
FASHION AND IP: PROTECTING CREATIVITY IN A COPYCAT INDUSTRY

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ABSTRACT

In today's economy, one of the most evolving sectors is the fashion industry led by creativity, innovation and commercial value, yet the major problem faced by this industry is imitation, counterfeiting and design piracy. This article examines the difference between inspiration and unlawful copying and how Intellectual Property rights helps in safeguarding the fashion industry. This article includes and analyses different judicial precedents and industry examples and explains the scope and limitations of different tiers of Intellectual Property rights- copyright, trademarks, Industrial designs, and patents. Further it comments on the challenges faced in the enforcement of IP rights, including lengthy registration procedures, high litigation costs, jurisdictional inconsistencies, and limited awareness among designers, particularly emerging creators. It also engages in how the industry has started responding to the problem of imitation, copying and counterfeiting, such as brand-building, social media enforcement, collaboration of designers and fast fashion brands, and the adoption of technological tools like blockchain and digital watermarking. The article concludes by suggesting an introduction of fashion specific sui generis IP regime, expedited registration mechanisms, greater harmonisation of international design laws, and enhanced awareness initiatives which helps in strengthening the mechanism of protection without hindering innovation. The article majorly argues that in this evolving global fashion industry, there is a need for an adaptive and balanced Intellectual Property framework for maintaining and promoting sustainable growth, encouraging innovation and preserving originality.

INTRODUCTION:

The Fashion Industry is one of the most dynamic and vibrant industries that plays a major part of the world wide culture and the Global Economy of the world¹. It has grown over the years, spanning from haute couture to fast fashion which includes different designs, production, marketing, retail, and now increasing sustainability and tech integration. In 2022, the global revenue has approximately reached \$1.53 trillion, with U.S. revenues amounting to \$312 billion. The Fashion industry generates employment in various sectors from employing over 75 million individuals worldwide in 2018.²

A very famous saying is, “Imitation is the highest form of flattery”, said by Coco Chanel, but some fashion labels have taken this a tad too seriously.³ One of the widespread practices in this particular Industry is the Design Piracy, where people and different firms in the fashion industry are engaged in and benefited from taking the design of others.

A landmark case on copying of what already existed is “Christian Louboutin vs. Mr. Pawan Kumar & Ors.”⁴. In this particular case, Christian Louboutin, which is a global high end brand sued Abubaker and many other shoe outlet owners for alleging trademark infringement, passing off, and loss of reputation and sales by using the same red sole in their footwears, which has been already trademarked by Christian Louboutin's “RED SOLE”. They sought an injunction and Rs. 10,00,000 in damages. The Court passed the judgment in the favour of Christian Louboutin, stating that the defendants had misrepresented their products without any authorisation. Punitive damages were awarded for the unlawful use of the Plaintiff’s trademark “RED SOLE”.⁵

To increase the value and productivity of the Fashion Industry, it includes the ad Campaign and marketing of products to achieve the competitive edge which is required to achieve success

¹ Global Fashion Industry: Key Markets and Emerging Trends, Fashion Drift (Aug. 6, 2024), <https://fashiondriftmagazine.co.in/global-fashion-industry-key-markets-and-emerging-trends>.

² IPR in Fashion Industry, Altacit Global <https://www.altacit.com/resources/ip-management/ipr-in-fashion-industry/>.

³ Joyshree Baruah, Some controversial high-profile instances of design copy, The Economic Times (Feb. 24, 2018), <https://economictimes.indiatimes.com/magazines/panache/some-controversial-high-profile-instances-of-design-copy/articleshow/63059688.cms>.

⁴ Christian Louboutin SAS v. Pawan Kumar, 250 D.L.T. 475 (Del. H.C. 2018).

⁵ April 6, 10 Landmark Cases In The Fashion Industry, Fashion Law Journal (Apr. 6, 2023), <https://fashionlawjournal.com/10-landmark-cases-in-the-fashion-industry/>.

in this fast growing industry but while campaigning for these products, many businesses including big fashion businesses fail to protect their Intellectual property in the correct way, because of unawareness and negligence of IP law. Big fashion Industries which generates hundreds of billions of dollars every year and prides itself on innovation and aspiration becomes a victim of common practice of stealing and copying ideas and designs from each other⁶. These business holders need to value such intangible assets and determine the relevance of their business in this fast growing market, and decide and agree on those to be protected and leveraged through the IP system.

The significant challenge in this ever evolving industry is to protect the valuable Intellectual Property (IP). These creations need to be safeguarded from infringement and counterfeiting by navigating a complex landscape by Designers and brands.⁷ Fashion needs to be protected because it's a result of human imagination and creativity in different forms. Intellectual property rights is the only law that can protect creative work. However, this might also be never enough on its own, different IPRs have different flaws in protecting the Fashion industry. There is no law that specifically protects every aspect of a Fashion garment from copying.⁸

This article starts by the problem between creativity and imitation in the Fashion industry, it then proceeds in outlining the main forms of Intellectual Property (IP) which is currently available to the designers: Copyright, Trademarks, design rights, and patents, by highlighting their scope and limitations. It further examines the challenges which are faced in enforcing IP laws in this fast moving industry. It discusses how brands adapt through alternative strategies and compares legal frameworks across jurisdiction. Finally, it offers policy recommendations to strengthen IP protection without stifling innovation.

THE NATURE OF CREATIVITY AND COPYING IN FASHION:

Frank Zappa once said, “Art is making something out of nothing and selling it”, an artist will

⁶ Yosha Dubey, ‘Role of IPR in Fashion Industry’ <https://www.ijraset.com/research-paper/role-of-ipr-in-fashion-industry/>

⁷ Intellectual Property Rights In The Fashion Industry: Protecting Creativity In A Fast-Paced Market » Lawful Legal, (Mar. 18, 2025), <https://lawfullegal.in/intellectual-property-rights-in-the-fashion-industry-protecting-creativity-in-a-fast-paced-market>.

⁸ Adrija Ghose, ‘Fashion Forward, Legally Protected: Analysing IPR Laws in India and the West’ (2022) 2 NLU Assam Journal of Intellectual Property Rights 107–123 <https://nluassam.ac.in/docs/Journals/IPR/vol2-issue-2/8.%20Fashion%20Forward,%20Legally%20Protected%20>

always be challenged by the question of monetary gain versus artistic truth.⁹ In the fashion industry, the main focus of the designers is to set trends by creating collections that are aesthetic and creative in nature. Brand managers and accountants are responsible for looking after the task of profiting and commercialising from creative imagination and creation of the designers. The minimum requirement for any fashion industry is to study the market, its ever evolving trends, and what consumers really want. One of the essential factors for balancing creativity with interests in business is the creation of a strong supply chain.¹⁰

Commercialising needs proper and adequate knowledge of seasonality and trends of the Fashion industry. The fashion trend cycle consists primarily of five distinct phases, which are:

1. Introduction: The trend is firstly introduced by different designers and celebrities in the market, which reaches the masses in a limited collection and high prices.
2. Rise: The trend rises when it is promoted by the social media influencers and media, which causes the rise in demand of the collection.
3. Peak: The collection is at its peak when popular culture fully adopts it, mass produces it, and the masses endlessly repeat it over and over again.
4. Decline: When the collection is overused and the consumers get bored of the same trend, then it starts declining.
5. Obsolescence: The trend gets outdated with its over consumption and is superseded by the upcoming trends.¹¹

These are the major five stages which occur in the fashion world and exist for a small period of time. All this happens on the preference of the consumers, who are the important factor in deciding the rise and decline of a fashion trend.¹²

All these trends are likely to get imitated by other designers, there is a very thin line between

⁹ Chris Dellorco, 'Art vs Commerce: The Artist's Eternal Conflict', Art Business News, (March 05, 2013) <https://artbusinessnews.com/2013/03/art-vs-commerce-the-artists-eternal-conflict/>.

¹⁰ Dakota Murphey, Creative And Commercial In Harmony: Helping Both Sides Speak The Same Language, The Interline (Sept. 20, 2023), <https://www.theinterline.com/2023/09/20/creative-and-commercial-in-harmony-helping-both-sides-speak-the-same-language/>.

¹¹ Ni Kadek Yuni Diantari, 'Trend Cycle Analysis on Fast Fashion Products' (2021) 1 Journal of Aesthetics, Design and Art Management 24–33 <https://media.neliti.com/media/publications/352061-trend-cycle-analysis-on-fast-fashion-pro-a273ebc2.pdf>

¹² Angela Buquet, Fashion Cycles: Understanding The 5 Stages Of A Trend, (June 23, 2025), <https://heuritech.com/articles/five-stages-of-fashion-trend-life-cycle/>.

inspiration and imitation. Inspiration for a designer helps them in innovating and creating new designs, which commonly derives from various sources, including people, nature, and art. But most of the time Inspiration is a tricky thing, inspiration is the most essential factor for creativity and innovation, but there is a very thin line between taking inspiration from something or simply copying that work.¹³

Being inspired from someone else's work and taking it as an inspiration to build your own work is acceptable, but to avoid infringement and to have original copyright on your work, you need to build something by adding your own unique perspective and creativity, rather than simply replicating it without any effort and skill of your own, which leads to imitation and plagiarism.¹⁴

Chet Lo vs. H&M

In the year 2025, a fashion designer, named Chet Lo accused a major fast fashion brand, not specifically mentioning but implied to be H&M, of copying his signature range, known as "Spiky Knitwear designs". He expressed his tension and frustration on Instagram without explicitly mentioning any name of the brand, stating how larger companies exploit independent creatives, especially those from marginalised backgrounds. Then later, Fashion watchdog "Diet Parada" threw light on the issue by comparing H&M's "Cherish Waste" collection with Lo's original pieces, fueling public support for the young designer.¹⁵

Fast fashion brands imitate the designs of independent designers in the name of inspiration and commercialise their products over others, fast fashion is the mass production of inexpensive things.¹⁶ The main agenda of fast fashion is to quickly manufacture the goods and sell them at affordable prices, to fulfill the main objective of rapid turnover and low costs.

A case study on how Shein outgrew H&M and Zara, by adopting a more radical and effective

¹³ 1605 Collective, 'Inspiration vs Copying' 1605 Collective (May 10, 2023) <https://1605collective.com/blogs/blogposts/inspiration-vs-copying/>

¹⁴ CopyrightUser, "10 . What can I borrow from someone else's work? Where is the line between inspiration and copying?" <https://www.copyrightuser.org/faqs/question-10/>.

¹⁵ Milanesi a Milano, Fashion and Copyright: A Thin Line Between Inspiration and Imitation, Milanesi a Milano (Oct. 1, 2022), [https://www.milanesiamilano.com/post/fashion-and-copyright-a-thin-line-between-inspiration-and-imitation /](https://www.milanesiamilano.com/post/fashion-and-copyright-a-thin-line-between-inspiration-and-imitation/).

¹⁶ Unstop, 'Fast Fashion Explained (with Examples) <https://www.unstop.com/blog/fast-fashion-explained-with-examples>.

strategy. Shein used a tech- driven, ultra- fast fashion model. It made use of Artificial Intelligence to spot the current trends and then produced small test batches at first and converted it into a larger production if the items sold quickly. With no physical stores, low prices, and 6,000+ new items daily, Shein keeps costs low and variety high. Shein has a strong strategy of social media and influencing culture, along with a global online presence which makes it more agile and responsive than traditional retailers. This shows how a more effective strategy can outgrow big brands, by evolving fast fashion into a hyper- digital, data- led model.¹⁷

OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS IN FASHION:

Protection of Intellectual Property can make a major difference between being successful or a failure for the members of the Fashion Industry.¹⁸ One of the major aspects is to understand all the different types of Intellectual Property Laws which are available for effective protection.

In the fashion Industry, there are various types of Intellectual Property (IP) available which helps in safeguarding different elements of creativity. Trademark somewhere protects the unique identity of the brand and helps in building brand equity. Whereas, Copyright law protects the original work of a designer, including textiles, fabric patterns, and also the overall aesthetic arrangement of a garment.¹⁹ Unlike Trademark and Copyright Law, Industrial Design helps in protecting the ornamental and aesthetic aspect of a functional item. From all the intellectual property forms, Patents are the least utilised in the industry, it is majorly used in protecting the technological innovations which helps in the formation of a design or a garment. All these measures taken together help in the protection of fashion designers, making them unique and gaining them a competitive edge by preventing unauthorised imitation.

COPYRIGHT

A Designer is protected under copyright law in fashion by protecting his original and artistic

¹⁷ Is Fast Fashion Killing Creativity? The Question the Industry Keeps Avoiding, (April 28, 2026), <https://www.amordesign.org/blog/is-fast-fashion-killing-creativity>.

¹⁸ Trademark Protection for the Fashion Industry, Gottlieb, Rackman & Reisman, P.C. <https://grr.com/publications/trademark-protection-fashion-industry/>.

¹⁹ Abounaja IP, 'Intellectual Property in Fashion Industry' (March 15, 2024) <https://www.abounaja.com/blog/intellectual-property-in-fashion-industry/>

work, which includes the graphic patterns, aesthetic embroideries and many other aspects of a garment.²⁰ Any unauthorised use or imitation of the original and artistic work of a designer can earn protection under copyright law. Copyright law helps in ensuring that the designer to whom the design belongs to has exclusive rights on its usage and distribution. Copyright is a vital tool for ensuring the original work of the design and ensures that the designer is not duplicated in any way.²¹

In India, the Copyright Act, 1957 is the legislation which takes responsibility for protection of original and artistic work of a designer, which includes sketches, prints, or embroidery designs in the fashion industry. Copyright Act, 1957²² imposes a challenge on the protection of the design under section 15 of the Copyright Act, 1957, stating that the protection would be lost when the design is used commercially on over 50 copies and not registered under the Designs Act, 2000.²³ Whereas in U.S., there is a limitation in the copyright protection of a clothing design because clothing is classified as a “useful item” under 17 U.S.C. § 101²⁴, which says only artistic elements that are conceptually separable from the functional aspects, like decorative prints or graphic designs can be protected, not the garment’s shape, cut, or silhouette.

Star Athletica, LLC vs. Varsity Brands, Inc. (2017)²⁵, is one of the landmark cases of the U.S. Supreme Court, which gave clarity on the copyrightability of design elements on useful articles, such as clothing. The court in its judgment held that, to get copyright protection, the graphic designs on cheerleading uniforms need to meet a two part test:

1. The design can be perceived separately from the useful item, and
2. The design can exist independently as a work of art.

The court somewhere ruled in the favour of Varsity Brands, stating that their cheerleading uniforms met the criteria. This case has had a major impact on the fashion industry because it

²⁰ Legal Research and Analysis, ‘Role of Copyright for the Fashion Industry in India’ <https://legalresearchandanalysis.com/role-of-copyright-for-the-fashion-industry-in-india/>

²¹ Anastasia Troshkova and Katie Moruzzi, ‘How to Protect My Clothing Designs’ Briffa Legal Blog (09 March 2022) <https://www.briffa.com/blog/how-to-protect-my-clothing-design/>

²² The Copyright Act, No.14 of 1957, § 15 (India).

²³ The Designs Act, No.16 of 2000 (India).

²⁴ 17 U.S.C. § 101 (2024)

²⁵ Star Athletica, LLC v Varsity Brands, Inc, 580 U.S. 405 (2017).

now allows certain design elements to be copyrighted, which offers a broader protection against any unauthorised imitation.²⁶

TRADEMARK

Trademarks can be understood in different ways but they mostly work as indicators to consumers, which help them in identifying the specific source from where a certain product has originated. Typical trademarks are names and logos but sounds, smells, and even colours can function as trademarks.²⁷ In the fashion industry, the most common brand names are of the designers themselves, like Calvin Klein, Manish Malhotra, etc. but under trademark, to get your name registered as a trademark is a little difficult, it can only be protected if the public at large has started to see that person's name as the source of identification. This level of recognition doesn't come overnight, it takes a lot of time, advertising and promotion.²⁸

Trademarks have some limitations but they also play an important role in the fashion industry as they serve as a powerful tool for brand recognition, as they allow consumers to recognise the source easily and differentiate one brand from another. They help in building loyalty and trust of consumers by signaling the origin and consistency of a product. Trademarks also represent the brand's equity, reflecting its reputation, goodwill, and the value built through extensive marketing and branding efforts. It also works as a protection for consumers by ensuring authenticity and quality of products, safeguarding any exploitation. This legal mechanism not only reinforces brand identity but also strengthens the overall market position of fashion businesses.²⁹

Gucci v Guess³⁰

In this case, Gucci accused Guess for copying its designs, specifically for copying its iconic "G" logos, stylized designs, and colour schemes which created confusion in the market for the

²⁶ Trayaksha pathak, Case Comment: Star Athletica v Varsity Brands, Legal Desire Media and Insights (May 26, 2021), <https://legaldesire.com/case-comment-star-athletica-v-varsity-brands/>.

²⁷ Trademark Protection for the Fashion Industry, Gottlieb, Rackman & Reisman, P.C. <https://grr.com/publications/trademark-protection-fashion-industry/>.

²⁸ Neelam Dahiya, 'The Significance of Trademarks in the Fashion Industry' S&A Law Offices Feb. 16, 2024) <https://sandalawoffices.com/the-significance-of-trademarks-in-the-fashion-industry>

²⁹ Intellectual Property for Fashion Industry: Trademarks, (May 24, 2024), <https://www.copperpodip.com/post/intellectual-property-for-fashion-industry-trademarks/>.

³⁰ Gucci Am., Inc. v Guess?, Inc., 868 F. Supp. 2d 207 (S.D.N.Y. 2012)

consumers. The U.S. federal Court decided in the favour of Gucci stating that Guess's use of similar design diluted the distinctiveness of the high end brand "Gucci".³¹

INDUSTRIAL DESIGN

Designs add aesthetic value to the product, such as its shape, pattern, or color combination which helps in distinguishing it from the other products in the market. These designs are protected under Industrial design to provide competitive advantages and prevent it from any unauthorised imitation by the competitors, with the intention of affecting the goodwill of the brand.³² Design rights helps in establishing a recognizable brand identity for the company, The same way industrial designs help in protecting the rights of the designers in the fashion world, by providing protection to the design which differs from others.³³

In the world, there are different design laws in different jurisdictions. Like the European Union (EU) provide protection for both unregistered design rights (for 3 years from initial disclosure) and for registered designs (for upto 25 years with renewal). Whereas in the U.S., the laws differ and there is no protection for unregistered designs, It only depends on design, pat's, Trademark, and trade dress for protection. On the other hand, in India, industrial designs are given protection under the Designs Act, 2000³⁴ through the process of registration, which provides a protection up to 15 years (10 years initially, extendable by 5 years). Design rights are more effective and useful when they are paired with trademarks, copyright, and contracts as a component of a comprehensive IP strategy.

Louis Vuitton Tote

Louis Vuitton is a luxury and a high end brand with an established reputation and goodwill in the fashion market. The specific design of the tote with LV monogram pattern paired with classic brown tones and metal ornaments is protected under the industrial design rights. This

³¹ Vaishnavi Parate, 10 Important Cases of Fashion Law, Gazette Dated 13 May 2025 (Nov. 22, 2023), <https://www.legalbites.in/fashion-law/10-important-cases-of-fashion-law-975691>.

³² Jessica de Araujo, 'The Protection of Intellectual Property Rights in the Fashion Industry While Living the Fast Fashion Era' (2024) 65 IDEA: The Law Review of the Franklin Pierce Center for IP 1 <https://law.unh.edu/sites/default/files/media/2024-09/1-jessica-article.pdf>

³³ Abounaja IP, 'Intellectual Property in Fashion Industry' (March 15, 2024) <https://www.abounaja.com/blog/intellectual-property-in-fashion-industry/>

³⁴ The Designs Act, No.16 of 2000 (India).

protection of pattern, shape, and other visual elements ensures the bag's exclusivity among the consumers and helps in maintaining its premium appeal and look in the market. Louis Vuitton tote is a luxury product and is very prone to imitation by the local brands, but the industrial design protection helps in preventing counterfeiting of the design.³⁵

PATENT

In the fashion industry, a patent as an intellectual property right is the last thing that would come to one's mind. The most used intellectual property rights are Industrial design, trademark, copyright but Patent works as a strong tool in protecting various innovations, designs, processes, and technologies that helps in completion of the design or a garment. Patent provides exclusive right to the inventor to use and distribute his designs and also stimulate economic growth by deterring any imitation or infringement.³⁶

A danish, biotech company, known as Novozymes is known to be a pioneer in the use of enzymes in the treatment of fabrics. In 1987, this company, which was not previously involved in the fashion industry, patented a technology for the treatment of "stone washed" denim jeans. This technology helps in removing a small amount of the Indigo dye from any denim which then gives the denim or fabric a worn look. It grew a lot in the fashion industry and later this company started licensing this technology to other industries for its usage. This company mastered the strategy of licensing and maximising royalty revenue from these IP assets.³⁷

GAPS AND CHALLENGES FACED IN ENFORCING IP IN FASHION:

Various forms of creativity and innovation are encompassed by the Intellectual Property Laws in the world, which includes Patents, trademarks, copyright and Industrial designs. IP law is very significant for any business, whether small or large. Despite this fact, IP law faces severe challenges in its enforcement in the fashion industry.

³⁵ Widjojo IP, '12 Examples of Industrial Design Rights'Widjojo, (Dec. 18, 2024) <https://widjojo.id/examples-of-industrial-design-rights/>

³⁶ Vaidehi Sharma, 'Patents in Fashion: Protecting Creativity and Innovation', Global Patent Filing (June 14, 2024) <https://www.globalpatentfiling.com/blog/Patents-in-Fashion-Protecting-Creativity-and-Innovation/>

³⁷ World Intellectual Property Organization, 'IP and Business: Intellectual Property in the Fashion Industry' WIPO (May 30, 2005) <https://www.wipo.int/en/web/wipo-magazine/articles/ip-and-business-intellectual-property-in-the-fashion-industry-34816/>

One of the major challenges faced by the fashion industry in enforcing IP Law is the slow registration process of different Intellectual Property with lots of backlogs and delays in the process.³⁸ According to the data, the registration of any innovation, artistic work, trademark etc. takes a time period of minimum 1 year, which results in a setback leading to the unauthorised imitation of the designs. The time by which the design is registered and protected, that specific design is already imitated at large leading to a large loss of profits and reputation of the original designer.³⁹

Another setback in the enforcement of IP laws in the fashion industry is the high cost of litigation. This problem is majorly faced by the small and emerging designers, who make less profits and lack in protecting their Intellectual properties from any unauthorised use. In this case, the big fishes in the market take advantage of this factor and imitate the designs of the small and emerging designers without any authorisation and credit.⁴⁰ The expenses involved in pursuing legal action can be prohibitive, leading to the abandonment of valid claims of the true victims.⁴¹

IP plays an important role in establishing innovation, expanding business and creating more market opportunities and helps in developing the business frontier globally. However, the protection of Intellectual Property in different jurisdictions with different IP laws are still very complex. There is a lack of harmonization in the different IP legislation in different jurisdictions which imposes a challenge on the designers when practiced across borders. This lack of harmonisation promotes the risk of infringement, counterfeiting, piracy and other legal perils. Mitigating these risks is critical for global fashion businesses that want to protect their IP assets in a world that continues to get more connected.⁴²

³⁸ Bhavpreet Soni, Challenges in Enforcing Design Rights in India: A Study of the Fashion and Textile Industries, Sonisvision (Nov. 21, 2024), <https://www.sonisvision.in/blogs/challenges-in-enforcing-design-rights-in-india-a-study-of-the-fashion-and-textile-industries>.

³⁹ 'Intellectual Property Challenges' (Abou Naja Intellectual Property, [2022]) <https://abounaja.com/blogs/intellectual-property-challenges>

⁴⁰ From Calico to Catwalk: Addressing the UK's Enduring Issue of fashion piracy (Dec. 05, 2024) <https://academic.oup.com/jiplp/article/20/2/71/7916754/>

⁴¹ Inadequacy Of Intellectual Property Rights In Indian Fashion Industry And Its Impact, (Apr. 12, 2024), <https://csripnusr1.wordpress.com/2024/04/12/inadequacy-of-intellectual-property-rights-in-indian-fashion-industry-and-its-impact>.

⁴² 'Cross-Border Intellectual Property Disputes: Challenges and Legal Strategies for Global Businesses' <https://ijirl.com/wp-content/uploads/2025/02/CROSS-BORDER-INTELLECTUAL-PROPERTY-DISPUTES-CHALLENGES-AND-LEGAL-STRATEGIES-FOR-GLOBAL-BUSINESSES.pdf/>

The major challenge faced in the field of IP laws is the lack of awareness and education amongst the designers and artists, specifically the emerging and independent designers.⁴³ The importance of protecting intellectual property is not well known by the designers, the designers are unaware of their rights of protection against any unauthorised use by anyone. Lack of knowledge and unawareness of the protection of Intellectual property leads to major financial losses to the designers and designers often end up in legal disputes.⁴⁴

INDUSTRIAL RESPONSES AND ALTERNATIVE STRATEGIES:

The imitation of the designs of various designers is increasing at a high speed and to curb this mechanism of copying, the industries try various alternative strategies and respond in their own way. One of the alternative strategies is to develop a strong brand identity, it is one of the most prevalent ways which helps in preventing the problem of copying and staying above the competitors in this industry.⁴⁵ Copying an already existing design or any other tangible items are easy, but it's not an easy task to replicate an entire brand identity and reputation. Let your customers speak for your service, it is the biggest strategy which will help in building a brand identity. This will encourage customers to stop buying the substitute and only look for the 'real thing'.⁴⁶

With the rise in the issue of copying, another effective method for addressing this issue is to use the method of calling out the copycats on social media. Where the process of legal proceedings takes a lot of time, calling out on social media comes to the rescue as an extra legal method of enforcement of keeping the copycats in their place.⁴⁷ In certain cases, the designers themselves don't call out the copycats, but certain social media handles, which are tasked with policing and calling out copycats, such as Diet Prada, with three million followers do so. Calling out on social media works in the favour of the victims as it leads to public shaming of

⁴³ 'Intellectual Property Challenges', AbouNaja Intellectual Property, (Feb 02, 2023)

<https://abounaja.com/blog/intellectual-property-challenges/>

⁴⁴ The Challenges Faced by Intellectual Property Law in India, <https://www.legalkart.com/legal-blog/the-challenges-faced-by-intellectual-property-law-in-india>.

⁴⁵ Ellie Mirman, 7 Strategies for Keeping Your Competitors from Copying You, Crayon (Mar. 13, 2019), <https://www.crayon.co/blog/avoid-competitors-copying/>.

⁴⁶ 'Copying And Knock-Offs: 3 Ways To Protect Your Brand', Maker's Row (May 27, 2014) <https://makersrow.com/blog/copying-and-knock-offs-3-ways-to-protect-your-brand>

⁴⁷ Rakesh Agarwal, 'When Fashion Moves Too Fast: Impact on IP Protection of the Fashion Industry', Mondaq, (March 24, 2023) <https://www.mondaq.com/india/trademark/1630428/when-fashion-moves-too-fast-impact-on-ip-protection-of-the-fashion-industry>

the individuals or entities which are engaged in copying activities, it leads to boycott of the copycat and in fear of public backlash in others as well. This process of calling out is much more efficient as it is quicker, easy and effective.⁴⁸

Big designers become the victims of unauthorised copying by the fast fashion brands, another alternative strategy to cope up with this problem is the collaboration of big designers and fast fashion brands where the fast fashion brands use the designs of the big designers and make it approachable to the masses, and in return, give the big designers, proper credit and profit of their designs. Under this process, the well-known designers tend to only design a limited edition collection, specifically for the fast fashion brand, which is then sold under the name of both the brands and give due credit to the actual owner. This trend has now become more prevalent in today's time of fast changing trends, limited edition collections of big designers in collaboration with fast fashion brands, fulfill the criteria of ever-changing fashion.⁴⁹

H&M x Mugler

Mugler is a well known french designer, who collaborated with a fast fashion brand, known as H&M and made his designs accessible to the masses. The marketing campaign included prominent influencers and celebrities, which gained high popularity among the public, which resulted in a good amount of revenue generation and increased brand visibility for both the parties.⁵⁰

Taking up technological innovations such as blockchain and digital watermarking by the Fashion sector to fight counterfeiting is another reaction to unauthorised copying. Blockchain is a technology that assists in tracking every single product, from raw materials to retail, which generates unalterable digital records of product origin and provides transparency and verification.⁵¹ This assists in establishing consumer confidence and assists in enforcing Intellectual Property Rights too. On the other hand, Digital Watermarking provides anti theft

⁴⁸ Lisa Wang, The Copying of Independent Fashion Designers: Perils and Potential Remedies in a Post-Star Athletica World, (May 1, 2023), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2023/04/Wang-75-Stan.-L.-Rev.-979.pdf>.

⁴⁹ Arielle K. Cohen, 'Designer Collaborations as a solution to the Fast-Fashion Copyright Dilemma (Jan. 04, 2012) <https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1113&context=ckjip>

⁵⁰ Pete Polgar, The Strategy Behind Designer Collaborations with Fast Fashion Brands, Glenmont Consulting (Sept. 14, 2024), <https://glenmont.co/the-strategy-behind-designer-collaborations-with-fast-fashion-brands>.

⁵¹ Blockchain in Retail Fashion and Luxury, Real World Blockchain Use Cases <https://consensys.io/blockchain-use-cases/retail-fashion-and-luxury>.

and authentication through invisible identifiers placed in fabric ps or product images. Luxury giants such as LVMH and Prada are incorporating these tools on collaborative platforms such as the Aura Blockchain Consortium. Furthermore, QR codes and smart labels are also being employed as affordable, scalable solutions for mid- sized brands that need supply chain visibility but do not have the entire blockchain operation. These breakthroughs mark a move towards tech- enabled transparency in fashion.⁵²

POLICY AND REFORM RECOMMENDATIONS:

Fashion is a blend of commerce, culture, and creativity. Different designers and brands innovate new designs and creations every day, but it still suffers from the problem of imitation and exploitation due to the challenges and gaps in its protections. For greater innovation and protection of the designers, certain reforms are long overdue.

Better protection of the intellectual properties of the fashion industry is the need of the hour, though there are different laws which protect different aspects of a garment, but there is no specific comprehensive law which protects the entire garment as a whole. To promote the better protection of the intellectual properties, there is a need for a fashion industry specific IP regime, which will help in filling this gap and provide protection through sui generis system making it more quick, easy and effective for the designers.⁵³

The registration process of Intellectual property is way too lengthy and time consuming, and as we know, fashion is fleeting in nature. A design's commercial worth has already been diminished or passed down by the time it is registered using the normal approach. To overcome this problem, the system needs to introduce a fast track registration procedure specifically for the fashion business. Some of the digital tools can be used to further make the process of IP protection more accessible and time saving by using tools such as AI- assisted design evaluation and blockchain timestamping.⁵⁴

⁵² Roplali Joshi, "Blockchain for Copyright Protection: Use Cases, Benefits and Challenges", A3Logics Blog (Oct 07, 2024) <https://www.a3logics.com/blog/blockchain-for-copyright-protection>

⁵³ Intellectual Property Rights In The Fashion Industry: Protecting Creativity In A Fast-Paced Market » Lawful Legal, (Mar. 18, 2025), <https://lawfullegal.in/intellectual-property-rights-in-the-fashion-industry-protecting-creativity-in-a-fast-paced-market/>.

⁵⁴ The Challenges Faced by Intellectual Property Law in India, <https://www.legalkart.com/legal-blog/the-challenges-faced-by-intellectual-property-law-in-india>.

Every designer tends to commercialise their designs by marketing their creations abroad in a variety of jurisdictions, which lead to design infringement in those same jurisdictions. There is a gap in the protection since different jurisdictions have distinct design rights. To overcome this problem, the harmonisation of design rights is very essential. Harmonisation of design rights will help protect the designers in all the jurisdictions from any imitation and unauthorised use.⁵⁵

CONCLUSION:

The fashion industry is the most evolving industry in the world, which contributes a major part of the global Economy, generating a lot of employment and revenue with every upcoming year. Though it's a massive industry, at the same time it is prone to design piracy, and every designer is going through the problem of unauthorised imitation. This problem of unauthorised copying is not just limited to the small or emerging designers but even the big fishes in this industry, like Christian Louboutin go through the same problem, due to the lack of protection of their Intellectual Properties. The importance and flaws of Intellectual property law needs to be understood to protect fashion and overcome the problem of piracy. This article has summed up the main problem between creativity and imitation and how the intangible assets of this industry can be protected by various Intellectual Property laws and also sums up the gaps and challenges faced in enforcing these laws and what are the alternative strategies that can be adopted. In the fashion industry, many trends are introduced and each trend follows a specific trend cycle consisting of five distinct phases, namely introduction, rise, peak, decline and ends with the trend being Obsolescence in nature. All these trends are prone to the problem of unauthorised imitation and blurs the thin line between inspiration and imitation.

This article further discusses how the different aspects of a garment are protected by different IP law. Copyright is the most used IP law in the fashion industry as it protects the original and artistic work of a designer. Though different jurisdictions have different IP laws, and helps in protecting the original and artistic work of a designer in their own different ways. Besides copyright, another commonly used IP law in the fashion industry is the Trademark law, which typically protects the name and logo of a brand which works as an indicator of the source of the product to the consumers. On the other hand, Industrial Design is the most important IP law for the fashion industry as it protects the design of a product, such as its shape, pattern or

⁵⁵ Praveen Agrawal, Fashion Design Rights : Protect Creative Originals Fast, (Aug. 9, 2024), <https://jpassociates.co.in/design-rights-in-the-fashion-industry-protecting-creativity-in-a-fast-paced-world/>.

colour combination, which establishes a unique identity for the brand. The last and least used IP law in the fashion industry is the Patent law, though this law is the last thought in anyone's mind but it's equally important as it protects the various innovations and technologies which helps in completing a product. All these intellectual property laws are equally important but they somewhere lack in their proper enforcement in the fashion industry.

This article discusses how there are gap and challenges faced in enforcing different IP laws in the fashion industry, it starts with discussing the challenges between the slow registration process of any intellectual property and high speed of unauthorised imitation of the designs, followed by the challenge faced by the designers, especially small and emerging designers which is the high cost of litigation which imposes a limitation on designers in protecting their property from unlawful imitation. Another challenge discussed is the lack of harmonisation of the different IP laws in different jurisdictions, leading towards a greater level of difficulty in protecting their intellectual property rights globally. Though there are many other challenges faced by the designers in enforcing the Intellectual property laws, lack of awareness about the same is a major challenge faced. Designers lack in protecting these properties because of not having proper knowledge about the process and their rights.

The article further sums up how the fashion industry responds to this problem of copying with their alternative strategies by building strong brand identities in the market and among the consumers to let them choose the 'real thing' over the copied products. Another strategy discussed is the method of calling out the copycats on social media by various famous social media handles and shaming them publicly to stop them from practising the same method of copying again. The fashion industry responds to this problem by collaborating with fast fashion brands as these fast fashion brands majorly copies the designs of big designers without giving them any due credit, so to curb this problem designers collaborate with fast fashion brands, like H&M x Mugler and many other and this article further summarises how the industry uses many technological innovations such as blockchain and digital watermarking to fight the problem of counterfeiting. The article concludes with some policy and reform recommendations like the system needs to introduce a specific IP regime for the protection of intellectual properties of the Fashion industry with a fast track registration system, specifically for the fashion business to overcome the problem of speed vs law and also by harmonising the IP law in different jurisdictions for better protections of Intellectual Properties of the Fashion industry and to prevent them from unauthorised and unlawful copying in this world of copycats.