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

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## ABSTRACT

*Fashion is 'Art'. Art is defined by the Oxford Dictionary as the expression or application of human creative skill and imagination. Hence, this skill which produces distinct and unique pieces must be protected with Intellectual Property Rights. The IPR Regime in India provides protection to the fashion design under four legislations that is The Designs Act, 2000, The Indian Copyright Act, 1957, The Trademarks Act, 1999 and Geographical Indications Act, 1999. From the perspective of Fashion Industry, the Acts do not protect the entire garment as a whole; rather it protects the particular and individual aspects like shape, pattern, color etc. of the garment. The available Intellectual Property laws in India with regard fashion protection and argues that it is not sufficient to protect the Fashion Industry in India. Fashion Protection is positively significant for un-established designers and entrepreneurs, who endure all the opposition and overexposure burdens of duplicating without the advantage of increased prestige. Without IPR protection they contend, copyists will complementary lift on the endeavors of makers, demoralizing future interests in new developments and manifestations. IPR protection for style designs would energize more prominent development by guaranteeing that the benefits from a plan went to the creator and not to the individuals who just replicated the work. Duplicating innovation especially the speed with which pictures of designs from runway shows can be sent the world over by means of the web has changed so radically lately, that designers are enduring phenomenal damage that must be redressed by IPR protection. The Designs Act affords protection to the "design" registered under the Act, but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark. In this paper the author suggests that this definition does not suit the needs of the fashion designing industry on account of three reasons such as no protection to unregistered designs, Time consuming registration process and Inadequacy of Damages. Due to the same reason the author proposes suggestions for improvisation of the IPR Regime of the Fashion Industry.*

**Keywords:** Fashion Industry, Design, Artistic Work, Intellectual Property Rights.

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## I. INTRODUCTION

The Fashion business in India is developing step by step and growing day by day, it has encountered huge extension in the most recent decade essentially determined by the development of domestic fashion designers, some of whom have increased global acknowledgment as of late.<sup>2</sup> Design in India started a huge number of years prior with grand conventions and traditions behind it. India has a rich diversity in textile legacy and tradition where every local and state has its own remarkable local ensemble and customary clothing and embellishments. In this globalized time, the fashion Industry in India is upgrading itself at a fast pace with worldwide turns of events. Although the Indian fashion industry is blooming, on the other hand, it is beleaguered in fashion design by the challenge of piracy. This Industry has long being known for its ubiquitous nature of duplicating unique style plans and plentiful accessibility of complex programming innovation and technology has made this act of replicating extremely simple. Fashion is Art and a form of craftsmanship. It's a type of innovative articulation did by a designer and put on our bodies which are blank canvases. Art is defined by Oxford Dictionary as "the expression or application of human creative skill and imagination." Henceforth, this aptitude and skill which produces one of kind novel pieces must be secured with Intellectual Property Rights.

### (A) Literature Review

The term 'intellectual property' refers to a loose collection of legal doctrines governing the use of various kinds of ideas and emblems. There are various "original forms of expression" protected by copyright law, including novels, movies, musical compositions, and computer software program's. Inventions and some sorts of discoveries are protected by patent law. Trademark law protects words and symbols that identify the goods and services manufactured or supplied by specific persons or companies to consumers.

The fashion industry now depends heavily on intellectual property rights and now specialises in Intellectual property disputes with a booming population of lawyers. The IPR Regime in India gives protection to the fashion design under four legislations that is The Designs Act, 2000, The Indian Copyright Act, 1957, The Trademarks Act, 1999 and Geographical Indications Act, 1999. From the viewpoint of Fashion Industry, the Acts don't ensure the whole article of clothing in general; rather it secures the specific and individual perspectives like shape, design, shading and so forth of the piece of clothing. The Designs Act safeguards

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<sup>2</sup> Grail Research, *The Global Fashion Industry – Growth in Emerging Markets* (Research Report), YUMPU (2009), <https://www.yumpu.com/en/document/view/5778119/the-global-fashion-industry-grail-research>.

registered designs rather than unregistered designs. Section 22 of the Designs Act will, in such a case, refer to fashion knockoffs created using registered design drawings. Piracy of registered designs is clarified in section 22. Section 15 of the Copyright Act lays down special rules specifying that in any design registered or capable of being registered under the Design Act, copyright shall not subsist. With regard to the apparel industry, when a mark or emblem is introduced into a fashion design, the trade mark legislation falls into effect. “Section 2(b) of the Trade Marks Act 1999 describes a trade mark as a mark which is capable of being depicted graphically and is capable of distinguishing one person's products or services from another person's goods and may include the form, packaging and combination of colours of the goods.”

## II. SURVEY SCALES

According to a survey directed by the Associated Chambers of Commerce and Industry of India (ASSOCHAM), they predicted that the homegrown creator clothing industry in India, which was of worth Rs. 720 crore and was detailing an accumulated yearly development rate (CAGR) of about 40% in 2012, is probably going to cross Rs. 11,000 crore mark by 2020.<sup>3</sup> They also documented that the Indian designer wear industry's contribution to the global market was a modest 0.32 percent, but by 2020 it is projected to hit 1.7 percent.<sup>4</sup>

According to data from McKinsey's FashionScope, India's apparel market will be worth \$59.3 billion in 2022, making it the sixth largest in the world, comparable to the UK's (\$65 billion) and Germany's (\$63.1 billion). Between now and 2025, the median income of the addressable population (individuals with over \$9,500 in annual income) is projected to triple.<sup>5</sup> In the next two years, more than 300 foreign fashion brands are expected to open stores in India. But India remains a complex market which poses both challenges and possibilities. The apparel industry is still largely unorganised, with just 35 percent of revenue in 2016 accounted for by official retail. By 2025, its share is likely to hit around 45 percent.

The development in the attire area is likewise being driven by expanding technical knowledge among customers. Ten years prior, innovation was for the trivial few, with only 5,000,000 cell phones in a nation of 1.2 billion individuals and just 45 million Internet

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<sup>3</sup> “*The 100 crore Fashion Club- The who, the how and the road ahead*”, STRAND OF SILK - INDIAN FASHION BLOG (July. 25, 2014), <https://strandofsilk.com/indian-fashion-blog/banking-fashion/100-crore-fashion-club-%E2%80%93-who-how-and-road-ahead>.

<sup>4</sup> The global designer wear market is estimated at more than Rs. 2.2 lakh crores in 2012 and is said to be growing at a compounded growth rate of 12%. By the year 2020, the industry is estimated to grow over Rs. 6.1 lakh crores.

<sup>5</sup> Imran Amed, *How Indias ascent could change the Fashion Industry*, MCKINSEY AND COMPANY, (Feb. 5, 2019) <https://www.mckinsey.com/industries/retail/our-insights/how-indias-ascent-could-change-the-fashion-industry>.

clients. These figures have since expanded to 355 million and 460 million, individually, in 2018, and they are relied upon to twofold by 2021, when in excess of 900 million Indian buyers will be on the web.

Ethnic wear is still a lot of the default decision for ladies, making up an expected 70% of ladies' attire deals in 2017. The hunger for Western styles is probably going to increment, yet traditional wear is as yet expected to represent a 65% of the overall industry by 2023.

### III. UNDERSTANDING FASHION AND LAW

#### (A) 'Fashion' and 'Fashion Design'

Like the author mentioned before Fashion is art, an impression of life. It is a language of signs, image and iconography that non-verbally convey implications about people and gatherings.<sup>6</sup> It is a method of communicating and fills in as an augmentation of one's character. Fashion may fluctuate significantly inside a general public as indicated by age, social class, occupation and topography just as over the long run. It changes continually and the progressions may continue more quickly than in most different fields of human action. In regular parlance, fashion alludes to a mainstream method of dressing during a specific time or among a specific gathering of individuals.

Fashion design is the utilization of plan and the aesthetics of the design to the things of fashion. It is a type of workmanship devoted to the production of unique garments and other way of life accessories.<sup>7</sup> Considered as "rule imaginative component" of fashion industry, a fashion design is affected by social and social perspectives and has shifted over the long haul and spot. Current fashion design is isolated into three fundamental classifications: (1) haute couture, (2) ready to-wear and (3) mass market.<sup>8</sup>

#### (B) Relevance of Couture in the Indian Context

To start it's vital to understand why couture has relevancy within the Indian context., 'Couture', like numerous fashion terms, may be a concept that appears to be used very loosely. The word, translated from its French roots, means 'high sewing'.<sup>9</sup> In France (which is taken into account because the original home of haute coutures), it's so respected that it's protected by law. If you think of high sewing, this country is that the global epicentre of

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<sup>6</sup> Merriam-Webster Online: Dictionary and Thesaurus, <https://www.merriam-webster.com/>.

<sup>7</sup> *What is fashion design?*, FIBRE2FASHION, (Dec. 2007) <https://www.fibre2fashion.com/industry-article/2860/what-is-fashion-design>.

<sup>8</sup> Kal Raustiala & Christopher Sprigman, "The Piracy Paradox Revisited", *Stanford Law Review*, 61(5): 1201-1225 (2009).

<sup>9</sup> Rashid Ali, *The impact of Couture (Custom-fitted) Versus Pret (Ready to Wear) garments on Customer Preferences towards the Fashion* (2019) (Unpublished P.h.D. thesis, Indus University).

couture during a plethora of aspects. The rich and sophisticated tradition of distinctive and authentic craftsmanship in India ensures that a lot of the best pieces of couture are made at local export ateliers. European luxury homes like Armani and Valentino only look to India for his or her craftsmanship. Couture shows play a really special role during a luxury house's reputation and perception and are often less about the profits or other monetary benefits.

The style Design Council of India (FDCI) organises the Indian Couture Week, and its president Sunil Sethi, says, "India as a rustic is understood for its craftsmanship, everywhere the world. Couture may be a canvas where designers use their creative impetus, as a playground for fresh ideas whether it's motifs, embroidery, or inspirations."<sup>10</sup>

### **(C) Fashion Design Piracy**

Piracy is the unauthorised and illegal reproduction or distribution of copyrighted, patented or trademarked materials".<sup>11</sup> It is an act in which some intellectual property is made up of unauthorised copies. As such, unapproved replicating is the pith of piracy. With regards to fashion industry, piracy incorporates: (1) piracy in fashion design and (2) piracy in logo, mark, label of fashion brand. Fashion design piracy (FDP) includes unapproved replicating of unique fashion designs. What's more, by and large it can be categorized as one of the two after classifications: (1) knockoffs and (2) counterfeits.

#### **1. Knockoff**

Knockoff is a duplicate or impersonation of a person or thing which is very popular or either expensive and it is delivered illicitly without a license. In the fashion world, a knockoff is a nearby duplicate of the first fashion design, copying its components, yet is sold under a name not the same as the name of the first design. Consequently, it isn't sold trying to pass as the first. Knockoffs are planned to reproduce the first design almost line for line however with another designer's name attached.<sup>12</sup> A line-for-line duplicate is a almost indistinguishable impersonation of a unique design.

#### **2. Counterfeit**

Contrasting to knockoffs, a counterfeit is a duplicate of the first fashion design as well as brand logo or name of that design. Here, expectation is to bamboozle purchasers of the attire's

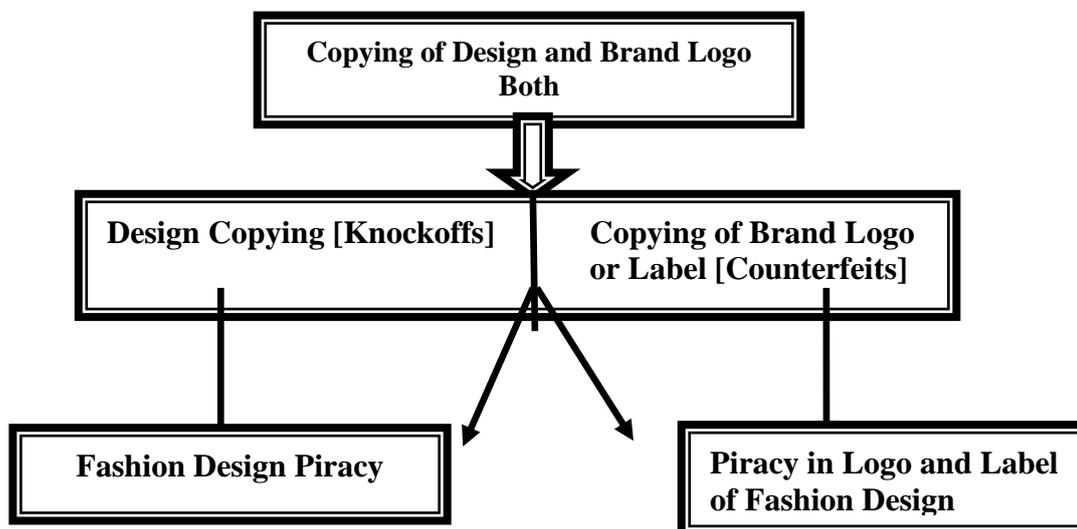
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<sup>10</sup> Ian, "Why is Haute Couture relevant in Indian Context", ONMANORAMA, (Sep. 6, 2020) <https://www.onmanorama.com/lifestyle/beauty-and-fashion/2020/09/06/haute-couture-relevant-indian-context.html>.

<sup>11</sup> *Supra* note 5.

<sup>12</sup> Sara R. Ellis "Copyrighting Couture: An Examination of Fashion Design Protection And Why The DPPA And IDPPPA Are A Step Towards The Solution To Counterfeit Chic", Tennessee Law Review, 78: 163-211, p. 168 (2010).

actual content and cause both.<sup>13</sup> Counterfeit clothing is sold trying to pass as the first. This circumstance includes robbery in fashion design other than theft in logo or name of fashion brand. Nonetheless, all the counterfeits don't grasp this sort of mix as in a portion of the cases just fashion brand marks are duplicated. Those cases speak to absolutely a piracy in logo or mark of fashion brand.



#### IV. IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS FOR THE FASHION DESIGN

Fashion design, as a result of human intellect and imagination, is an appropriate topic for IPR protection without any iota of doubt. However there is a lack of consensus on the question of the need for fashion design protection under the IPR regime.<sup>14</sup> Conflicting views on this subject have been expressed as some of them seek the urgent need for fashion design IPR security and on the other hand, some do not need any such necessity.<sup>15</sup>

The adversaries of IPR protection for fashion design contend that as fashion industry is flourishing, IPR assurance isn't fundamental. Or maybe, they guarantee, nonattendance of IPR assurance encourages fashion designer to advance new designs which at last prompts the development of the fashion business. For example, Rausiala and Springman<sup>16</sup> point out the "angelic" features of "piracy" in a scholarly article supporting this opinion, and substantiate that piracy in fashion design can indeed prove more of a blessing than a bane for the fashion

<sup>13</sup> Biana Borukhovich "Fashion Design: The Work of Art that is Still Unrecognized in the United States", Wake Forest Intellectual Property Law Journal, 9(2): 155-176, p. 156 (2008).

<sup>14</sup> Julie P. Tsai, "Fashioning Protection: A Note on the Protection of Fashion Designs in the United States", Lewis and Clark Law Review, Vol. 9:2, 502-511 (2005).

<sup>15</sup> RAUSTIALA, *Supra* note 7.

<sup>16</sup> *Id.*

industry. In any case, the perspectives on Rausiala and Springman are a long way from great. Their entirety proposition that duplicating of fashion design is advantageous for the fashion business consequently it ought to be permitted and IPR protection to fashion design ought to be evaded is basically dependent on "trickle down theory"<sup>17</sup> of fashion change. As indicated by them, duplicating of fashion design happens between most elevated to bring down layers of fashion industry. Alternately, pundits are of the view that it happens between all layers of the fashion industry, not simply from the most elevated to the lowest.<sup>18</sup>

Extending IPR security for fashion design may not be helpful for well-known fashion designers, but it is certainly necessary for un-established designers and small business owners who, without the advantage of increased prestige, endure all the rivalry and over-exposure burdens of copying.<sup>19</sup> The advocates of IPR security for fashion design recognize that fashion industry is one of the world's most significant inventive businesses. As per them, designs, which are at the core of fashion, are troublesome and costly to make, however moderately simple and reasonable to duplicate. Without IPR, they contend, copyists will complementary lift on the endeavors of makers, debilitating future interests in new developments, designs and manifestations.<sup>20</sup> They guarantee that IPR for fashion designs would encourage more noteworthy development by guaranteeing that the benefits from a design went to the designer and not to the individuals who only replicated the work.<sup>21</sup>

The advocates of protection for fashion design further contend that replicating innovation especially the speed with which images of designs from runway shows can be sent far and wide by means of the web has changed so definitely lately that designers are enduring exceptional damage that must be corrected by IPR. They keep up that IPR protection is particularly needed for un-set up and un-established designers and marks as replicating obstructs their endeavors to manufacture a brand.<sup>22</sup>

## **V. PROTECTION OF FASHION DESIGN UNDER THE EXISTING INTELLECTUAL PROPERTY RIGHTS REGIME IN INDIA**

The IPR Regime in India provides protection to the fashion design under four legislations that

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<sup>17</sup> Erika Myers, "Justice in Fashion: Cheap Chic and the Intellectual Property Equilibrium in the United Kingdom and the United States", *AIPLA Quarterly Journal*, 37(1): 47-81(2009).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> C. Scott Hemphill & Jeannie Suk, "The law, culture and Economics of Fashion", *Stanford Law Review*, Vol.61 (2009)

<sup>21</sup> Katelyn N. Andrews, "The Most Fascinating Kind of Art: Fashion Design Protection as a Moral Right", *N.Y.U. Journal of Intellectual Property & Entertainment Law*, 2: 188-226 (2012).

<sup>22</sup> *Id.*

is The Designs Act, 2000, The Indian Copyright Act, 1957, The Trademarks Act, 1999 and Geographical Indications of Goods (Registration and Protection) Act, 1999.

### **(A) The Designs Act, 2000**

The Designs Act<sup>23</sup> just secures enlisted designs not the unregistered designs. Henceforth, fashion designers who have not appropriately enrolled their designs can't get the advantages of the Act. It is appropriate to take note of that a fashion design, which is a brand name, can't get security under the Designs Act. Further, The Designs Act 2000, is so drafted to allow protection of the non-functional parts of an item, having visual allure, with the end goal that design that incorporate the highlights of shape setup, example, decoration or piece of lines or tones applied to any two dimensional or three dimensional or on the two structures. Such a design right remaining parts in force for a time of ten years, extendable subject to conditions, for a complete time of 15 years.<sup>24</sup>

The Designs Act affords protection to the "design" registered under the Act. Section 2 (d) of the Designs Act defines the term "design".<sup>25</sup> Not all designs, but only those designs that fall under the concept of "Design" may be registered under the Designs Act, as provided for in Section 2 (d) of the Act. In addition, a design must also meet the following requirements in order to obtain registration and therefore to obtain protection under the Design Act-

- 1) "It must be new or original.
- 2) It must not have been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the date of filing for registration.
- 3) It must be significantly distinguishable from known designs or combination of known designs.
- 4) It must not comprise or contain scandalous or obscene matter."<sup>26</sup>

From the point of view of fashion industry, the Act doesn't secure the whole piece of clothing in general; rather, it just secures the specific/singular viewpoints like shape, design, shading and so forth of the article of clothing. Additionally, to be secured under the demonstration, these specific angles must not just fulfill the meaning of "design" as given under the Act however should likewise be enrolled under the Act. Under the Act, the owner/proprietor<sup>27</sup> of

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<sup>23</sup> The Designs Act, 2000, No. 16, Acts of Parliament, 2000 (India).

<sup>24</sup> *Id.*

<sup>25</sup> The Designs Act, 2000, No. 16, Acts of Parliament, 2000, s. 2, ss. d (India).

<sup>26</sup> The Designs Act, 2000, No. 16, Acts of Parliament, 2000, s.4 (India).

<sup>27</sup> The Designs Act, 2000, No. 16, Acts of Parliament, 2000, s.11, ss.1 (India).

a registration design is entitled to copyright in the design, which means the exclusive right to apply the design to any article in which the design is registered in any class.

On the off chance that an individual submits any act including piracy of enrolled design, he is at risk, on each demonstration of robbery, to pay to the enlisted owner of the design a total not surpassing 25000 rupees recoverable as an agreement obligation or if the owner chooses to bring a suit for the recuperation of the damages for any such act including robbery, and for any directive against thereof, to pay such damages as may be granted and to be controlled by directive as needs be and the complete total recoverable will not surpass 50,000 rupees.<sup>28</sup> Proprietor of the enlisted design needs to establish the suit in any court not beneath the court of District Judge.<sup>29</sup>

### 1. Lacunae in The Designs Act, 2000

- **NO PROTECTION TO UNREGISTERED DESIGNS-** Considering the dynamic nature of fashion industry where fashion design houses come up with a fresh collection of fashion items at a regular interval usually every season, fashion designers need automatic and immediate protection independent from registration for their designs. Further, it deprives the designers of the privilege of putting their innovative creations to the market, observing the reaction to the same and then deciding whether the particular design in question is worth registration or not. At this juncture, one may provide protection for the unregistered design, Compare India's Designs Act with the industrial design legislation law of the European Union and the proposed legislation by the United Kingdom and the United States of America to provide sui generis protection for fashion designs.

- **TIME CONSUMING REGISTRATION PROCESS-** To benefit security against piracy under the Designs Act, design registration is pre-imperative. For fashion designers, this process is of almost no utilization. The cycle of registration as explained in the Act and the Designs Rules is complex and time devouring subsequently not positive for the necessities of dynamic fashion design industry. The entire cycle of design enrollment in India (i.e. from the filing of application till the grant of certificate of registration) takes around 10 to a year. Furthermore, that is tricky on the grounds that the extended existence of a bit of article of clothing in a designer store goes on for a most extreme time of one season which is three to four months.<sup>30</sup> In this setting, a designer is left with just a single alternative that is to apply for design registration much before the normal date of introduction of his/her designs to

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<sup>28</sup> The Designs Act, 2000, No. 16, Acts of Parliament, 2000, s.22, ss.2 (India).

<sup>29</sup> Id.

<sup>30</sup> Poojan Sahny, "The Designs Act, 2000: A Fashion Faux Pas", 1-12 (2012).

the market. This results into another test identifying with the upkeep of mystery about designs' highlights. During the pendency of the application, fashion design remains susceptible to exploitation by the employees of the designers or by any other person in whose wrong hands the design may fall. Moreover, the designer is at a risk since the success of the design registered prior to market exhibition and sale of the same is not known to the designer.

- **INADEQUACY OF DAMAGES-** In spite of the fact that the Designs Act joins arrangements for recuperation of damages from any individual associated with the demonstration of piracy of enlisted design yet sets a boundary for the measure of cash that can be recuperated (for example not surpassing 50,000 rupees). This roof on damages is a joke of the magnificence related with couture manifestations which are worth lakhs of rupees.

### **(B) The Copyright Act, 1957**

Another legal security model used by fashion designers to protect their artistic work is copyright protection. The Indian Copyright Act, 1957<sup>65</sup> provides for the legislation on copyright in India. Section 15 of the Copyright Act is applicable from the perspective of the protection of design in general and fashion design in particular.

Section 15 of The Copyright Act<sup>31</sup> provides for special provisions stating that copyright shall not subsist in any design, which is registered or capable of being registered under The Design Act. This clause stymies the inherent protection accorded by copyright that a person enjoys merely by virtue of creation.

The commercial/industrial manifestation of original work such as the design derived from and founded upon the original artistic work for the purpose of industrial production of furnishings would be covered by the limitations under Section 15 of the Copyright Act. When read in conjunction with the Designs Act, the Copyright Act, especially Section 15, lays down a basic framework in India as under-

- 1) Designs that can be registered under the Designs Act, 2000 Protection under the Designs recorded under the provisions of the Act
- 2) Designs capable but not so capable of being registered under the Designs Act, 2000 Registered under the Copyright Act, 1957, to gain protection.
- 3) Designs not capable of being registered under the Designs Act, 2000, as they are original artistic works,<sup>67</sup> get protection under the Copyright Act. 1957.<sup>32</sup>

*A Fashion designer under the Copyright Act, 1957, trying to protect his/her creations has to*

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<sup>31</sup> The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

<sup>32</sup> The Copyright Act, 1957, No. 14, Acts of Parliament, 1957(India).

prove the below-

- 1) that his/her production is a "original artistic work" for the purposes of the Copyright Act of 1957 and is not a "design" for the purposes of the Design Act of 2000.
- 2) that the article (e.g. clothing) on which the design extracted from the production was applied was not copied more than fifty times by means of an industrial method by the owner of the copyright or by any other person under his licence.

Designs Act, 2000 will get copyright protection in the form of copyright in original artistic work under the Copyright Act, 1957. Copyright in an original artistic work automatically subsists as soon as the work comes into existence and it remains during the lifetime of the author plus sixty years, when published during the lifetime of the author.<sup>33</sup>

From the above discussion, it is evident that the protection provided to fashion Design is far better as an original artistic work than the rights given to it as a design that can be registered under the Designs Act, 2000. In other words, under the Copyright Act, 1957, a fashion design is better protected as an 'artistic work' than as a 'design' under the Designs Act, 2000. For this reason, India's fashion designers often prefer to refer to their creative works as artistic works, i.e. fashion designs, and protect them as the same. Nevertheless, through a series of judgments, courts in India have developed jurisprudence to decide when a design is a "artistic work" and when it is a "design" in the context of the Designs Act, 2000. The order of the Division Bench of the High Court of Delhi in the *Rajesh Masrani Vs. Tahiliani Design Pvt. Event. Ltd.*<sup>34</sup> was the first primary step in the development of jurisprudence. In this case an order of interim injunction ex parte ad was passed in favour of

Plaintiff. Subsequently, in its order, the learned Single Judge of the Delhi High Court upheld the ex parte ad interim injunction and granted the plaintiff's request to prohibit the defendant from reproducing, printing, publishing and distributing, selling or offering to sell the copyrighted prints of the plaintiff in any form whatsoever and dismissed the defendant's application for vacation of the copyrighted prints in any form whatsoever. An appeal against the order was filed by the defendant. The Court didn't acknowledge the plea of the offended party that to guarantee assurance under Copyright Act, registration was obligatory. The Court saw that it was settled law that registration of the work was not obligatory and was not a condition point of reference for keeping up a suit for damages for

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<sup>33</sup> The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, s.15 (India).

<sup>34</sup> *Rajesh Masrani Vs. Tahiliani Design Pvt. Event. Ltd.*, 2008 PTC (38) 251 DEL (6)(India).

encroachment of Copyright.<sup>35</sup> In perspective on the previous and subsequent to making correlation of crafted by both plaintiff and defendant, the Court reasoned that respondent submitted infringement of copyright of plaintiff and it was a glaring instance of piracy of copyrights.

Furthermore the jurisprudence that was formed in the above case was elaborated in a comprehensive and lucid way by the Division Bench of the Delhi High Court in *Microfibres Inc. Girdhar & Co. & Anr.*<sup>36</sup> This case was due to a violation of the design of upholstery fabrics. Accepting the pleas made by the defendant, the learned Single Judge of the Delhi High Court held that plaintiff's work was design capable of being registered under the Designs Act, 2000 and not the artistic work such as M.F. Hussain.<sup>37</sup> It was the original paintings, sculptors and such works of art which were sought to be specifically excluded from the definition of 'design' under the Designs Act, 2000. Act. However, the plaintiff failed to register his works under the Designs Act hence no protection would be available to him under the said Act.

### **(C) Trade Marks Act, 1999**

A trademark is helpful for a fashion design just in that circumstance when it is obviously incorporated into design so much that it turns into a component of the design. For individual brands, trademarks help to retain a prestige premium and can be very beneficial to clothing and accessories companies. However the effectiveness of trademark law is very restricted in defending fashion styles, as distinct from fashion labels.<sup>38</sup> In India, the Designs Act of 2000 under Section 2(d) while defining "design" expressly excludes the trademark within the meaning of Section 2(1) (v) of Trade and his right to claim the said article as trademark which is evident from the definition of "design" under Section 2 (d) of the Designs Act.<sup>39</sup> It is appropriate here, however to mention the judgement of the Delhi High Court in *Micolube India Ltd. Vs. Rakesh Kumar being traded as Saurabh Industries and Ors.*<sup>40</sup> The Court held that a suit for infringement of an enlisted design and a passing off activity could be founded at the same time anyway a composite suit for infringement of an enrolled design and

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<sup>35</sup> *Id.*

<sup>36</sup> *Microfibres Inc. Girdhar & Co. & Anr.*, 128 (2006) DLT 238, 2006 (32) PTC 157 DEL.(India).

<sup>37</sup> *Designs and Artistic works- Microfibre's appeal falls through*, LEXORBIS, (June 9, 2009), <https://www.mondaq.com/india/copyright/80924/designs-and-artistic-works-microfibres-appeal-falls-through>

<sup>38</sup> RAUSTIALA, *Supra* note 7.

<sup>39</sup> Rohan Gandhi, *Role of Intellectual Property Rights in the Fashion Industry* LEXFORTI, ( July 5, 2005), <https://lexforti.com/legal-news/role-of-intellectual-property-in-the-fashion-industry/>.

<sup>40</sup> *Micolube India Ltd. Vs. Rakesh Kumar being traded as Saurabh Industries and Ors.*, 2012 (50) PTC 161 (Del).

a passing off activity would not lie.<sup>41</sup> Moreover, the Court highlighted that a suit for passing off activity could be established before the expiry of the legal statutory period gave under Section 11 of the Designs Act.<sup>42</sup> The scope of trademark rights for design was extended by this judgement. As a consequence, a fashion design registered under the Designs Act not only enjoys protection under the Act, but may also be protected by instituting a passing action if the design is used as a post-registration trademark. In conclusion, a new vista for design security has been unlocked by this judgement.

#### **(D) Geographical Indications Act, 1999**

The Fourth schedule of the GI Act accommodates an order of goods protectable under the Act. The enrollment of geographical signs clearly portrays the insurance of fashion clothing versus the surface and masterful incentive in the texture used to make clothes and adornments. Till now around, 15 sorts of GIs have been registered in regard of materials in India like Kasuti Embroidery from Karnataka, Kutch Embroidery from Gujarat, and Sujini weaving and embroidery works from Bihar, and so forth.<sup>43</sup>

The Delhi High Court restrained the defendants in *Louis Vuitton Malletier v. Atul Jaggi*<sup>44</sup> and others for infringing and transmitting their famous trademarks 'LOUIS VUITTION' and 'LV' by using similar marks and awarding damages. Trademark Designers can use trademark law not only to protect logos and brand names, but also to protect the product's distinct features. For instance, both the 'Burberry' and the 'Burberry distinctive plaid' trademark rights are owned by the brand Burber

## **VI. CONCLUSION/SUGGESTIONS**

The worldwide fashion industry is developing significantly. It has gotten a huge piece of the worldwide economy and ought to along these lines get Intellectual property rights protection for its development. At the core of developing fashion industry are new designs and styles. Nonetheless, development of this industry is defaced by fashion design piracy. The Indian fashion design industry is experiencing a similar issue. Furthermore, based on investigation made in the former part of this paper it tends to be appropriately inferred that the current Intellectual property rights protection system in India isn't adequate furthermore, sufficiently proficient to ensure Indian fashion design industry. Indian fashion designers have been more vigilant about their Intellectual Property and are taking action against those who are

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<sup>41</sup> *Ibid.*, paragraph 34 (iii).

<sup>42</sup> *Ibid.*, paragraph 34 (ii).

<sup>43</sup> GANDHI *Supra* note 38.

<sup>44</sup> *Louis Vuitton Malletier v. Atul Jaggi*, CS(OS) 1419/2009 (India).

infringing their designs. They have begun to educate themselves about Intellectual property rights protection.

There is a need to make an improvisation on the current Intellectual Property Rights regime in India in order to make it more ideal to shield fashion design from piracy and fraud.

- Above all, firstly, a different meaning of "fashion design" ought to be remembered for the Designs Act, 2000. Also, this definition ought to encourage the whole appearance and over all look of a specific bit of attire or piece of clothing as against the current definition under Section 2 (d) of the Act which ensures every part of an article of clothing exclusively.
- Secondly, under the Designs Act, 2000, a standardized and simple process for design registration should be carried out as the existing procedure is cumbersome and does not meet the needs of the competitive fashion design industry.
- Thirdly, the provision for security and protection of unregistered design ought to likewise be remembered for the Designs Act, 2000. The assurance for even short time frame will serve the requirements of fashion design industry in this circumstance.

Joining of every one of these recommendations would unquestionably make the current Indian intellectual property regime and system more powerful and effective enough to manage the danger of fashion design theft and piracy. This would encourage fashion designer to enhance new designs which would eventually prompt the development of the brand's business and the industry as a whole.

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