

A Critical study and analysis on Patent, Trademark infringement and Brand Protections Strategies among Emerging Start- ups in Tamil Nadu

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Abstract: *The history of fashion is replete with shifts and growth. The global or national economy can be impacted by fashion. It can influence politics, function as a kind of art, and have an impact on a person's private life. It goes without saying that one of the main things that influences and is influenced by culture is fashion. It has existed continuously and will continue to do so for as long as humans do. In the realm of fashion, trends essentially drive the industry: a new trend gains traction, designers create their own takes on it, consumers purchase the items, the trend eventually wanes, and a new one appears. Trends cover a wide range of industries, including decor, body piercings, tattoos, surgical procedures, clothes, shoes, accessories, cosmetics, and interior decoration. Since the Indian apparel market is expected to reach \$220 billion by 2020, fashion trends have become significantly well-known than any other. Intellectual property rights are important for fashion sustainability. It guards against imitation and maintains the uniqueness of every single design. A small infringement of intellectual property rights will result in an enormous loss for the business. Study up on the regulations pertaining to intellectual property that affect fashion diligence. A series of legal rights known as copyright are given to the specific individual or inventor who created the design. Opponents might be prohibited from duplicating or disseminating inside the allotted time by utilizing this intellectual property right. Participants or authors are free to use their creations without any limitations. Obtaining the owner's consent is crucial when using creative work.*

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I. INTRODUCTION

The history of fashion is replete with shifts and growth. The global or national economy can be impacted by fashion. It can influence politics, function as a kind of art, and have an impact on a person's private life. It goes without saying that one of the main things that influences and is influenced by culture is fashion. It has existed continuously and will continue to do so for as long as humans do. In the realm of fashion, trends essentially drive the industry: a new trend gains traction, designers create their own takes on it, consumers purchase the items, the trend eventually wanes, and a new one appears. Trends cover a wide range of industries, including decor, body piercings, tattoos, surgical procedures, clothes, shoes, accessories, cosmetics, and interior decoration. Since the Indian apparel market is expected to reach \$220 billion by 2020, fashion trends have become significantly well-known than any other. Intellectual property rights are important for fashion sustainability. It guards against imitation and maintains the uniqueness of every single design. A small infringement of intellectual property rights will result in an enormous loss for the business. Study up on the regulations pertaining to intellectual property that affect fashion diligence. A series of legal rights known as copyright are given to the specific individual or inventor who created the design. Opponents might be prohibited from duplicating



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II. EVOLUTION OF FASHION INDUSTRY

- **Indus Valley Civilization's Textile Manufacturing (3300–1300 BCE)**

When the Indus Valley Civilisation flourished between 3300 and 1300 BCE, it left behind the first evidence of fashion in India. These people were expert weavers and spinners of cotton, according to archaeological discoveries. A vibrant textile industry is demonstrated by fragments of woven cotton discovered at places like Mohenjo-Daro and Harappa. Indigo was used to dye clothes, and the discovery of colourful apparel suggests that the Indus Valley's ancient residents were not just cotton producers but also dyers.

The fabrics made during this time were straightforward but useful, frequently embellished with straightforward patterns and decorations. Men wore a sort of loincloth called a dhoti, while women wore long, draped pieces of cloth that resembled modern sarees. The main purpose of the clothing was to provide adequate comfort. With the subcontinent's warm temperature in mind, most clothing was left unstitched.

- **From 1500 to 500 BCE, the Vedic Era and the Origins of the Saree**

The saree, a garment that is still a crucial component of Indian design today, originated as the principal clothing worn by women throughout the Vedic period, which lasted from 1500 to 500 BCE. Symbolizing the status of women in society, the unstitched, draping material offered comfort and versatility. The saree, like other Indian clothing, was dyed in vivid hues, frequently with the use of organic dyes derived from flowers, minerals, and vegetation. By now silk was starting to become popular, especially with the wealthier segments of the population. The manufacture of magnificent silk garments, sought after by the elite and royalty, was made possible by India's mastery of the practice of sericulture. Given the intimate association between religion and daily life, the elaborate designs on silk cloths were frequently influenced by religious and mythical themes.

- **Buddhism and Jainism's Influence on Indian Style**

From the sixth century BCE onwards, Buddhism and Jainism, with their emphasis on simplicity and a disengagement from worldly possessions, had an impact on Indian fashion. These values might be seen in the plain cotton clothes that monks and nuns wore. Though the upper classes and kings continued to wear silk and other luxurious materials, this simplicity coexisted with their complex and intricate attire.

- **Governmental Initiatives to Safeguard Fashion Designs:**

Recognizing the critical need to protect fashion creations, governments worldwide have introduced legislative and policy measures. In India, the Designs Act of 2000 provides legal protection for original designs for an initial period of ten years, which can be extended for an additional five years. The Copyright Act of 1957 protects artistic works such as sketches, patterns, and textile designs. Furthermore, the Geographical Indications Act of 1999 safeguards traditional and region-specific fashion, such as the Banarasi sarees and Kancheepuram silks.

In the United States, fashion designers rely on a combination of legal tools, including copyright law for purely artistic designs and design patents for ornamental creations. Trademarks also play a significant role, protecting logos, brand names, and unique identifiers, such as Gucci's iconic "GG" logo. The European Union has developed a robust legal framework through the Community Design Regulation, which offers both registered and unregistered design protections. Additionally, anti-counterfeiting initiatives ensure strict enforcement to curb the inflow of counterfeit goods.

At the international level, organizations like the World Intellectual Property Organization (WIPO) promote harmonized standards for protecting fashion designs globally. The TRIPS Agreement (1994) remains a landmark initiative that mandates minimum intellectual property protections among member countries. These measures collectively aim to create a safer environment for designers to innovate and thrive.



- **Current Trends in Fashion IPR:**

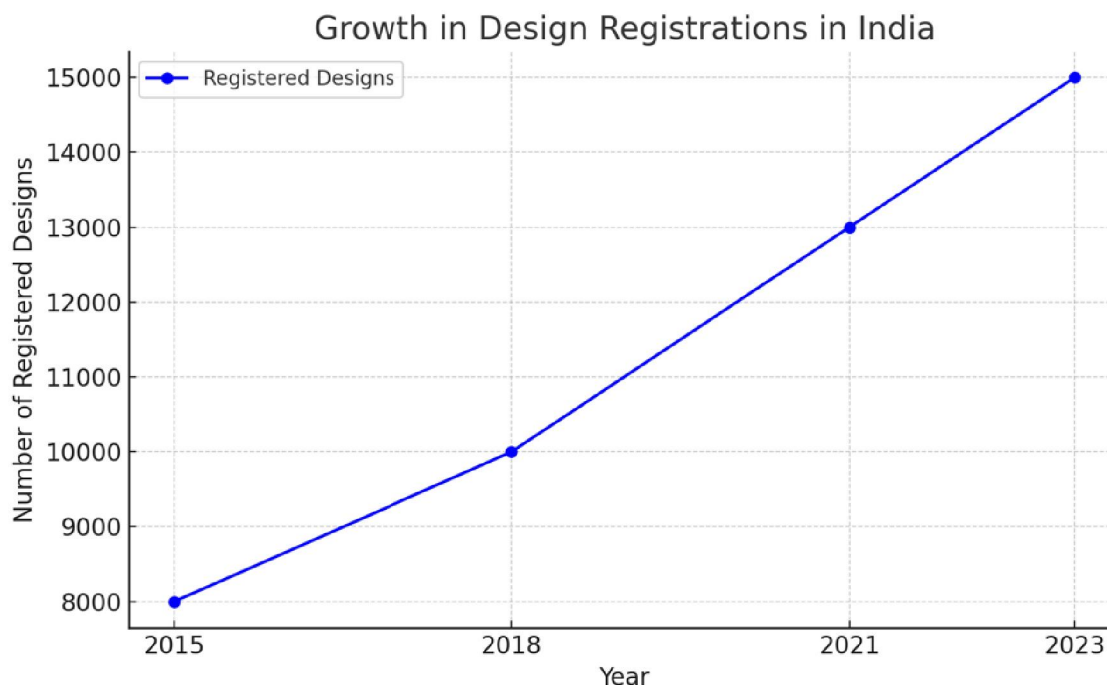
Fashion designers are increasingly turning to innovative technologies and strategies to safeguard their creations. Blockchain technology, for example, provides a transparent ledger that tracks design ownership and ensures authenticity. Similarly, the rise of Non-Fungible Tokens (NFTs) has enabled designers to tokenize digital fashion assets, preventing duplication in both digital and physical marketplaces. AI-powered tools are also revolutionizing the industry by quickly detecting counterfeit designs and facilitating legal enforcement. Another significant trend is the emphasis on sustainable fashion, with governments promoting intellectual property rights to protect ethical and environmentally conscious brands. Licensing agreements and collaborations have become common, allowing designers to expand their reach while ensuring fair compensation. These advancements highlight the evolving nature of IPR in fashion, as designers embrace modern tools to address long standing challenges.

- **Statistical Data:**

Recent studies highlight the economic and creative impact of intellectual property violations in the fashion industry. According to a 2023 OECD report, counterfeit fashion items account for 21% of all seized goods globally, significantly affecting designers' revenues. In India, the fashion industry loses approximately ₹50,000 crores annually to counterfeit products, as reported by ASSOCHAM.

The rise in IP awareness has led to a notable increase in design registrations. In 2023 alone, India recorded a 20% growth in filings under the Designs Act, with independent designers accounting for nearly 30% of the total applications. Such data underscore the growing importance of intellectual property rights in safeguarding creative assets and promoting economic growth in the fashion sector.

Graph 1: Growth in Design Registrations in India



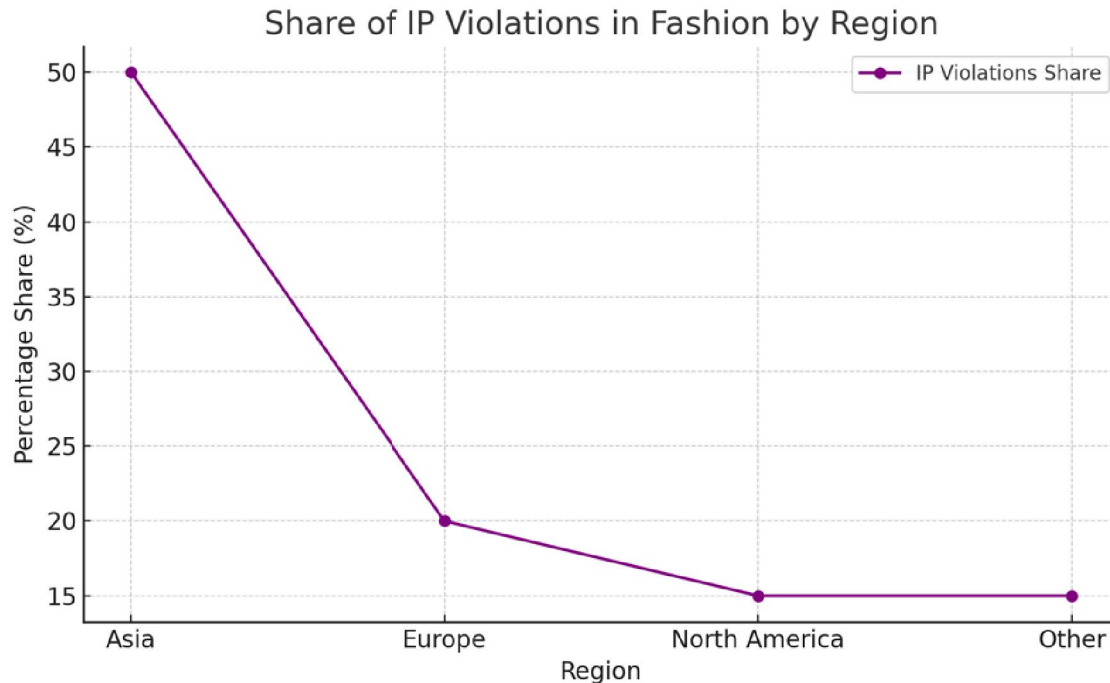
Interpretation:

The graph shows a consistent increase in the number of design registrations under the Designs Act, 2000 over the years. From 8,000 registrations in 2015 to 15,000 in 2023, there has been nearly a 90% increase. This growth highlights the



increasing awareness among fashion designers about securing their intellectual property rights. It also reflects the Indian government's initiatives in promoting IP protection and simplifying design registration procedures. Fashion designers, especially in India, are realizing the importance of registering their designs to combat piracy and counterfeiting. This trend indicates a positive shift towards protecting innovation and creativity in the fashion industry. However, despite the growth, challenges remain in enforcement and awareness, particularly for smaller or independent designers.

Graph 2: Share of IP Violations in Fashion by Region



Interpretation:

The pie chart reveals that Asia accounts for 50% of IP violations in the fashion industry, followed by Europe (20%), North America (15%), and other regions (15%). Asia's high share can be attributed to large-scale manufacturing hubs, where counterfeit fashion items are often produced and distributed globally. This data underscores the critical need for stronger enforcement mechanisms in regions like Asia, where counterfeiting and piracy are rampant. Fashion designers face massive revenue losses and brand dilution due to such violations. The statistics emphasize the importance of global collaboration in tackling IP violations through stricter laws, enforcement, and awareness campaigns.

III. PROTECTING INTELLECTUAL PROPERTY: ALTERNATIVES TO THE CURRENT SYSTEM

New approaches that place a greater emphasis on adaptation, collaboration, and creativity have been advocated by a number of individuals in light of the limits of traditional intellectual property protection in the setting of the short fashion cycle. In an environment where designs become obsolete so rapidly, these alternatives are a reflection of the rising understanding that laws pertaining to intellectual property may not be able to protect creators on their own.

Prioritising Collaboration Over Confrontation in Every Situation

One alternative is the increasing trend of fashion cooperation, which is becoming more popular. As opposed to competing with one another over intellectual property, a growing number of designers and brands are opting to collaborate. The legal and commercial benefits of shared creativity can be realised through collaborations between



high-end designers and rapid fashion firms, as well as between influencers and established houses. Due to the fact that intellectual property law frequently fails to keep up with fast shifting trends, this model of collaboration has the potential to assist in overcoming the constraints of the law. As an illustration, the industry has embraced cross-brand alliances in order to stimulate innovation while avoiding typical legal fights over intellectual property. For instance, the collaboration between Balenciaga and Adidas, as well as the relationship between H&M and designers such as Karl Lagerfeld or Stella McCartney, are examples of how this has occurred.

- **The Promotion of Creativity Without the Imposition of Legal Restrictions**

Some people believe that rather than relying on intellectual property rules, the fashion industry ought to adopt a more open model of innovation, in which people are able to openly exchange ideas and designs with one another. Rather than concentrating on the protection of specific items, this would let designers to concentrate on continual innovation. A culture of ongoing reinvention, in which fashion is always evolving and trends are perpetually updated, might be fostered through the dissemination of ideas without restriction. Redefining success as a function of creative agility rather than exclusive possession of intellectual property could also be beneficial to the fashion sector. Designers would be less concerned with legal disputes and more focused on keeping up with trends in this setting. They would also place an emphasis on the artistry and speed with which fashion can innovate.

- **Establishing a Legal Structure That Is Adaptable to the Fashion Industry**

Some people have recommended a legal framework that is more adaptable and fluid, despite the fact that standard intellectual property protections might not be suitable for the fast-paced fashion industry. This may involve a reduction in the length of time required for design patents or a speedier process for the granting of intellectual property protection. As an illustration, the implementation of "micro-patents" or transitory protections that are more closely aligned with the speed of fashion cycles could provide designers with the opportunity to safeguard their works for a short period of time without requiring them to engage in costly and antiquated legal procedures. As a result of the short-cycle nature of fashion trends, the fashion industry has been radically altered, the efficiency of traditional intellectual property protections has been called into question. In the field of hectic fashion, it is clear that copyright, design patents, and trademarks each offer some degree of protection; nonetheless, their limitations are currently apparent. Design professionals and smaller companies are facing an uphill battle when it comes to securing their ideas because trends are changing at the speed of light and imitation is becoming more widespread. Important decisions in instances such as Christian Louboutin v. Yves Saint Laurent, as well as the legal cases that involve corporations like Shein, bring to light the necessity of reforming the laws governing intellectual property. It may be difficult for designers to succeed in a market where originality and invention are continuously under threat if fundamental changes are not made to the structure on which they currently operate. In order to adequately safeguard those who are responsible for driving innovation and creativity within the fashion business, intellectual property legislation needs to develop as the fashion industry adjusts to the new realities of short-cycle trends.

IV. COST AND ACCESSIBILITY OF IPR PROTECTIONS FOR EMERGING DESIGNERS

In order to encourage creative thinking and guarantee that there is a level playing field in the fashion business, it is critical to protect intellectual property rights (IPR). The cost and accessibility of intellectual property rights protections, on the other hand, are frequently significant impediments for budding designers. The complexity of negotiating the intellectual property rights landscape, in addition to the high expenses associated with securing and maintaining these rights, can discourage many smaller designers from pursuing legal protections, despite the fact that safeguarding unique designs and brand identities is of the utmost importance. Emerging designers confront a number of hurdles and constraints when it comes to gaining access to effective intellectual property rights (IPR) protections. This portion will investigate the financial costs that are involved, as well as possible remedies that could make IPR protections more accessible and cheap.



Obstacles to Financial Success for Independent and Small-Scale Designers

The financial obstacles that must be overcome in order to secure and enforce intellectual property rights are frequently insurmountable for designers who are just starting out. In the fashion industry, new entrants may be discouraged from entering the market due to the high expenses required in gaining protection for designs, logos, and collections. Emerging designers frequently lack the financial capital and legal resources that are available to established fashion firms. As a result, they are susceptible to intellectual property theft and do not have the means to fight back legally. Additionally, the process of fighting issues involving intellectual property can be prohibitively expensive. This is especially true when designers are required to challenge claims of infringement or counterfeiters in different jurisdictions. For instance, in order to pursue a case of trademark infringement, one needs to have legal representation, expert evidence, and documentation, all of which might add up to significant costs. It is possible that small designers who are just starting out may be compelled to make a choice between committing limited resources to marketing and production or investing money on legal protection. This results in an unfair playing field, where larger corporations are able to afford substantial intellectual property protection and enforcement, but smaller designers are left vulnerable.

V. CONCLUSION

The fashion business, especially in India, is growing rapidly and is exposed globally, making intellectual property rights (IPR) protection and challenges a major issue. IPR is crucial to protecting designers' creative output, but the fashion industry's rapid rate of invention, short product life cycles, and global counterfeiting hinder its effectiveness. Manufacturers still struggle to secure their innovations and prevent intellectual property infringement notwithstanding copyrights, trademarks, design patents, and geographical indications. These issues affect designers' success and the fashion industry's progress by allowing counterfeiters to thrive and making creativity less profitable. The fashion business in India has grown, attracting international attention for its distinctive styles, materials, and craftsmanship. Rising fashion weeks and worldwide attention to brands in India have made the country a global fashion player. Intellectual property weaknesses increase as the fashion business grows. Fast fashion and the rapid evolution of fashion trends imply that designs can become obsolete very immediately, offering designers with little opportunity to safeguard their IP. Many fast fashion businesses replicate high-end designs, mass-produce them, and sell them for a fraction of the original price, reducing their value to the marketplace. Due to the pace at which designs are copied and sold, designers' legal protection sometimes falls short. Copyright offers designers legal protection for sketches, fabric patterns, and design elements. Clothing design is not protected by copyright in India. When innovations are quickly copied in the market, this limitation leaves many fashion designers without enough security. Design patents safeguard the aesthetics of a garment, but they rarely cover customizations. Trademarks safeguard brand identification and logos, which help differentiate a designer's work in the market, but not decorative or utilitarian components.

VI. ANALYSIS

The case of Microfibres Inc. v. Girdhar & Co. sheds light on the intricacies involved in the protection of intellectual property for designs, notably in the fashion and textile industries. The decision of the court underscores the ongoing conflict that exists between preserving artistic creativity and furthering the development of commercial innovation. The case makes it clear that designs that are primarily intended for commercial use, such as cloth patterns, are better suited for protection under the Designs Act, which is principally concerned with prohibiting the unauthorised copying of designs that are both decorative and practical.¹

- **Protection of Designs versus Copyright:**

The decision confirms the dual protection regime that exists in India. This means that works of art are protected by the Copyright Act, while industrial designs are protected by the Designs Act. The court specified that designs for textiles

¹ Fryer III, W R, *Industrial design protection in the United States of America-present situation and plans for revision*. U. Balt L Rev, 19, 198 (1989).



and fabric patterns that are primarily intended for mass manufacturing ought to be categorised as designs rather than creative works, and that the Designs Act ought to be the governing legislation for these designs.

“**Privy Council in Interlego A.G. v. Tyco Industries Inc**²In this suit the court decided that the entire aim of a design is for it to be duplicated via embodiment in a commercially produced product rather than standing alone as an aesthetic work. Thus, the main consideration is what the finished article will look like, not what it will do, and the owner is granted a monopoly by granting not, as in the case of ordinary copyright, a right to avoid direct reproduction of the image registered as the design, but a right to prevent the manufacture and distribution of articles with a design not significantly different from the registered design, for a much shorter period of time.”

- **Commercial Use and Protection:**

The judgement also highlights the fact that once a design is commercially exploited (for example, applied to an article more than fifty times), it is no longer able to file a claim for copyright protection under the Copyright Act unless it is registered under the Designs Act.

- **Registration of Industrial Designs:**

This case demonstrates the significance of registering designs for protection under the Designs Act, particularly in businesses such as the fashion and textile industries, where mass production and replication are essential components. The decision highlights the fact that designs that have not been registered cannot claim copyright protection unless they satisfy the particular conditions that have been established by the Copyright Act. According to the conclusion, the case of Microfibres Inc. v. Girdhar & Co. is a major ruling in the field of fashion law. This ruling reaffirms the fundamentals of intellectual property protection for designs in India. Having this knowledge highlights how important it is to have a clear awareness of the differences between design protection and copyright. This decision underscores the necessity for textile designers and companies to register their designs under the Designs Act in order to ensure that they are properly protected legally and to avoid unauthorised usage of their fabric designs. A significant precedent has been established by this ruling, which aims to strike a balance between the protection of creative creation and the advancement of economic innovation in the textile and fashion industries simultaneously.

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² (1988) R.P.C. 343



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