

**“Protection of Fashion Design under Intellectual Property Law”**

*Roshni Khatri*  
*B.B.A.LL.B. (Hons.)*  
*Amity University,*  
*NOIDA*

**ABSTRACT**

Fashion, as stated by Calvin Klein, revolves around change—constantly altering silhouettes, fabrics, and colors. But what happens when the worlds of "legal" and "fashion" collide? Can law become less or more captivating by adding a stylistic touch? Is it possible for someone who is attracted to the glamor of the spotlight and the complexities of law to become a lawyer?

In India, a key player in cotton, jute, and silk production, the fashion sector is making significant strides on the global stage, becoming a substantial contributor to the Indian economy. Projections indicate that by 2026, the fashion industry in India could burgeon into a \$106 billion enterprise, with notable growth in women's formal wear and children's clothing. However, the industry grapples with challenges such as brand recognition, design protection, and trademark issues, thrusting fashion law, also known as apparel law, into the spotlight.

The fiercely competitive global fashion industry, although impacted by economic crises, continues to adapt and attract consumer admiration. Yet, this glamorous world is not without its drawbacks, particularly the rampant production of counterfeits that annually inflict significant losses on fashion businesses. To address this issue and the industry's dominant position in global markets, the necessity for protection has arisen. Intellectual property law emerges as the solution, safeguarding not only designers' names and company brands but also the products they bring to life.

**Keywords:** Fashion Designs, Piracy, Intellectual Property Rights, Protection

**INTRODUCTION**

"As the saying goes, 'The difference between a good designer and a real designer is to be in tune with what is there in the moment and define it before anyone else.'" The fashion industry is a unique and dynamic business sector that contributes millions of Rupees annually and plays a significant role in international trade.

It not only plays a significant economic role but also constitutes a captivating and vibrant world that captures the enthusiasm of many.

This dissertation aims to shed light on the fundamental challenges faced by fashion companies, particularly in the realm of fashion design, addressing issues such as counterfeiting and knockoffs. The focus of the investigation will be on the safeguards provided by EU intellectual property legislation.

Fashion designs are protected by a variety of mechanisms, including copyright and related rights, registered and unregistered designs, trademarks, domain names, utility models, trade secrets, patents, and know-how. However, this dissertation will focus specifically on copyright law and industrial designs law for a comprehensive examination of the subject matter.

### **SUBJECT MATTER FOR PROTECTION**

- Sketch designs are eligible for protection under the Copyright Act through the registration process.
- Article designs are eligible for protection under the Design Act, 2000.
- Color combinations can be protected under the Copyright Act, 1957.
- The fabric or material used for producing articles can be claimed for protection under the Designs Act, 2000.
- Logos are also eligible for protection under Intellectual Property laws.

### **RESEARCH QUESTIONS**

1. What legal protections for fashion designs are offered under the Designs Act and the Copyright Act?
2. What obstacles must be overcome in order to secure patent protection for fashion designs?
3. How does the judiciary feel about fashion design protection?
4. How do geographic indicators fit into the protection of fashion design?

### **RESEARCH OBJECTIVES**

1. To look into the concept of fashion designs and the protections afforded by the Copyright Act of 1957 and the Designs Act of 2000.
2. To recognize and examine the obstacles and hardships that fashion designers face while trying to register their creations.
3. To investigate the legal viewpoint about fashion design protection.
4. To make suggestions for legislation and practical measures to stop design piracy.

### **LITERATURE REVIEW**

In this paper, the author explores the division of Haute Couture, emphasizing the problems that immediate replication of well-known designs poses to designers' intellectual property rights. While adding new intellectual property rights may deter unfair competition, care must be taken to make sure that these regulations are specifically crafted to safeguard only particular types of designs. In order to effectively counteract copying processes, the author emphasizes the necessity of a thorough protection mechanism for fashion designs.

By examining the intersection of fashion and intellectual property law, the paper sheds light on the sustainability issues arising from "fast fashion" practices and the ethical dilemmas associated with overseas manufacturing. Despite efforts by designers to safeguard their creations, existing intellectual property protections remain inadequate, leaving them vulnerable to piracy.

The article's emphasis on counterfeiting concerns draws attention to the substantial obstacles that luxury goods manufacturers face in an increasingly globalized marketplace. Counterfeiting, particularly prevalent in the luxury sector, not only defrauds consumers but also poses ethical concerns. While the paper elucidates the process of counterfeiting, it falls short in providing solutions for preventing such practices. The discussion on the protection of fashion designs emphasizes the need for a systematic and expedited protection process to mitigate the copying process faced by designers. Despite legal rights available to designers, the registration process is cumbersome, hindering their ability to safeguard their creations effectively.

The article about the Indian fashion business highlights the serious problems with widespread piracy that designers face and the pressing need for stronger laws to safeguard their creations. However, it overlooks specific recommendations for enhancing legal protections and fails to address potential drawbacks of stringent regulations. Legislation to protect unique artistic expressions is also emphasized in the report on intellectual property rights in the fashion industry. It makes the case for updating current laws but does not provide specific steps for changing them or deal with any obstacles that might arise.

## **THE FASHION INDUSTRY**

The fashion industry, which stands out for its inventiveness, originality, and creative thinking, is based on these fundamental principles. With the main objective of drawing in clients, every business in this industry uses these components to develop its own distinctive character. Fashion items provide prestige, glamor, and luxury by functioning at the nexus of psychological and utilitarian purposes. As a result, the level of competition between fashion brands is largely determined by the creative marketing strategies they employ. The world's most famous fashion houses must adapt quickly and skillfully to the constantly shifting seasonal fashion trends in order to establish a firm monopoly.

To explore the potential protective frameworks for the fashion industry, it becomes imperative to first delve into the segmentation of the fashion market. This exploration aims to provide a deeper understanding of the structural dynamics of the fashion industry and identify specific sectors that warrant protection.

## SEGMENTATION IN THE FASHION INDUSTRY

Initiating the discussion on market segmentation, price often stands out as the predominant criterion for market categorization in general. However, several other pivotal elements, such as creativity, quality, and specific target groups, play integral roles in shaping the nature of markets. Adhering to these principles, the fashion industry reveals itself as comprised of five distinct market segments, symbolized as a pyramid:

### 1. Haute Couture:

At the pinnacle of the pyramid, Haute Couture represents the most exclusive and expensive market segment, with prices soaring up to ten times higher than the average market. Tailored for a specific elite clientele, including celebrities gracing the "Red Carpet" or international patrons, haute couture is reserved for special occasions. Exhibiting unmatched vision, inventiveness, and artistry, these works are painstakingly "made-to-measure." Each piece is considered a work of art, and the brand's image is intricately linked to this segment. As Ralph Lauren eloquently expressed, "I do not design clothes. I design dreams."

### 2. Ready-to-Wear ("Prêt-à-Porter"):

The ready-to-wear category, which is positioned beneath haute couture, blends effective industrialization with a high degree of inventiveness. Prices in this area are three to five times more than those in the mainstream market. Ready-to-wear collections, particularly at fashion shows, are a means by which designers present their interpretations. These designs are more widely available, adaptable, and appropriate for a wider range of events and target audiences than haute couture.

### 3. Diffusion ("Second Young Lines"):

Occupying a segment with prices higher than the average (two to three times more than mass market), diffusion products are relatively affordable. The objective here is to broaden the reach of fashion companies by producing lower-priced, lower-quality items. Brands like Marc for Marc Jacobs, Versus for Versace, and DG for Dolce & Gabbana are examples of how this technique seeks to appeal to a broader audience. Although production is outsourced in greater quantities and the nation of origin is less crucial for success, the designer's involvement is still important. This category combines wholesale and retail distribution to reach a new demographic: youth. Sporting a more casual and sportive style, including items like t-shirts and sneakers, diffusion lines resonate strongly with younger audiences.

### 4. Bridge:

Originating in the USA, the Bridge category serves as a connector between high-end and mass-market segments. Product prices fall within 1.5 to 2 times the range of mass-market items, striking a balance with affordability through the application of the value-for-money principle.

The production heavily relies on outsourcing, resulting in a noticeable absence of craftsmanship. These products prioritize ease of wear, accommodating a broad spectrum of occasions, including everyday wear. The distribution model blends elements of both wholesale and retail, with a noteworthy emphasis on locality. Local brands play a pivotal role, appealing to the local populace. Designers within this segment often adopt fantasy names for their brands rather than using their own names, as exemplified by Diesel, Coach, North Face, and others.

### **5. Mass Production Market:**

Products in this category are often affordable, though brand pricing may vary. As an example, the Inditex Group has multiple brands, including the well known brands like Pull and Bear, Massimo Dutti, Bershka, and Zara, all of which have distinct product characteristics and pricing points while remaining competitively priced overall. Mass-market products, which appeal to a diverse range of age groups—from teenagers to sophisticated women—are designed to be adaptable to a variety of places and situations. The major purpose of this area is to provide an enjoyable and globally accessible purchase experience.

Upon scrutinizing the segmentation of the fashion market, it becomes evident that each of the five categories possesses distinct characteristics. Significant differentiations arise, encompassing aspects such as price, creativity, and the quality of products. In the subsequent chapters, we will delve into the realm of intellectual property protection, examining its relevance to specific segments within the fashion market. For example, designs that are sold in large quantities might not be sufficiently unique to warrant copyright protection. Nonetheless, intellectual property law continues to protect brands in this sector, especially in regard to trademark protection. It is crucial to highlight that every segment in the fashion market encounters similar challenges, with counterfeiting and knockoff issues standing out as the most significant. In the chapters to follow, we will conduct an in-depth analysis of these challenges and explore the legal solutions available to address them.

## **THE CHALLENGES OF “FAKES” IN THE FASHION INDUSTRY**

Underneath the glamorous exterior of the fashion industry is a pervasive problem with regard to intellectual property rights, one that many fashion brands—especially the most prominent ones—share in their fight against counterfeiting.

It's critical to distinguish between copycat and counterfeit goods before going any further. A "counterfeit" is a perfect duplicate of an authentic product that includes the trademark-logo and design. These products are categorically unlawful and intended to intentionally mislead customers throughout the purchasing process, which may result in legal repercussions.

On the other hand, a "knockoff" is a more general term for goods that bear a striking resemblance in terms of overall appearance or design to a popular product, but do not have the same trademarks or federally registered brand names. Even with a clearly distinctive logo,

those who deal in copycat products could still be subject to legal action from the trademark owner because of the possibility of consumer confusion.

The problem of "knockoffs" is frequently linked to powerful fashion houses imitating rivals' designs in an effort to grow their clientele. This could entail making the product better, giving it more appeal, or selling it for less. A famous instance of emulation transpired involving two prominent fashion houses over an elongated black tuxedo evening gown. A very popular dress that Yves Saint Laurent debuted in 1970 was remarkably copied by Polo Ralph Lauren in December of 1992. Yves Saint Laurent sued Ralph Lauren for copyright infringement and unfair competition, and she was successful in getting a court order for the confiscation of the knockoff garments. Ralph Lauren was forced to make a sizable payment of French francs in damages when YSL prevailed.

The fashion sector faces substantial hurdles from both counterfeiting and copycat items, which violate intellectual property rights like copyright, patents, trademarks, and industrial design. Some contemporary economic theories propose a significant relationship between imitation and invention, notwithstanding their deleterious repercussions. If innovation produces better items, imitation makes them available to a larger market. This dynamic suggests that while imitation encourages healthy competition, innovative businesses may ultimately gain a great deal from it.

Products that are counterfeit and belong to well-known brands are frequently sold through a variety of trade channels, including internet portals. On the other hand, well-established businesses could take advantage of legal gaps to imitate and manufacture goods that belong to other brands. For example, on December 8, 2017, Nike was able to get a permanent injunction and damages against a merchant who was utilizing their Nike and Swoosh trademarks to sell counterfeit goods. The damages included both punitive and compensatory elements. In a similar vein, rumors circulated that Christian Dior, a high-end fashion label, had copied designs for its Cruise 2018 collection from a tiny Indian art collective and shop called "People Tree."

India, Asia Pacific's second-largest market, had a 25.5% increase in retail e-commerce sales in 2022. Despite the positive online shopping experience and convenience, counterfeiters exploit consumers through domain name squatting, making online shopping appear genuine and professional. Counterfeiters manipulate the online shopping experience by generating fake reviews and influencing consumer purchasing decisions. Social media platforms such as Instagram, Facebook, WhatsApp, and Telegram are also utilized for selling counterfeit products. To curb the prevalence of counterfeit items on online retail platforms, proactive measures are imperative to eradicate them for the benefit of legislators, brands, and consumers.

The profitability and brand values of well-known brands are seriously threatened by the counterfeit business, which also poses a serious threat to the economy by causing losses in government income. The massive amount of counterfeiting contributes almost one lakh crore to the Indian economy, which has a significant effect. There are serious legal and financial

repercussions to this activity for both unaware consumers and brand owners. The issue is made worse by deliberate counterfeiting, in which consumers buy things that are actually fake. Counterfeiting increases the price difference between genuine and fake goods in the fashion sector. Consequently, the production or distribution of inferior imitation items under another person's name without that person's knowledge or authorization is considered counterfeiting.

### **LANDMARK JUDGMENT: Christian Louboutin SAS vs Nakul Bajaj and Ors.**

The Indian legal system has dealt with a number of cases involving fashion industry counterfeiting. The Delhi High Court's decision in *Christian Louboutin SAS vs. Nakul Bajaj & Ors.* serves as an example of how online intermediaries can be held accountable and liable for trademark infringement. In the context of trademark infringement, this ruling clarifies India's intermediary responsibility laws.

Christian Louboutin, the complainant, is the owner of registered trademarks, including a one-color mark for the recognizable "red sole." The plaintiff, "darveys.com," a company that bills itself as a "luxury brands marketplace," was sued for trademark infringement by the defendant, asserting that their items are only offered in India through authorized dealerships. The defendant was allegedly selling fake goods, according to the complaint. The defendant countered that since the offered products were authentic, it was only a middleman and qualified for protection under Section 79 of the Information Technology Act, 2000's "Safe Harbor" clause.

Examining the definition of "intermediary" under Section 2(w) of the Information Technology Act, 2000, the Delhi High Court considered the functions of intermediaries in the US, India, and the European Union. In evaluating the defendant's impartial role, the court considered technical, automatic, and passive behavior that suggested ignorance of or control over stored data. The court argued that intermediaries become liable for infringement once they become aware of it, citing a number of previous rulings. This is in line with the decision made in *MySpace Inc. v. Super Cassettes Industries Ltd.*, which highlighted the need for intermediaries to intervene when they become aware of illegal activity on their platforms—even in the absence of a court order.

We looked at the idea of active and constructive knowledge. The court ruled that intermediaries do not need a court order to stop using counterfeit or infringing products if they are aware of illicit activity taking place on their platforms. If the intermediary continues to act with scant information, it could be held liable for the violation as it suggests collusion. The court stressed that an e-commerce platform goes beyond its position as a middleman and is held accountable for infringement when it actively engages in, promotes, or assists in the sale of counterfeit goods. As demonstrated by the *A&M Records, Inc. v. Napster* case, this approach is consistent with the intermediary responsibility stances taken in copyright infringement cases in prominent international jurisdictions such as the United States.

Finally, the court in the Christian Louboutin case decided that the plaintiff went beyond the duty of an intermediary by having full authority over the products being sold. As a result, intermediaries' failure to perform 'due diligence' about intellectual property may exclude them from the safe harbor exemption under Section 79(3)(a). The court ordered the intermediary to ensure that its vendors fulfill the plaintiff's warranties and guarantees, as well as remove any meta-tags containing the plaintiff's mark.

Regardless of whether we subscribe to the notion that counterfeiting detrimentally impacts the production of fashion items or the idea that counterfeiting fosters healthy competition among fashion companies, there is a universal conclusion that we all acknowledge as imperative: the safeguarding of creativity through intellectual property law.

## CONCLUSION

The stories of all civilizations are shaped by the always changing fashion trends, which are not only representations of the times but also of history, vitality, and development. The fashion business has had an extraordinary upsurge in the last several years, transcending beyond the realm of apparel, accessories, and shoes to become a significant medium of expression. With fashion's enormous economic impact, intellectual property rights are the domain in which its protection is most urgently needed. The foundation of the rapidly expanding fashion industry is its unique and fresh designs. Fashion design piracy, on the other hand, poses a serious threat to the industry, impeding development and innovation. This problem is especially common in the Indian fashion design industry, where outdated laws frequently fall short of offering sufficient defense against imitations, knockoffs, and counterfeit goods. Fashion designers' rights are seriously threatened by how easy it is to copy designs, patterns, and methods. This might devalue their work and jeopardize the integrity of their brands.

Realizing that imitation is not always flattering is crucial, particularly for independent designers who make their livings from producing one-of-a-kind pieces. The issue has been made worse by the quick development of technology, which makes it possible for designs to be stolen minutes after they are created and even before they are formally published. Even though some industrialists have substantial financial resources, they are nevertheless susceptible to design theft because to the time-consuming and costly nature of legal defense.

Fashion designs are not effectively protected by the present legal framework, which includes the Designs Act and the Copyright Act. The registration procedure is onerous and fails to sufficiently take into account the fashion industry's changing character. The Designs Act of 2000 has to be amended in order to fix these flaws. A precise description of "fashion design" that emphasizes a garment's overall look above its separate components ought to be included. In addition, to account for the fast-paced nature of fashion design, a more straightforward registration process must be put in place. In addition, measures for unregistered design protection have to be implemented in order to offer temporary safeguarding for the works of designers.



## SUGGESTIONS

The effectiveness of current legislation has been questioned, especially in light of the difficulties small businesses and indigenous fashion workers have in obtaining legal counsel in order to preserve their intellectual property and exercise their legal rights. Many are further discouraged from requesting protection under these statutes by the time-consuming and costly registration process. A more rigorous approach to handling these cases and increasing public awareness of the problem of piracy is desperately needed, with the goal of enlightening both the general public and designers themselves about the significance of properly protecting their intellectual property.

To address these concerns, it is essential to define fashion design and fashion design piracy within a comprehensive model. Given the broad scope of fashion design, a more specific definition is required, encompassing various aspects such as apparel, accessories, and footwear. Additionally, clarity is needed regarding what constitutes fashion design infringement, particularly in cases of inspiration or adaptation from previous designs. While recognizing the industry's reliance on imitation, measures must be implemented to protect designers' rights without unduly stifling creativity. One proposed solution is to require authorization from the creator before making changes to existing designs, thereby controlling the proliferation of counterfeit goods. Establishing a distinct panel composed of industry experts and intellectual property specialists to assess design submissions for registration could streamline the process. This panel could set a shorter registration timeframe of fifteen days to a month and limit the number of designs per application to twenty to thirty, reflecting the current challenges of the registration process. Moreover, a database should be maintained to track registered and denied designs, with protections granted for a limited period, considering the transient nature of fashion trends. While technology advancements necessitate a modernized approach to existing laws, it is crucial to strike a balance between adaptability and legal rigidity to thrive in today's competitive society.

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