



BLIND FOLD LEGAL JOURNAL

VOLUME-1 ISSUE-3

{DECEMBER 2021-FEBRUARY 2022}

E-Mail:- blindfoldjournal@gmail.com

Website: - www.blindfoldjournal.com

Need for Fashion Laws in India

Author: Riya Jaiswal

Introduction

People in the fashion business have experienced the problem of their original content being duplicated and published elsewhere, and with the progress of modern technologies, we may see more copying in fashion design than ever before. The fashion industry is known to expand on a daily basis, and we have witnessed this trend over the last decade. Many local designers have created a name for themselves not only in the United States but also abroad. From the beginning of 2004 to late 2015, the number of fashion events increased from one to five. According to a survey undertaken by the Associated Chambers of Commerce and Sector of India (ASSOCHAM), the fashion industry has increased from 750 crores to 15,000 crores by late 2020, with a 40% increase from 2012.²¹ However, the research went on to say that Indian designer work has not flourished in the worldwide market. Designer clothing has climbed from 0.32 percent in 2012 to 1.9 percent in 2020, according to the report. When it comes to fashion design, it's where one's creative mind and academic abilities come together. In order to display their art and obtain protection under the Intellectual Property Act, they need to be innovative. Right to Property (IPR). We all know that clothing and accessories are utilised for practical purposes. However, with the current fashion and the influencers who work behind it, we have a purpose for our lives reveals an expression that is more than utilitarian. This level of protection is required. Safeguards for these movers and shakers.

IPR Protection in Fashion Design

There is a group that opposes IPR protection for fashion design. They have made a critical argument that IPR protection is not necessary because the fashion industry is rich and growing. Instead, they claim that without IPR protection, fashion designers will be more confident to innovate new designs, which will lead to the growth of the industry. Copying is a prevalent tendency in fashion design, and it usually occurs between the upper and lower echelons of the industry, thus it is in everyone's best interest to avoid IPR protection.²³ Extending this IPR protection to the fashion industry is not a priority for top fashion designers, but it is a worthwhile consideration for upcoming designers and small business owners who are caught in a market where

there is enough over-exposure due to copying, as social media has brought us together. Copying is a common occurrence in fashion design, and it frequently occurs between the upper and lower echelons of the industry, therefore avoiding IPR protection is in everyone's best interest. 23 Extending this IPR protection to the fashion sector is not a top priority for top fashion designers, but it is a worthwhile consideration for rising designers and small business owners who are caught in a market where there is enough over-exposure due to copying, thanks to social media. The trademark act does not provide for the provision of fashion garments; rather, it protects aspects of the garment such as shape, colour, pattern, special sign, and so on, and it must be registered in order to receive protection. The class of fashion goods is stated in Schedule III of the Design Rules, 2001, where class is mentioned and protection is awarded according to it.

After registration, the design must meet the standards set forth in Section 2[d] of the Design Act, as well as the requirements set forth in Section 4 of the same Act, which states:

1. The design must be original and include a creative aspect.
2. Before the design is made available for successful registration, it should not be made available to the general public anywhere.
3. It should be designed in such a way that it stands out from previous or similar designs in order to establish its own identity.
4. There should be no vulgar stuff on the design or anything that could sway a person's religious attitude, for example.

Let's look at how a trademark might assist a company keep its unique identity. This does not apply to fashion designers, but to others who work in the sector, such as weavers, however trademark law does not provide complete protection for any fashion brand. In India, the Designs Act of 2000, Section 2(d), defines what is a design in great detail, but there is a gap when it does not include trademarks in the scope of Section 2(1) (v) of the Trade and Merchandise Marks Act, 1958, which will be the corresponding definition of the Trade Marks Act, 1999 after repeal.

The Court went on to interpret the definition of design as per Section 2[d] It may not be difficult to register the same design under the Design Act and the Trademark Act, but after registration under the Design Act under Section 11, there is no limitation on where a trademark can register the same as a design. This is because any kind of use under the registered design in the form of a trademark is not given an important component for cancellation under Section 19 of the Trademark

Act.

Thus, the court believes that a suit for any kind of infringement for a registered design and passing off action could be filed, but that suit shall not lie against any kind of registered design and passing off, and that this suit should be filed before the expiry period as stated in Section 11 of the Design Act 2000, and that this suit should be filed before the expiry period as stated in Section 11 of the Design Act 2000. This judgement is significant because it expands the scope for a fashion designer to register their design as a trademark.

The Problem of Knocking off

The researcher has now attempted to distinguish between a knockoff and a counterfeit. So, a knockoff is a replica or imitation of someone else's popular creation/idea, and this content or material was created illegally without a licence to generate such content/material. This is a widely used phrase in the fashion industry, where we frequently see copies of original designs or materials being sold in the market under the label, and the created content is the original copy of the design. Because it is identical to the design that is produced originally, the knockoff is utilised in the way that it makes a replica of the original design with no name or credit provided to the original designer.

When it comes to counterfeit goods, it's usually a duplicate of an original fashion design with a brand symbol linked to it. The true objective of the individual trying to sell counterfeit is to trick the buyer who came to him with a clothing design by delivering a counterfeit one. This product is marketed in place of the originals in order to pass the same tests. Even if the counterfeits cannot carry the original design and adaptability, the only thing they seek to do is duplicate and present it, fashion influencers regard this as piracy in the area of fashion design.

Conclusion

The fashion industry changes with time, and it has an impact on the lives of those who work in it. As a result, drafting and enforcing formal and rigorous legislation for this industry becomes critical. As a result, our legislators must try to create a fashion legislation, or else reform the current state of law regime to be tougher in order to defend fashion designers' rights from infringement.

There is a pressing need to improve India's current intellectual property regime to make it more conducive to protecting fashion design from various forms of piracy. The fashion industry is recognised for being fast-paced. It is clear that the market's trend changes on a regular basis, and the consumer is regarded as the king. As a result, there is an ever-increasing necessity to safeguard fashion designer work from being duplicated. Nowadays, practically every fashion company that is popular in the market issues various obligatory criteria in order to prevent their designs from being copied.

