the details of copyright law such as section 13 which includes original literary, dramatic, musical, and artistic works, section 2(c) Definition of "artistic work", and section 22 defines terms of copyright in published literary, dramatic, musical, and artistic works pertaining to fashion, outlining the limitations and the necessity of registration under the Designs Act for artistic works under section 15 which states special provision regarding copyright in designs registered or capable of being registered under the Designs Act, 1911. The article also looks into trademark protection, relevance of patents in the fashion industry and the importance of geographical indications for traditional fashion products to protect the distinctiveness of products associated with a particular region.

In this regard, there is a call for fashion designers to be aware of the intellectual property protections available and strive hard to acquire them in order to protect what they create. The authors mention some positives from the legislative and judicial institutions that are involved in the protection of rights in the fashion industry, such as lawmakers and courts' efforts, but at the same time, they acknowledge that much more will be required to ensure acceptable safeguards for the fashion industries.

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The lack of legal knowledge of IP protections by fashion designers often leads to failure in protecting one's work from imitation and piracy because it is too expensive and cumbersome to register and enforce an IP.

² Poorvi Singh Chaudhary & Udiksha Chhikara, Role Of Intellectual Property Law In The Fashion Industry, Volume iii Issue ii, 2021, Published By- Indian Journal Of Law And Legal <https://heinonline.org/HOL/LandingPage?handle=hein.journals/injlaw3&div=326&id=&page=>

2.3. The Most Fascinating Kind Of Art: Fashion Design Protection As A Moral Right

Katelyn N. Andrews, The Most Fascinating Kind Of Art: Fashion Design Protection As A Moral Right, Volume II No. 1, Fall 2012, Published By- New York University Journal Of Intellectual Property And Entertainment Law ³

The article highlights the comprehensive analysis of the debate surrounding the extension of copyright protection to fashion designs. The author argues that while there have been legislative efforts to include fashion under copyright laws, such as the Innovative Design Protection Act of 2012, these initiatives have not gained substantial traction. The primary reason for the push for copyright protection in fashion is not economic, as the industry thrives without it, but rather a moral one as the designers view their work as art and feel a sense of moral harm when their designs are copied.

The author further examines the economic arguments for and against fashion copyright, including the first-mover advantage and the quality of copies, which are insufficient to justify a change in the current legal framework. The author also explores the relationship between fashion and art, highlighting the increasing overlap between the two, with fashion designers being celebrated as artists and collaborating with contemporary artists. It discusses the display of fashion in museums and the conceptual nature of modern fashion shows, which further blur the lines between fashion and art. The author suggests that the debate over fashion copyright should shift to a discussion of moral rights, which are more concerned with reputational harms than economic ones. The research paper points out that visual art receives special moral rights protection under the Visual Artists Rights Act of 1990, and argues that if fashion is to be protected, it should be under a similar moral rights framework rather than an economic one.

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Fashion is displayed in museums and often merges with contemporary art, legal frameworks still primarily treat it as a functional rather than artistic industry. The question of whether fashion design should be reclassified legally as an art form is underexplored.

³ Katelyn N. Andrews, *The Most Fascinating Kind Of Art: Fashion Design Protection As A Moral Right, Volume II No. 1, Fall 2012, Published By- New York University Journal Of Intellectual Property And Entertainment Law* <https://heinonline.org/HOL/LandingPage?handle=hein.journals/nyuinpe2&div=8&id=&page=>

2.4. The Sartorial Dilemma Of Knockoffs: Protecting Moral Rights Without Disturbing The Fashion Dynamic

Margaret E. Wade, The Sartorial Dilemma Of Knockoffs: Protecting Moral Rights Without Disturbing The Fashion Dynamic, Volume 96, 2011, Published By- Minn.L.Rev.⁴

This paper explores the nature of fashion piracy, its current state of protection or lack thereof for designers using intellectual property, and potential legislation to reform the basis of copyright law on that of fashion designs. Through this, it argues that any extension of the Copyright Act to include fashion designs into the act is untenable and instead suggests that with certification or collective marks one can balance moral rights benefits of copying. It presents a major industry issue by making designers attempt to keep their original ideas from being stolen and consequently sold cheaper which is- Fashion piracy.

While considering the current state of affairs in regard to the intellectual properties protection offered to the fashion designers, such as trademarks, trade dress, patents, trade secrets, and copyrights, a legal analysis will be made in the paper. It also reviews the proposed legislations, Design Piracy Prohibition Act (DPPA) and Innovative Design Protection and Piracy Prevention Act (IDPPPA), and its influence on the industry. The author finds that though there is a need to protect the moral rights of fashion designers, especially the new ones, the proposed legislation could lead to adverse consequences such as increased litigation, higher costs for consumers, and a reduction in the variety of clothing styles available. It appears that there must be a certification or collective mark system since the protection of rights to attribution would no longer disturb the dynamic of the fashion industry.

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Emerging designers often lack the resources to secure extensive IP protections. Wade proposes moral rights as essential for these designers, but alternative, cost-effective legal mechanisms remain underexplored.

⁴ Margaret E. Wade, The Sartorial Dilemma Of Knockoffs: Protecting Moral Rights Without Disturbing The Fashion Dynamic, Volume 96, 2011, Published By- Minn.L.Rev. https://heinonline-org-christuniversityncr.knimbus.com/HOL/Page?public=true&handle=hein.journals/mnlr96&div=11&start_page=336&collection=usjournals&set_as_cursor=0&men_tab=srchresults

2.5. Tailoring Copyright To Protect Artists: Why The United States Needs More Elasticity In Its Protection For Fashion Designs

Robin M. Nagel, Tailoring Copyright To Protect Artists: Why The United States Needs More Elasticity In Its Protection For Fashion Designs, Volume 54:635, 2020 , Published By University Of Richmond Law Review ⁵

This research paper discusses the inadequacy of current U.S. copyright laws in protecting fashion designs, which gets classified as "useful articles" and thus ineligible for copyright protection. The paper outlines the historical context of copyright law in the U.S., noting its initial exclusion of fashion designs and the lack of development in copyright law to keep pace with the fashion industry's evolution. The author employs a legal analysis approach, examining the current state of copyright law in the U.S., the historical attempts to include fashion design protections, and the potential legal theories for change. It also discusses the moral rights framework in European copyright law and its implications for fashion design protection. The author suggests expanding moral rights protections, either by broadening VARA or reinstating the original Title II of the 1976 Act, could provide the necessary legal framework to safeguard fashion designs. The paper also states that the U.S. needs to update its copyright laws to better protect fashion designs, both to fulfill its obligations under the Berne Convention and to support the growth and innovation of the fashion industry. It recommends a shift towards a more elastic copyright framework that includes moral rights protections for fashion designs.

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The Author discusses the lack of legal protections for fashion designs and the need for designers to innovate to avoid copying, but does not include how these legal limitations might actually foster creativity and innovation within the industry.

3. Research Methodology

The paper will be based on the interaction of fashion law, intellectual property rights, and moral

⁵ Robin M. Nagel, *Tailoring Copyright To Protect Artists: Why The United States Needs More Elasticity In Its Protection For Fashion Designs*, Volume 54:635, 2020 , Published By University Of Richmond Law Review https://heinonline-org-christuniversityncr.knimbus.com/HOL/Page?collection=usjournals&handle=hein.journals/urich54&id=684&men_tab=srchresults

rights using a doctrinal methodology for research. This research methodology will involve a very thorough review of current legislation and case law and the current legal frameworks that are germane to fashion law, while being empathic on the rights defense of designers and how moral values are applied in the fashion business. It explores the weakness and incoherence of the legal structure in place for designers relating to IPR issues in relation to rights of attribution and integrity by conducting a study of the normative foundation of IPR and moral rights.

In addition, a comparative analysis of the protection afforded by moral rights in the respective legal systems would be carried out, giving particular attention to the European Union's position about moral rights in the garment industry. Best practices and potential developments that India, among others, may make to enhance the rights of fashion designers will be represented in this paper. The study will also explore how the moral rights interpreted in the Nordic nations might shed light on how these rights are applied in the fashion industry, specifically in relation to the balance between the rights of writers and business interests.

Using this mixture of doctrinal and comparative methodological approaches, the present study will endeavor to make an in-depth analysis on the integration of fashion law, rights of intellectual property, and moral rights. It aims toward creating a proper legal framework which protects the creative works as well as designers engaged in the industry.

4. The Importance of Intellectual Property Rights in Fashion

There is no doubt the world of fashion requires Intellectual Property Rights as legalistic protection is indispensable to the dignity and value of artistic creation. Intellectual Property Rights, or IPR, represents copyrights, trademarks, and patents which come in handy while protecting the original creation from the unauthorized replication of copies.

Copyright Laws

- These safeguard the right to protect the artistic creation or designs, be it of a fashion garment or accessory. Under Section 2(c) of the Copyright Act of 1957, it is specifically stated that any painting, drawing, and even statue can fall under this section and receive copyright protection so that their rights are solely exercised by the original creator.
- In the case of *Unicolor, Inc. v. Urban Outfitters, Inc.*, the court decided that a lady's dress print pattern should be eligible for copyright; hence if any firm were to reproduce

the pattern, they would be liable for infringing copyrights. Such a case explains why the fashion industry requires copyright: to protect artistic works which are unique in the creative world.

- Nevertheless, it is crucial to understand that copyright laws in the fashion sector only cover creative patterns rather than the actual garments or items. This issue was brought to light in the *Ritika Apparels v. BIBA* case, in which a fashion brand copied designs from another company. BIBA escaped accountability by exploiting a loophole in Section 15(2) of the Copyright Act, which specifies that if an unregistered creation eligible for design law protection has been replicated over fifty times, its copyright is forfeited. This demonstrates the obstacles that designers encounter when trying to adequately safeguard their creations within existing copyright regulations.

Trademarks

- Trademarks are important in the prevention of dilution of brand identity and confusion of consumers as regards the source of a product. According to Section 2(zb) of the Trademark Act of 1999, a trademark may consist of any word, name, symbol, or color combination that distinguishes one man's goods from another man's. For example, the distinctive Gucci GG logo distinguishes Gucci products from other brands' products. Trademark protection helps preserve the reputation of brands, which benefits fashion companies in valuable ways.
- The case of *Romag Fasteners, Inc. v. Fossil, Inc.*, as a representative case, reveals the role of trademark law in the fashion industry. In this instance, the court discussed matters concerning trademark dilution and safeguarding brand identity. It emphasized the right of famous trademark owners to take legal action against any product that harms or diminishes the uniqueness of the trademark. Fashion brands rely on this legal framework to protect their reputation and market position.

Patents

- Patents provide safety for creative styles and practical features of fashion products. Patents are given for innovations that help the public and may involve new methods to create products like shoes and fabrics. Three types of patents exist: utility patents,

plant patents, and design patents. Design patents offer safeguarding for 14 years starting from the filing date, whereas utility patents have a duration of 20 years.

- There have been significant instances of patent protection within the fashion sector, including Louis Vuitton receiving six design patents in 2016. Yet, the applicability of patents in the fashion sector is frequently doubted, as original designs may not always be categorized as innovations. For instance, a shoe design might not be eligible for a patent if it does not include a distinctive novelty. The complexities of enforcing patent law are emphasized by this restriction.

The copyrights, trademarks, and patents are crucial for safeguarding the fashion industry's creative works and brand identities. Cases like *Unicolor, Inc. v. Urban Outfitters, Inc.* and *Ritika Apparels v. BIBA*, highlight the complexities of copyright protection, whereas cases like *Romag Fasteners, Inc. v. Fossil, Inc.* underscore the significance of brand identity. Moreover, patents offer a way to safeguard creative designs, but their usefulness in the fashion industry is still up for discussion. In general, a strong IPR framework is essential for encouraging innovation and maintaining the financial sustainability of the fashion sector.

5. Fashion Piracy: Knockoffs vs. Counterfeits

There are two distinct forms of fashion piracy: knockoffs and counterfeits, and both hold different legal definitions and consequences.

Knockoffs are virtually identical to original designs that are sold under other brands for generally lower prices. Although not illegal, they could cause problems of confusion among customers and legal action if proved to be deceptive. Knockoffs are not necessarily against the law because they do not infringe on trademarks or copyrights unless they are so identical that they are likely to confuse the public about the origin of the product. If the counterfeit product appears to be an original design and may even cause confusion in some consumers' minds, one would seek legal action to rectify the situation.

The Forever 21 scenario highlights the issues that counterfeit items bring to the fashion industry. Luxury brands have filed countless lawsuits against the retailer because of the designs it manufactures, which are almost a copy of the original works of luxury fashion

houses. Since this is not strictly illegal, it can still prompt a legal battle because of customer confusion, and brands look to protect their image as well as market position.

A copy of the authentic product of equivalent quality is produced to defeat the trademark of the design owner. Counterfeiting has led to huge legal suits in courts, forcing big companies to spend millions of money as legal fees to protect the designs. Since counterfeiting is covered under trademarks, the legal aspect would be more defined. For instance, in the United States, the Lanham Act allows a brand to sue the counterfeiters, have them cease selling their products, and recover the compensation.

Notable incidents, like the ones with Chanel, Coach, and Gucci, demonstrate the severe outcomes of counterfeit goods. These companies have effectively taken legal action in multi-million dollar lawsuits against counterfeiters, proving that the legal system acknowledges the damage caused by fake products. The significant financial losses from counterfeit products have a major impact on these brands, damaging both their profits and reputation with consumers.

Although knockoffs may not be strictly against the law, they have the potential to cause confusion among consumers and result in legal issues. Fakes, on the other hand, are a direct breach of trademark regulations and have led to notable legal measures from top fashion companies. Understanding the legal landscape and the challenges designers face in protecting their intellectual property is important due to the difference between these two types of fashion piracy.

6. Current Legal Framework and Its Deficiencies

The current legal framework for Intellectual Property Rights governing the fashion industry in India is full of inconsistency and inadequacy, which has led to quite a few obstacles for designers and brands. The jurisdictional standards of protection in different jurisdictions are applied at varying levels to fashion creations, thus creating a fractured landscape that complicates enforcement and generates market uncertainty. Most jurisdictions categorize fashion designs as "useful articles," which would exclude them from copyright and make them subject to trademark, trade dress, and design patent law, each with its own set of limitations and applicability issues. Trade dress, for instance, covers the overall appearance of a product

but demands a high level of "secondary meaning" to enforce, attainable only by established brands.

Although design patents are available, their lengthy application process makes them unworkable in the rapidly changing world of fashion, where trends come and go overnight. Furthermore, the limited term and narrow scope of protection provided by a design patent do not satisfy the need for ongoing flexible protections appropriate to the fleeting nature of fashion. In contrast, Community Design Rights in the European Union provide more protection for fashion designs. This includes automatic short-term protections for unregistered designs and optional long-term protection for registered ones. The approach is more elastic than that found in U.S. law, which puts a spotlight on the legal disparities between regions.

This patchwork of laws complicates enforcement for the designer who wishes to preserve his creations around the world, and it undermines its economic interests by creating a context that is prone to design piracy and counterfeiting. A harmonized IPR framework is necessary for effective uniform protection as well as for making sure that the creative investments from designers and brands are protected and for encouraging innovation and competition within the global fashion market.

6.1. Inconsistent Protection Across Jurisdictions

The international legal framework of IPRs for the fashion industry has huge variability with other jurisdictions, as very varied approaches are being followed to cover the protection of fashion designs. In the case of the European Union, an excellent amount of protection can be obtained for the protection of fashion IPR through legal mechanisms like the Community Design Regulation (EC) No. 6/2002.⁶ This regulation gives two layers of protection to both registered and unregistered designs, thus allowing fashion designs to be protected against illegal reproduction and imitation for as long as 25 years in the case of registered designs. It also allows unregistered designs to be granted automatic protection for three years, thereby answering the demands of the fashion industry regarding the urgency of protection needed to meet seasonal trends and market demands. The approach of the United States is narrower

⁶ Angeline Stephanie, *Fashion and IP Rights: The Overlap of Art and Law, Anthology* (2023), <https://ojs.uph.edu/index.php/Anthology/article/view/6687>.

because its legal system focuses more on functionality of an article rather than the design or aesthetic appeal.

The most fashion designs under the U.S. Copyright Act of 1976 do fall out of copyright eligibility because they are classified as "useful articles," and their design elements can be separable and not functional. This exclusion means designers cannot rely on alternative forms of protection, such as the costly, time-intensive acquisition of design patents out of sync with the speedy turn of the fashion cycles, and trademark and trade dress protections offer limited recourse and require a showing of distinctiveness and, in the case of trade dress, of secondary meaning, which are more difficult to establish especially among emerging designers. Such IPR regimes divergence leads to a fragmentary legal landscape for fashion brands around the world, causing these brands to face complex and inconsistent standards that often prove an obstacle to comprehensive enforcement. Thus, designers and brands are at a heightened risk of counterfeiting and design piracy in countries with less protective frameworks; this is why there's a need for a harmonized approach to fashion IPR, which ensures effective protection and equitable enforcement in international markets.

6.2 Deficiencies in Current IP Laws

The present Intellectual Property (IP) regime fails to give the much-needed protection to fashion designs mainly because of the fast speed of the production cycles in modern times and because of the culture of fast fashion that has spread over. IP laws as of now are unable to keep pace with the rapid advancement of technology that facilitates instantaneous copying of designs from runways. Hence, identical copies of haute couture pieces hit the retail level, often at a discounted

price, even before the original designs are made available to the public. The speedy process of copying degrades the value of original designs, erodes the competitive advantage of designers, and strangles innovation in the fashion industry due to reduced incentive to invest in unique designs.

The case of Burberry Ltd. v. Euro Moda, Inc. exemplifies the significant legal hurdles that established designers face in protecting their proprietary designs. Burberry sought litigation to protect its checkered pattern against a discount retailer, Euro Moda, from replicating the iconic design. The court's decision in this case highlighted the inherent limitations within the

current legal framework, demonstrating the significant difficulties in enforcing design rights against knockoffs and counterfeits. The result of this reflects a deeper problem in the IP law, which is how the protection of visual designs is still limited and inconsistent; specifically, it is inadequate when the design is not protected by a specific patent or registered trademark.

Even further, the legal ineffectiveness is augmented by an unnecessarily high burden of proof against designers. They should not only prove ownership of the design but also that the imitation is likely to cause consumer confusion or misappropriation of goodwill. Such requirements are hard to meet in high-turnover fashion items and distinctive designs that may not satisfy strict requirements of trademark or copyright standards. Therefore, the lack of this robust legal framework for design protection in the face of fast trends underscores the need for a reform. For the protection of the creative integrity of fashion and the economic sustainability of the industry, a greater security mechanism is needed than mere consideration of the impermanence of fashion and the impact caused by instant, unauthorized copying.

6.3 Globalization and Enforcement Challenges

With regards to globalization, it brings much complexity in the way Intellectual Property Rights (IPR) are enforced, hence providing an opportunity for counterfeit and pirated goods to thrive with almost negligible legal repercussions. As clearly shown, the flexibility to find jurisdictions with weak IP enforcement or poor protections results in the growth of centers that manufacture counterfeit products, produce fake goods, and sell them to other countries with impunity. This reality underscores an urgent need for comprehensive international standards and effective enforcement mechanisms that will protect designers' rights and reduce the economic and reputational damage inflicted by counterfeits and other unauthorized copies.

The TRIPS Agreement, concluded under the auspices of the WTO, was intended to address such concerns by setting forth minimum standards for IP protection and enforcement by member countries. However, while providing an important framework, the effectiveness of TRIPS is severely sidetracked by unevenly enforced practices at the national levels that lead to an inequality of protection across different jurisdictions. For example, because of lack of infrastructure and other resources, some countries do not enforce TRIPS obligations at the proper level; this is leading to significant gaps in IPR enforcement related to fashion at a global level.

To say the least, it looks to member countries to actually implement and enforce their unique IP laws. The pattern of enforcing standards will tend to leave some jurisdictions holding higher levels of IP protections than others. Such inconsistent patterns will lessen the effective strength of TRIPS; designers have to deal with differently protected territories and therefore see weaker legal predictability and added barriers to defend the designs overseas. Conclusion Finally, international cooperation in the IP standards coupled with the enforceability is a prerequisite towards uniformity in making a law framework that would ensure the prevention of infringement and avail the design owners of guaranteed recourse.

6.4 Need for a Unified Approach

In a world of rapid product turnover, strong competition, and a completely globalized supply chain, the concerns of the fashion industry about the protection of IPR are more important. The existing frameworks on IPR are fractured between jurisdictions, which cannot respond to the specific demands of this sector. These deficits call for better policies to IPR protection that values creativity in original fashion design while bringing out the grand perspective of social, moral, and environmental concerns embodied with clothing production. Protection and safeguarding the innovations at an international level for such a harmonized legal frame would not only improve effectiveness in the protection accorded to the designers but will also encourage fair and balanced competition that leads to environmentally and morally sustainable practices at each step of the whole industrial cycle.

Frameworks need to be developed such that they are reflective of a larger role for the fashion industry in society, its impacts on labor standards, and environmental sustainability rather than just focusing on protection through design. All of these aspects, placed within the fabric of IPR law, would aid in developing a more responsible fashion industry with incentives towards ethical production practices and innovation.

Global cooperation between the jurisdictions will be necessary in order to achieve harmonization. ⁷Uniform standards for protection in design, combined with proper cross-border enforcement mechanisms, will reduce the danger of counterfeiting and infringement. Moreover, uniform policies on IPR will have the effect of promoting more legal certainty for

⁷ *Fashion and IPR Laws in India*, *Fashion Law Journal*, <https://fashionlawjournal.com/fashion-and-ipr-laws-in-india/>

border crossing designers and brands while reducing enforcement costs, bringing access to remedies for infringement even closer to uniformity.

This would mean that the current legal structure for IPR in the fashion industry is riddled with acute incongruities and inadequacies, for the varying levels of protection across jurisdictions are unable to keep pace with the fast-moving cycles and pressures of globalization. A unified, robust IPR framework adapted to the needs of the industry will protect the rights of designers and spur innovation, ethical practices, and sustainable growth. The gaps, therefore, are imperative to be addressed in fostering a balanced and competitive ecosystem in the fashion industry.

7. The Role of Moral Rights

The very fundamental rights that protect the designer's reputation and that personal connection between creators and their works are the right of attribution and the right of integrity. Right to authorship: guarantees credit for original works; right of integrity: safeguards designers against misleading uses or alterations to their work and can thus damage reputation. When copying is done at high speed and imitation seems to be all-pervasive, these rights become an important tool for safeguarding the authenticity and value of a designer's creative contribution.

This would greatly strengthen designers' positions in the industry, according to the paper. Once their rights of morals are protected, control over the presentation and association of the works shall rest with them, leading to a stronger culture of respect for original designs. This is particularly relevant in the fashion industry, where designs are often copied by third parties before the original products have even had a chance to penetrate the market, thereby reducing their uniqueness and economic value. Without sufficient moral rights, designers find it extremely difficult to prevent misattribution or unauthorized alterations that may water down the effect of their work or communicate a false impression of their creative intent.

A more robust moral rights framework would not only help protect designers' reputational interests but also contribute towards a more respectful and soundly ethical industry. The recognition of these rights in the fashion industry would prevent such exploitative practices, allow for innovation, and originality. Finally, the protection of moral rights would promote an environment where designers could contribute confidently to the industry's creative

landscape without the fear of misappropriation or reputational harm, thus reinforcing both individual and collective respect for intellectual and artistic contributions.

7.1. Right of Attribution

Right of attribution is, therefore, an important moral right that allows the author to have recognition formally granted to him or her as the creator of work. This right is very vital in fashion because attribution helps in proving the personal and professional identity of the designer and ensures appropriate credit is given for their creative contributions. Under the droit moral, rights of attribution, as discussed in the paper, encompasses a number of rights that include rights of the designer to lay claim over the assignment of credits,⁸ to claim authorship in times of a dispute, and also the right to maintain anonymity if desired. Internationally, Article 6bis of the Berne Convention provides protection for such rights, which states that authors have the right to claim authorship of the works without affecting their economical rights, and thus assures the recognition is separate from commercial exploitation of the work.

In the fashion context, however, the right to attribution is still not efficiently exercised, and customary usage regularly violates designers' efforts to gain proper credit. While there is legal structure in support of rights in attribution, the speedy nature of the fashion industry, particularly the sometimes collaborative processes used in creating fashion products, can mean that designers may not receive proper credit for their work. This situation, aside from devaluing designers' reputations, also hurts the creative integrity of the process, for it chases originality and innovation away. The fact that designers are not well recognized automatically goes on to compromise their ability to build a unique professional profile and, by extension, realize upward career progression.

The paper has underlined that unless there is an effective exercise of attribution rights, designers are prone to plagiarism and loss of artistic individuality. In strengthening such rights in the fashion world, it would affirm a culture of respect for intellectual and artistic contributions and set a standard for an ethical industry toward the proper crediting of creators' intellectual and artistic contributions in preserving personal integrity and professional integrity.

⁸ *Application of IPR to the Indian Fashion Industry and Its Flaws: A Legal Study*, Aequivic Blog, <https://www.aequivic.in/post/application-of-ipr-to-the-indian-fashion-industry-and-its-flaws-a-legal-study>

7.2. Right of Integrity

The right of integrity is a basic moral right wherein the authors may exercise to maintain the integrity of the work by assuring the presentation of it in form and context envisioned. Its relevance in fashion is strong because any changes in design can easily change the original aesthetic vision of the creator of the piece. The paper identifies the three key dimensions of the right of integrity in regard to fashion: altering a work, when it is reproduced or copied, modifications to the original piece itself, and the display or use of a design in an unsuitable or degrading context. These activities undermine the artistic vision of the designer and can cause reputational damage, thereby influencing the economic interests of the designer.

The right to integrity is important for designers as it enables them to safeguard their creative output from distortion that can misrepresent the brand identity or the artistic message. If there is an industry where branding and originality⁹ are of particular importance, then the explicit impact on the work of a designer can be as much about commercial value as artistic value in terms of intent in expression. When these designs are altered or misrepresented, this can go to affect the overall sense of quality and originality in a designer's product, thus tolling economically at the level of the designer and possible credibility within the market.

Although the scope of the right of integrity in fashion design may seem narrow, it should not prevent its enforceability. The extension of protection to embrace fashion designs would not improperly interfere with legitimate commercial practices since it essentially guards only against unauthorized changes and abuses that dilute the author's intent. Therefore, the correct use of the right of integrity in fashion would neither only protect the reputation of designers but also enhance and authenticate the value of those works, thus creating more ethical and artistically respected industries.

7.3. Legal Precedents and Implications

The paper refers to several legal cases and frameworks which illustrate the application of moral rights in the fashion industry. For instance, the CJEU judgment in C-145/10 *Eva-Maria Painer v Standard VerlagsGmbH* illustrates the importance of moral rights in protecting the

⁹ Fashion & IP, C&C Intellectual Property, <https://www.candcip.com/fashion--ip>

reputation of authors. This case proves that the recognition of moral rights of authors is necessary even in sectors where economic rights are given prominence.

This paper, however, also suggests that the conflict between moral and economic rights is real and present, especially when contractual agreements are involved. The paper suggests that the attempts by the holders of economic rights to limit the scope of the moral rights should not invalidate the fundamental rights of the authors. Instead, the paper further submits that a legal framework, in this case, one where the moral rights of the designers supersede all other interests, is necessary and sufficient for the recognition of the value and respect given to the contributions of designers.

Finally, higher rights protection can contribute much toward elevation¹⁰ in the name of respect for originals in positive connotation in fashion design: a respect that may protect an imbalanced setting with the right to attribution and the right to integrity being viewed as tools through which one may balance a little on these aspects. Hope those principles of respect play fundamental roles in the domain of aesthetics.

8. Challenges in the Fashion Industry

1. **Weak Intellectual Property Protection:** The current system has a very weak and wanting intellectual property law regime; therefore, it offers a protection of fashion items that is far from predictable. Appropriate and poorly enforced IP laws in different jurisdictions result in a patchwork of protections for designers against piracy and counterfeiting.
2. **Labor Standards and Rights:** The fashion industry has long been criticized for its terrible labor standards, especially towards the treatment of models and workers in the supply chain. Models have the most minimal employment rights and agencies that do not support them often make it hard for them to recover payment. Factory workers in developing countries are also at low wages and working under the worst conditions, especially concerning fast fashion.
3. **Global supply networks:** Because the apparel industry is so highly globalized, it operates on a system of very complex separate networks of entities. In such complex networks, labor standards and human rights obligations are very difficult to adhere to. Frequently,

¹⁰ Malaurie Vignal, Blockchain, Intellectual Property, and Fashion, Semantic Scholar, <https://www.semanticscholar.org/paper/Blockchain%2C-intellectual-property-and-fashion-Malaurie-Vignal/f8acf194bd89a53f24085a1fb751c61a954ba50c>

retailers disavow the practices of their suppliers, making it difficult to hold them accountable for labor abuse.

4. Sustainability Issues: The fashion sector is subject to tremendous pressure relating to its sustainability. For this, it is for the simple reason that the current fast-fashion business model of this industry subjects it to a requirement more for high production and consumption before ethics can prevail. This is also detrimental in labor conditions ¹¹but at worse causes degrading the environment. Legislate now, with need for immediate change through legal reforms of the above.

5. Moral Rights and Attribution: Moral rights, particularly the right of attribution, are not applied in the fashion industry. Most designers, especially the less popular ones, do not get credited for their work. The industry turns some designers into "stars," while others' efforts are never recognized, thus contradicting the basis of authorship and creativity.

9. Findings

The findings are as follows:

1. Intellectual Property Rights in Fashion: The research paper stresses the need for intellectual property rights in fashion. It brings out a case of legal disputes under design infringement as seen with *Ritika Private Limited v Biba Apparels Private Limited* (2016). From the text, it follows that even though trademarks are cheap to protect and easier in use, designers have to turn to them due to lack of a strong fashion-specific legal framework.

2. Labour Standards Issues: The report deals with a widespread problem of low labor standards in the global fashion supply chain. Developed countries have strict labor legislation, whereas many developing nations do not have standard standards that make workers, especially women and children, victims of exploitation. A major example of legal protections for workers in the fashion industry is the Rana Plaza disaster.

3. CSR: CSR practices have begun to be seen by larger fashion companies. Reportedly all the top twenty-five companies are either practicing CSR reports or codes. The growing

¹¹ Henning Grosse Ruse-Khan, *Revisiting the Relationship Between IP and Investment Law: Insights from the New German Model BIT*, 73 *GRUR Int'l* 406 (2024), <https://academic.oup.com/grurint/article/73/5/406/7642377448270290>.

awareness about ethics and sustainability in the industry makes clear that though fast fashion had contradictions in this context still, the trend continues steadily.

4. **Legal Reforms on Labor Conditions:** The need for legal and non-legal reforms is highlighted in order to address the issue of labor conditions in the fashion supply chain. It includes thorough monitoring of supply chains, traceability of raw materials, conducting due diligence in identifying human rights violations, and children who are taken out from the labor process being given opportunities to be educated.

5. **Transparency and Stakeholder Engagement:** The apparel industry should gain transparency regarding the practices, in part for the reason that making available to the public these core kinds of information would potentially be an improvement to the incentives for accountability that transparency will bring. As such one of the institutions WRC praises in aiding openness and labor accountability on all its work sites among its apparel factories.

6. **Consumer Demand and Labor Standards:** This study's findings indicate that promoting consumer demand for ethically produced apparel is a potential leverage for improving labor standards. The existence of fair labor products in the marketplace can communicate to consumers the importance of ethical practices, influence purchase decisions, and motivate companies to adopt better labor standards.

This calls for the necessity of stronger legal safeguards for fashion designs, better labor conditions in supply chains, and corporate responsibility and consumer alertness on the way toward a more ethical fashion industry.

10. Recommendations for Legal Reforms

The paper suggests the following legal reforms to further safeguard fashion designs and moral rights:

1. Sui Generis Legislation

Legislation specifically to be enacted for the fashion industry that will afford comprehensive protections to designs. This would entail the establishment of a specific legal regime that considers the artistic and commercial value of fashion designs, similar to the Innovative Design Protection Act (IDPA) of 2012. Such legislation would be copyright-like but for fashion

designs alone and would correct the existing gap under the "useful articles" doctrine that currently limits protection to the functional rather than aesthetic value of fashion designs. The need for this reform is underscored by the inconsistent IP laws across jurisdictions, as highlighted by Professor Andrew Beckerman-Rodau, who notes that the arbitrary approach to fashion protection creates unpredictability for designers.

2. Better Enforcement Mechanisms

Improve the enforcement of Intellectual Property Rights (IPR) through dedicated agencies and international cooperation. With a patchwork of IP laws around the world and varying degrees of enforcement, it's challenging for the fashion industry to safeguard its designs. For instance, the European Union offers a higher level of IP protection than does the U.S., where protection is limited. Strengthening enforcement mechanisms can include the formation of specific IP enforcement agencies that work in collaboration with international bodies to fight against counterfeiting and allow designers to protect their designs across borders. The Burberry Ltd. v. The Euro Moda, Inc. case is an example of how established designers are unable to preserve their signature designs, making it all the more imperative to have effective enforcement strategies.

3. Public Awareness Campaigns

Educate consumers on the value of supporting original designs and the consequences of counterfeiting. Public awareness campaigns can help create a culture that promotes originality and creativity in fashion. They can help consumers change their behavior in purchasing counterfeit goods by making them aware of the ethical implications. Such reported economic loss in counterfeiting by the European Commission calls for education of a consumer to reduce the demand for counterfeit products. An awareness of the moral right also helps to cultivate respect for the work and the effort of designers.

In addition, these legal reforms bring about significant changes in providing protection to fashion designs as well as moral rights which will lead to a sustainable and equitable fashion industry.

11. Result

The research highlights significant deficiencies in the current legal framework governing

intellectual property rights (IPR) in the fashion industry, particularly in the United States, where fashion designs are often classified as "useful articles,"¹² rendering them ineligible for copyright protection. This classification leads to an over-reliance on trademark protections, which do not adequately cover the creative aspects of fashion designs, leaving designers vulnerable to imitation and piracy. The paper emphasizes the need for a more robust legal framework, suggesting that the establishment of sui generis legislation tailored specifically for the fashion industry could provide comprehensive protections for designs.

Furthermore, the research underscores the importance of moral rights, particularly the right of attribution and integrity, in safeguarding designers' reputations and creative contributions. The lack of enforcement of these rights can lead to significant reputational harm for designers, as they often do not receive proper credit for their work. The findings advocate for legal reforms that not only strengthen IPR protections but also promote public awareness about the value of original designs, thereby fostering a more equitable and sustainable fashion industry.

The paper argues that the current IPR framework is characterized by inconsistencies and inadequacies, particularly regarding the protection of fashion designs. The proposed reforms aim to create a more equitable environment that encourages innovation and respects the rights of creators, ultimately contributing to the sustainability and ethical practices within the fashion industry.

12. Conclusion

With respect to the fashion industry, a critical juncture looms ahead with heavy threats from piracy and counterfeiting. Strengthening IPR protections and augmenting moral rights are absolutely vital for protecting the creative efforts of designers. Upon adoption of the legal reforms outlined above, the fashion industry will be able to support a more balanced and sustainable business environment that fosters creativity and honors the rights of creators.

The fashion industry now stands at the crossroads with an endemic and constant threat of piracy and counterfeiting undermining painstaking efforts and creativity. In this respect, while being

¹² Shayal Anand, *Legal Aspects of Fashion and IP*, *Int'l J. Res. & Analytical Rev.*, <https://www.ijrar.org/papers/IJRARTH00216.pdf>

an indispensable component of the fashion law framework, IPR is seriously wanting on many counts that exposes a number of designers to exploitation. As this article shows, present legal protections are generally frivolous and far from sufficient, in particular in the United States where aesthetic functionality overrules the area of protection for fashion designs.

To address these challenges, one needs to strengthen IPR protections¹³ and enhance moral rights for designers. The institution of sui generis legislation specifically tailored for the fashion industry would provide a wide-ranging legal framework that gives due recognition to the fashion industry as both an art form and a commercial undertaking. Strengthening moral rights, especially the right of attribution, would ensure that designers are accorded proper recognition for their creative contribution to fashion and, by extension, cultivate a culture of respect and appreciation for originality in fashion.

In addition, the suggested law reforms should bring more efficient mechanisms of enforcement and campaigns that raise public awareness about issues of counterfeiting and the value of real designs. Educating the consumer on the ethical nature of his purchasing decisions will develop an informed and responsible consuming market that will support original creators. Adopting these proposed legal reforms, the fashion industry will create an environment that is both equal and sustainable to foster creativity while respecting the rights of creators. On this basis, change must begin for the future of fashion-an industry that has always evolved and remained lively and exciting.

¹³ Anuradha B. Reddy, *Fashion Law: A Legal Perspective on Indian Fashion Industry*, 3 *Indian J.L. & Tech.* __ (year unavailable), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/injlw3&div=326&id=&page=>.