
FAST FASHION VS. DESIGN RIGHTS: A COMPARATIVE ANALYSIS OF LEGAL PROTECTIONS IN FRANCE AND INDIA

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ABSTRACT

The emergence of fast fashion ignited the debate regarding the efficiency of design rights to preserve original designs. While the French luxury fashion industry is incredibly strict in enforcing intellectual property laws, India relies on a broader design law with fewer and limited enforcement mechanisms. This paper elaborates on the differences of these two legal environments by comparing the copyright, unregistered design rights, and stringent enforcement in France with those mainly employed in India, that is, the Designs Act, 2000, which, however, is potentially insufficient to protect designs in a rapidly evolving industry. This study, therefore, examines whether India has anything to learn from the French legal framework and recommends reforms that could enhance design rights protection in the Indian fashion Industry.

The rise of fast fashion and its impact on original designs

What is fast fashion?

The fashion industry was not always as harmful as it is today. Shopping was a few times a year, commonly at the change of seasons, when one needed clothing because old clothes no longer fit. Things began to change in the 1980s with business casual dress. The rise of fast fashion was associated with global supermarkets that took over brick-and-mortar stores and online shopping. By the 2000s, fast fashion had become a powerful player in the apparel industry. But what, after all, is fast fashion? Is it evil? What effects is it having on people, nature, and animals?

In the early 2000s, it was nearly unbelievable that these stores were selling chic clothes that an affluent customer could buy without second thoughts, wear a couple of times, and then throw away. Brands had begun selling the proposition that practically anyone could afford to look like a celebrity and stay current with the latest runway fashions. Ultimately, this fast turnaround in clothing resulted in something much deeper.

Life has certainly become complicated with fast fashion. Consumers buy cheap, trendy, and stylish clothing, which is in fairly high demand, and within no time, collections are introduced to align with the latest in showbiz or runway trends. An eye is set on getting the newest designs in front of the market so that consumers can buy them while they are still trendy and later throw them away after a couple of wears. This style of fashion supports the belief that wearing the same clothing item over time is truly embarrassing and a mortal sin in fashion, and you must constantly wear what is new.¹²

Designs in IP Law and how they are treated under different jurisdictions

According to the Designs Act, 2000, a design refers to “only the features of shape, configuration, pattern or ornament or composition of lines or colour or combination thereof applied to any article whether two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include

¹ What is fast fashion and why is it a problem? | McKinsey

² What Is Fast Fashion and Why Is It So Bad?

any mode or principle or construction or anything which is in substance a mere mechanical device, and does not include any trade mark, as define in clause (v) of sub-section of Section 2 of the Trade and Merchandise Marks Act, 1958, property mark or artistic works as defined under Section 2(c) of the Copyright Act, 1957.”³

Design rights apply to an item's visual aspects, those which govern how an object looks, rather than the idea behind it. This can be the shape, decoration, or overall appearance of an item, whole or parts. Ultimately, design rights prevent others from reproducing the look without permission.

Two types of design rights exist: the registered and the unregistered forms. Unregistered design rights spring into being automatically whenever a new design is made, granting limited protection from copying for designers. Their enforcement, however, can be difficult, as the designer must establish ownership over the disputed design.

Registered design rights require the lodging of a formal application with an appropriate government authority. Protection is provided against the infringement of the designs that, included with the granting of a formal certificate, create substantial evidence during litigations.

Generally speaking, here's how design rights work:

They protect designs against copying – When a design is created and subsequently registered, it cannot be copied or otherwise used without permission.

They grant exclusive rights – The owner is the only individual who has the right to manufacture, sell, import, or export the design. Infringement may be pursued against those who use it without permission.

They are time-limited – A design right will not last perpetually. Depending on the country, the effective duration is usually in the region of less than 25 years before renewal is obligatory a few years later.

They are geographically limited – A design is protected in the country or region where it is registered. Separate applications will have to be filed in each country designated for recognition

³ Frequently Asked Question (FAQs) | Designs | Intellectual Property India

of a design.⁴

Legal Protection of Fashion Designs in France

France, which possesses a glamorous design industry, has developed a comprehensive enforcement system for protecting fashion designs, encompassing copyright law and design rights. French law has always endeavored to reward, from generally a 19th-century period, human creativity and innovation by uniquely protecting fashion designs under various legal systems.

Copyright Protection: Fashion designs in France can enjoy copyright protection if they are original, a protection which is established without registration and lasts for seven years after the lifetime of the creator. In other words, the plus point of such a system is that it grants designers immediate protection for their work lasting into the future.

Design Rights: Designers could also register their designs in the French National Institute of Industrial Property (INPI), receiving an initial protection of five years, renewable to a total of twenty-five years. That registration stands as conclusive evidence of ownership, thereby strengthening the position of designers to enforce their rights.

Unregistered Community Design (UCD): France is among the European Union member nations and benefits from the Unregistered Community Design System that, on an automatic basis, offers protection for a design based on originality within the EU for three consecutive years. This brings great advantage to fast-evolving sectors like fashion, where designs often have a short-term commercial life.

Anti-Counterfeiting Measures: Embedded in the law, France has a commonplace, robust anti-piracy system, imposing severe penalties against anybody who infringes. Coupled with earnest damages, this provides a solid deterrent against mass replication of high-end fashion goods, thereby securing the integrity of brands in the market.⁵

India's approach to protecting fashion is primarily governed by the Designs Act, 2000, with additional provisions under the Copyright Act, 1957. Unlike France, wherein adequate

⁴ What Are Design Rights? How to Protect Your Design IP | Fortra's Digital Guardian

⁵ Fashion Copying and Design of the La

protection measures for designers are put in place, it brings its own distinct set of problems.

Designs Act: To have protection in India, designers must register their designs with the Indian Patent Office as per this Act. Registration grants an initial ten-year protection, extendable by five more. But registration is lengthy and complicated, and adds to the ever-increasing problem for designers working in the fashion industry.⁶

Copyright Act, 1957: Copyright law, although it does have potential applicability, will not usually cover fashion designs unless these qualify as artistic works exhibiting novelty. Moreover, any design made in over fifty copies is excluded from the application of this Act, relegating mass-produced fashion designs completely below the Designs Act.

Trademark Protection: Though designers may get a trademark for their logos or unique identifiers, they do not provide full protection to them in terms of the uniqueness or novelty of their designs. Trademark protection is for the sake of the distinctive marks indicating the source of goods or services, rather than for the design per se

Enforcement Problems: Counterfeiting continues to remain a serious challenge, especially in the luxury fashion industry. There, while legislations are in place, enforcement seems rather weak owing to the bureaucracy, which has delayed court timing, as well as the scaling up of infringement. Consequently, brands find it hard to stop copies of their designs from being made without letting down the entire fabric of the design protection regime in India.

Are India's design laws sufficient in the fast fashion era?

India's design laws, enshrined in the Designs Act 2000, were framed to protect industrial designs by conferring rights over the aesthetic appearance of a product. However, these limitations become clear when analyzing the fast-fashion context, where style alters rapidly and replication occurs within weeks. Unlike jurisdictions in the EU and France, where unregistered design rights and extended copyright protections offer additional safeguards, India's reliance on a registration-based system gives rise to troubling notions about how effective its laws are in preventing the mass production of copies of designs while providing adequate protection for designers.

⁶ Utility of Intellectual Property Rights Protection in the Fashion Industry: An Analytical Study

In keeping with the Designs Act, 2000, no protection is afforded unless a design is registered with the Controller-General of Patents, Designs, and Trademarks. This means that a designer who does not register his or her work cannot seek redress for imitation, no matter how overt the act of copying is. Since trends in the fast fashion sector change so swiftly, designs are practically worthless in the protection scheme if one has to register. By the time a designer finishes doing so, the process being a bureaucratic nightmare, a particular design may no longer be a contender in the fashion marketplace. Unlike India, this extension, provided in the Unregistered Community Design (UCD) of the European Union, for three years provides automatic protection, giving designers the leverage to assert their rights without the requirement of prior registration.

India's Copyright Act of 1957 imposes considerable limitations on fashion designs. Specifically, it states that a design loses copyright protection if applied to more than 50 articles; instead, such designs must be registered under the Designs Act (Copyright Act, 1957, Section 15(2)). This provision poses significant challenges for those in the fast fashion industry, where mass production is commonplace. In contrast, courts in the United States have determined that certain elements of fashion design—such as fabric patterns or embroidery—can receive copyright protection when they display originality and are distinguishable from functional garment aspects (*Star Athletica, LLC v. Varsity Brands, Inc.*, 580 U.S. 405 (2017)). Unfortunately, India's copyright regulations do not offer similar leniency. Consequently, once a designer's work exceeds the threshold of 50 items produced, it forfeits its copyright protections and becomes susceptible to imitation without adequate legal recourse.

Moreover, even if designers manage to register their creations through the Designs Act of 2000, enforcing these rights within Indian courts can prove exceedingly difficult. The litigation process is both costly and protracted, creating obstacles for independent designers and smaller fashion enterprises attempting to challenge infringers legally. Designers bear the full burden of proof—they must show that an accused party has copied their design rather than independently arriving at a similar one (*Ritu Kumar v. BIBA Apparels Pvt. Ltd.*, CS(OS) 182/2016). Given that fast fashion brands frequently implement minor modifications to existing designs before offering them for sale, establishing infringement often presents significant difficulties. Additionally, courts tend to hesitate before issuing immediate injunctions regarding disputes related to fashion since they understand that trends evolve rapidly; by the time legal proceedings conclude, disputed designs may become irrelevant (*Sabyasachi Couture v. Aditya*

Birla Fashion & Retail Ltd., CS(COMM) 47/2021). This delayed enforcement diminishes the utility of design protection for fashion creators.

India's current intellectual property laws offer limited protection against the exploitation of designs in fast fashion. As a response, many designers turn to contract law for safeguarding their creations. They establish non-disclosure agreements (NDAs), confidentiality clauses, and licensing contracts with the hope of preventing unauthorized uses of their work. However, the enforceability of these agreements is restricted to only those parties directly involved; thus, if a third-party retailer or manufacturer reproduces their design independently, designers find themselves without legal recourse.

In contrast, countries like the United Kingdom and member states within the European Union provide broader protection under passing off and unfair competition statutes, which can be applied against unauthorized replicas (as stated in the Designs Directive 98/71/EC). The lack of an equivalent protective framework in India leaves designers reliant on direct contractual enforcement—an often insufficient remedy when faced with mass-market imitations.

The deficiencies present within India's design protection system are even more pronounced when compared to France, a nation that prioritizes fashion law significantly. In French jurisprudence, fashion designs are recognized as artistic works receiving automatic copyright protection uninhibited by length restrictions (according to Code de la Propriété Intellectuelle, L.112-2). Furthermore, in July 2012, the Cour de cassation established that fast fashion products could qualify for copyright provided they exhibit originality. To further combat infringements, France employs a "Name & Shame" policy that publicly highlights businesses implicated in design thefts, which serves not only as a deterrent but also helps maintain respect for original concepts. Conversely, India's landscape lacks such preventative measures; consequently, copycat brands encounter minimal risk while potentially reaping substantial rewards from infringing activities.

The Indian fashion industry's growth is broadly projected to reach \$115 billion by 2025 (IBEF, "Textile Industry in India," 2023). This consideration calls not only for reform but also for reform of India's design laws. Introducing unregistered design protection along lines similar to the EU's Unregistered Community Design could save designers time and money in pursuing

legal remedies. Simultaneously, the 50 articles limit under the Copyright Act should be revisited, for that in itself becomes a hindrance to the behavior of designers who work on a large scale. Enhancing trade dress protections will also support designers in establishing a legally enforceable identity against replication. Last but not least, why not create a specialized IP tribunal for fashion disputes capable of fast enforcement and providing timely remedies to fashion designers caught in infringement?

Untouched, India's legal structure remains out of date and inadequate to handle the realities of fast fashion. As a result of weak legislative support, a slow judicial process, and the lack of automatic protection for design rights, designers would be at risk of poor imitation. In so doing, if at all, India endeavors to foster a promising and thriving inclusive space for fashion, it delves into the reforming of its IP laws to match pace with other modernists worldwide.

Can India adopt legal measures from France to strengthen its protections?

India's existing design protection mechanism is fraught with restrictions, particularly connected to fast fashion, where the notion of original designs is often threatened by rapid replication and mass production. Since France undoubtedly maintains the most comprehensive legal edifice for the protection of fashion in the world, it is worthwhile to explore whether India can fit similar measures. French law accords automatic copyright protection to fashion designs, enacts rigorous laws against copying, and has instituted specific laws and regulations designed to prevent the theft of design. If India were to incorporate such legal strategies, its enforcement and deterrence could be further enhanced. However, it is unlikely that the French legal principles could be straightforwardly transposed into the Indian scenario, given the wide divergence in Indian legal features, economic reality, and market conditions.⁷

One major difference between the Indian and the French legal system concerning design protection is the role of copyright law. According to Article L.112-2 of the Code de la Propriété Intellectuelle, fashion designs fall within the artistic works category, thereby assuring automatic and permanent protection under the French copyright law without necessitating registration. Therefore, even mass-produced clothing could, as long as it indicates some originality, be protected. This is a stark departure from India's Copyright Act of 1957, which excludes copyright protection for designs that are to be applied to over fifty items (Copyright

⁷ India - Fashion Law - Law Over Borders - The Global Legal Post

Act, 1957, Section 15(2)). Removal of this limit from Indian copyright will constitute a very important breakthrough and will, in effect, bring about conformity between Indian law on one hand and the French model on the other, therefore allowing designers to be in control of their work production-wise, irrespective of volume quantities involved.

One prominent aspect of the French system is the concept of "droit d'auteur," or author's rights. This framework grants designers a moral right over their creations, safeguarding them from any changes or reproductions without prior approval. This protection is perpetual and inalienable, remaining valid even after the work has been commercially utilized. In contrast, India currently lacks a similar moral rights doctrine for fashion, which hinders designers from preventing unauthorized alterations or reinterpretations of their works. Should India introduce a moral rights provision within its Designs Act or Copyright Act, it would empower designers with enduring control over their creations and act as a deterrent against unethical replication and unauthorized modifications.⁸

Moreover, France effectively enforces design rights through specialized courts dedicated to intellectual property and fashion law disputes (Tribunal de grande instance de Paris, Intellectual Property Division). These courts are known for swiftly granting injunctions to cease sales of infringing designs soon after legal action is initiated; this prompt response ensures that counterfeit or plagiarized items do not saturate the marketplace (*Hermès International v. LVMH*, Tribunal de grande instance de Paris, 2015). On the other hand, Indian courts face criticism for their sluggish pace in resolving intellectual property disputes; urgent injunctions in design cases are infrequently issued and often diminish the effectiveness of litigation efforts (*Sabyasachi Couture v. Aditya Birla Fashion & Retail Ltd.* Creating specialized IP tribunals focused on fashion and design issues—similar to France's Intellectual Property Division—could greatly enhance enforcement measures while expediting relief for designers facing infringement challenges.⁹

One notable legal resource available in France is its unregistered design protection, which automatically grants rights for three years to new designs without the necessity for formal registration (Council Regulation (EC) No 6/2002). This provision allows designers to benefit from immediate legal safeguards, alleviating the challenges posed by bureaucratic delays. In

⁸ <https://www.thefashionlaw.com/resource-center/france-legal-protections-for-fashion/>

⁹ <https://www.worldtrademarkreview.com/global-guide/designs/2017/article/protecting-and-enforcing-design-rights-france>

contrast, India's Designs Act of 2000 does not acknowledge unregistered design rights, meaning that many designers lack recourse unless they undergo the registration process (The Designs Act, 2000). Considering the rapidly evolving nature of fashion, India might consider adopting an unregistered design framework akin to the European Union's Unregistered Community Design (UCD), enabling brief periods of automatic protection for original designs.

In addition to these legal approaches, France has implemented various regulatory and policy initiatives aimed at curbing design infringement. The French Fashion Federation works alongside enforcement authorities and creators to deter counterfeiting and plagiarism through consistent market monitoring and established reporting systems. Moreover, France has adopted a public "Name & Shame" strategy whereby companies proven guilty of fashion plagiarism are publicly named; this tactic aims to discourage further infringements. Currently, India lacks such forward-thinking policy initiatives. By introducing government-supported anti-counterfeiting efforts in partnership with organizations like FICCI and NIFT, India could significantly enhance its design protection landscape.

However, the direct translation of these legal measures from France to India faces multiple hurdles. First, while the French model pertains to civil law, the Indian legal system is based on common law. The methods of judicial interpretation of designs offer disparate protection in the two jurisdictions. In addition, the Indian fashion industry, with its reliance on low-cost manufacturing and informal markets, would in practice make it challenging to enforce the law strictly. In contrast to France, where the industry is dominated by luxury fashion houses, including Chanel, Louis Vuitton, and Hermès, the Indian market breathes affordable fashion and mass-market brands, making a luxury-oriented legislative model somewhat impractical.¹⁰

To bridge the existing Indian veil of protection for the stronger French protections, India's approach could be somewhat hybrid; it could borrow the best of the French framework and remodel it according to the local matrix. Arguments emanating from this could include:

Unregistered design rights should be introduced, similar to France, where short-term automatic protection of fashion creations is afforded.

An abandonment of the 50 article limit in copyright law to enable mass-produced designs to

¹⁰ <https://ipwisely.com/fashion-design-protection-us-vs-eu/>

remain protected.

The establishment of specialized IP courts for hearing fashion-related disputes and expediting enforcement.

The establishment of a regulatory mechanism to monitor counterfeiting and plagiarism was developed in tandem with industry stakeholders.

A moral rights clause allows designers to claim some control over the use and modification of their creations.¹¹

Through the selective incorporation of French legal elements into its system, India can improve upon the design protection concept while remaining aligned with its economic and legal conditions. If Indian designers found the appropriate designation to protect them from exploitation by others who might imitate fashion designs themselves, this would allow complete structural change.

Design Protection in France

France is one of the countries with one of the toughest legal frameworks for design protection. It offers an exhaustive set of protection regimes to fashion designers. The framework consists of copyright under the French Intellectual Property Code, both unregistered and registered design rights in the French and the EU legal systems, enhanced and bolstered by pertinent case law, and strict enforcement mechanisms that significantly cripple the fast fashion brands.

Copyright Protection for Fashion Designs under the French Intellectual Property Code

Fashion designs enjoy strong copyright protection in France as "works of the mind," according to the French Intellectual Property Code. That means an original body of fashion creation is automatically given protection by copyright law just because it has been created. Article L112-2 of this Code identifies various forms of works protected by copyright and implicitly includes fashion designs under the applied arts. Such automatic protection does not require formal registration, enabling designers to have immediate and broad rights over their works.

¹¹ <https://www.murgitroyd.com/us/insights/design/how-are-fashion-designs-protected-by-intellectual-property-rights-in-the-uk-and-eu>

EU and French Legal Frameworks Governing Unregistered and Registered Design Rights

In France, fashion designs may, under the conjunctive application of French and EU laws, benefit from both unregistered and registered design rights. In France, the Intellectual Property Code provides an option of registering any design in the case of novelty and individual character for a certain period. Therefore, its registration is fast and relatively inexpensive, thus helping the fashion industry, which is always requiring a quick turnover in its design.¹²

There are two modes of protection at the EU level via the Community Design system: unregistered and registered Community designs. Unregistered Community design gives automatic protection for three years, calculated from the date the design is first made available to the public within the EU. Registered Community designs could protect up to a maximum of 25 years, provided they are renewed every five years; however, this would be granted only after the design passes through a formal registration procedure. These EU-wide protections are of paramount importance to designers wishing to secure their inventions in different European markets.¹³

Fashion-Specific Protections and Notable Cases

The French legal system has harsh penalties specifically meant for fashion. Notable case law involving great fashion houses, including Chanel and Christian Louboutin, has supplemented these laws. These cases have been pivotal in shaping the enforcement and interpretation of design rights within the fashion industry.

For example, Christian Louboutin's legal battle for the red-soled shoes has been instrumental in setting the boundaries of trademark protection for fashion designs. In one of the more important rulings on this issue, the Paris Court of Appeal upheld Louboutin's trademark, finding both the distinctive character of the red sole and that it was linked to the brand. The court ruled that the specific color applied to a specific part of the shoe (the sole) was sufficient to constitute a trademark, thereby strengthening protection for certain design elements in the fashion industry.¹⁴ Likewise, a dynamic enforcement of the design rights against infringement has been exercised by Chanel to emphasize the real value of the creative assets in fashion.

¹² <https://www.murgitroyd.com/us/insights/design/how-are-fashion-designs-protected-by-intellectual-property-rights-in-the-uk-and-eu>

¹³ <https://www.worldtrademarkreview.com/global-guide/designs/2017/article/protecting-and-enforcing-design-rights-france>

¹⁴ <https://trademarkblog.kluweriplaw.com/2018/08/31/louboutin-saga-france-new-victory/>

These rules made quite palpable all the possible standing of France's system of law as being protective of fashion design and preventing potential infringers.

Strict Enforcement Mechanisms: Litigation Trends and Impact on Fast Fashion Brands

In France, enforcement mechanisms for design protection are quite strict and favourable to active litigation in defence of rights of intellectual property. It is not uncommon for fashion houses to file lawsuits against infringers of their designs, and the resulting jurisprudence serves as both a deterrent and a source of guidelines for acceptable practice within the industry.

These enforcement mechanisms significantly impact fast fashion brands, as they sell styles drawing inspiration from expensive designers. They must do so while mindful of the risk of being alleged against them of infringing upon a design right, thus resulting in legal action against them. The existing court precedents set up by the cases involving these major fashion houses tell a notable tale, one that indicates that there may be consequences associated with unauthorized copies of protected designs.

In conclusion, France's strong legal framework on design protection refers to a combination of thorough copyright laws, flexible design rights, fashion-specific protections, and strict enforcement mechanisms. This tremendous variety not only protects the interests of fashion designers while simultaneously maintaining the credibility and originality of the fashion industry, but also poses significant threats to fast fashion brands wishing to adopt designs protected by the law.

Design Protection in India: Gaps & Challenges

India's fashion industry, rich in heritage and contemporary creativity, is beset by enormous challenges in the protection of design innovations. The primary legislation in this field, the Designs Act 2000, sets forth a procedure for design registration and enforcement. The absence of unregistered design rights and inefficiencies with enforcement have, however, often left some designers or new creators vulnerable to the possibility of a crackdown, especially when it comes to players in fast fashion.

The Designs Act, 2000: Scope, Registration Process, and Enforcement

The Designs Act, 2000, is the centrepiece for design protection in India and aims to provide

such protection for aesthetic elements, namely shape, configuration, pattern, or ornamentation, of articles. Protecting the design under this Act, however, entails registration of the design, which is mandatory that a designer must consider for all designs. Notably, however, is the fact that under the Act there are no common law remedies available for the unauthorized use of designs, thus reinforcing the need for registration.¹⁵

Limitations in Protecting Fashion Designs

No Unregistered Design Rights

Another striking shortcoming within the present laws is that unregistered designs do not have any protection. While jurisdictions in other parts of the world are ready to offer automatic protection as soon as the design is created, India asks that the design be formally registered to then be conferred with legal rights. This requirement becomes onerous for fashion designers, who create numerous designs every season and find the formal registration of each creation impractical. Unprotected and placed under the magnitude of vulnerability, unregistered designs may be used to someone's advantage.¹⁶

Enforcement in Weak and Delayed Courts

Faced with registration, enforcing rights may still be a challenging exercise. Many have criticized the enforcement mechanisms under the Designs Act as inefficient, with lengthy processes of litigation combined with long judicial delays. Such delays typically prevent designers from taking action against the infringers, resulting in the protection framework hardly becoming effective.¹⁷

Present-day Challenges

Sabyasachi Mukherjee Versus H&M

It's not that Indian designer Sabyasachi Mukherjee has never faced any difficulties before. The Swedish fast-fashion giant H&M launched a collection that bore similarities to Mukherjee's distinctive features. The major contention in this case revolved around the protective umbrella

¹⁵ <https://www.globallegalpost.com/lawoverborders/fashion-law-1929833902/india-727650549>

¹⁶ <https://jpassociates.co.in/design-rights-in-the-fashion-industry-protecting-creativity-in-a-fast-paced-world/>

¹⁷ Challenges in Enforcing Design Rights in India: A Study of the Fashion and Textile Industries - Blog | Sonisvision

over a brand's unique characteristics. The case highlighted how complicated it is for designers attempting to protect their works when confronted with large retailers capable of quickly copying design cues.¹⁸

Rahul Mishra's Infringement Suit

Designer Rahul Mishra pursued a claim against a company for infringement of his designs. Mishra's suit cited trademark and copyright infringement, design piracy, passing off, and unfair competition, among other claims; he sought a permanent injunction against the infringer. The case illustrates how proactive designers must remain to protect their respective intellectual property from a marketplace that lends itself to imitation.¹⁹

Ritu Kumar vs. Biba Apparels

Ritu Kumar, the veteran designer, filed a suit against Biba Apparels for infringement under the Copyright and Designs Act. This case demonstrates the kind of dilemmas a designer faces in maintaining the sanctity of original work, and the legal means available to be exercised for reparation against the infringement.²⁰

How Fast Fashion Brands Exploit Legal Gaps

The global fast-fashion industry relies on rapid production cycles, which allow brands like Shein, Zara, and H&M to roll out new collections in weeks. However, this approach often employs legally grey strategies that let these brands play catch-up with high-end and independent designers without substantial legal consequences. Countries differ in their approaches to exploiting legal loopholes: France has very tough protection, while India is still struggling with enforcement gaps.

In the realm of knowledge about physical-ownership concepts in the company of giant fast-fashion firms, we have some techniques, including:

Alterations in minimal design: By slightly modifying iconic designs, these brands create

¹⁸ <https://www.mondaq.com/india/trademark/1510730/from-runway-to-courtroom-the-sabyasachi-hm-design-controversy-unveiled>

¹⁹ <https://www.lexology.com/library/detail.aspx?g=5>

²⁰ <https://www.thevoiceoffashion.com/intersections/features/fashion-ipr-you-cannot-get-away-with-murder-5828>

distinctions that usually place them outside the scope of infringement. Hence, they deceptively profit from popular styles while facing no legal repercussions.²¹

Rapid production cycles: The speedy turnaround from the drawing board to the store often means that, by the time the case goes to court, the product may no longer be available, making such lawsuits comparatively weaker and more ineffective.

Diasporic corporate structures: Companies such as Shein have complicated corporate transfers that would take the designers more time to find out the exact legal entity against which to sue, unnecessarily jeopardizing such legal actions.

Caucusing practices: To cut their losses, these companies typically settle cases instead of preserving them as lawsuits that could lead to legal precedents they might not find too congenial.

Enforcement methods: France vs. India

The effectiveness of the enforcement of design protection varies greatly between France and India:

France: the French intellectual property code grants protection to designs with legal protection comprising automatic copyrights immediately upon creation. Hence, designers could surmount the obstacle of not having to engage in prior registration while still being able to terminate their copyrights. Under these circumstances, designated remedies for design piracy would see criminal penalties instituted, thereby deterring would-be infringers.

India: The Designs Act, 2000, prescribes formal registration as a requirement for protection, which can be rather strenuous for designers having to put out multiple seasonal designs each year. There exist no unregistered design rights, making enforcement difficult due to judicial delays and limited remedies, which causes a weaker deterrent against infringement.²²

Policy Recommendations & The Way Forward

While a well-articulated framework for design protection has been provided by India's

²¹ https://www.huffpost.com/entry/fast-fashion-copycats_n_5b8967f9e4b0511db3d7def6

²² <https://www.legal500.com/guides/chapter/france-intellectual-property/>

immensely slow-moving legal setting, fast fashion has caught up very quickly with the rising tide of fashion. While the Designs Act, 2000 states formal protection for registered designs, there exist gaps in protection due to the lack of unregistered design rights, with practical bottlenecks related to enforcement and judicial inertia. At the same time, strengthening design protection in India would need to balance drawing best practices from international quarters while ensuring that the legal reforms do not kill the creativity or hinder access to affordable fashion.

Undeniably, one of the most crucial reforms the country should consider is a regime of unregistered design rights, like the one in the European Union. The Designs Act of 2000 requires some formal registration for design protection: in practical terms, this leaves many designers, notably those developing seasonal or limited collections, without effective recourse to infringement. The European Union has extended automatic protection to unregistered designs under which the right-holder is given exclusive rights against unauthorized copying for a term of three years starting from the date of first public disclosure, giving designers a remedy against infringement without the burden of registering it. If such a regime were introduced in India, independent designers and small proprietors would be helped tremendously; they would be better set to guard their creations against fast fashion brands, who so often lift off original designs with tweaks.

Even beyond the necessity of implementing unregistered design rights, enforcement remains a rather critical issue in the Indian legal terrain. Judicial delays and a lack of deterrent penalties, of course, ensure that even where designers have succeeded in establishing an infringement case, remedies provided by the courts of law are usually insufficient. France, however, has supposedly tough penalties for design infringement—they may impose heavy fines or, with other great luck, even criminal sanctions. Recently, such celebrated court rulings upheld Chanel and Christian Louboutin as worthy champions in France, attesting to the strength of the French legal line in fashion design protection.²³

In contrast, Indian courts often take years to decide on design infringement suits, rendering the whole purpose of design protection useless. More specific enforcement measures, such as the creation of intellectual property courts and punishment of infringers with larger sentences to

²³ <https://www.thefashionlaw.com/resource-center/france-legal-protections-for-fashion/>

promote deterrence, will go a long way toward enabling quicker justice for designers.

Another aspect that needs to be considered is the alignment of the Designs Act with global best practices. While very recent amendments, notably the Design (Amendment) Rules of 2021, have made considerable improvements in the field by streamlining the registration process and reducing fee requirements for startups, further revisions are needed to modernize and upgrade the law²⁴. One possible amendment may be to expand the definition of "design" to include digital and non-traditional designs, thereby expanding the scope of protection for new inventions created in the fashion space. In addition, the grace period for registration would allow designers more leeway in filing applications without compromising novelty. Simplifying the registration process further—specifically for individual designers and small enterprises—would also render the legal protection accessible and effective.

However, while stronger legal protections are needed, it is equally important to strike a balance for such measures to ensure they do not inhibit innovation or make fashion goods prohibitively expensive. The law on design should not be unduly restraining of artistic reinterpretation or fail to produce other derivative works based on wider fashion trends for new and emerging creators. Further, overly restrictive laws would effectively lead to monopolistic practices whereby larger fashion houses use design rights to obfuscate legitimate competition instead of protecting originality. Consequently, the structures of any legal reform should be appropriately aligned to foster innovation and curb unfair exploitation.

In saying so, while stronger legal protection must be instituted, it is all equally proportionately weighted on the tight-rope law in which these protections function to avoid limiting the scope of innovation or pricing fashion products prohibitively. Overzealous and extremely constricting laws on design could hinder an artistic reinterpretation and further curb a budding designer's creativity in carrying out derivative works based on broad fashion trends. Conversely, these laws could usher in monopolistic tendencies among established, powerful labels that would instead use the design rights granted to them to escape competition and not promote genuine originality. Any law reforms undertaken have to be from the background of ensuring that innovation is not only promoted but also that cases of unfair exploitation are prevented.

²⁴ <https://ipindia.gov.in/rules-designs.htm> based on m

A perfectly balanced approach would ensure an incentive for creativity through protection to original designs, and allow imitating and building from them reasonably. This has to be delivered with attention to the access of consumers to reasonably priced fashion. Overregulation can backfire and increase prices on the fashion brands, thus invariably being transferred to the consumers. Alternatively, India should build on practices that duly promote fair competition where larger corporations cannot use technical conventions regarding knock-offs to ensure their production en masse, while independent designers get the support to protect their work. And the increased knowledge and education about design rights sustained among designers and businesses will nurture an attitude of respecting intellectual property, thus likely driving down cases of infringement in the long term.

Through the implementation of these reforms, India will be able to create a stronger and just system of design protection that will support the burgeoning fashion industry. Introduce unregistered design rights, reinstate enforcement mechanisms, and align the Designs Act with the international level of need for a legal shield that professionally balances innovation and access. With the dominance of fast fashion in our current era, it is not only a statutory obligation but also significant to ensure that original creators receive fair protection to sustain a more humane and innovative fashion industry.