

RELEVANCE OF INTELLECTUAL PROPERTY FOR FASHION INDUSTRY AND WORLD CLASS ORGANISATIONS

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In today's competitive environment, innovation is the strength for every business that leads to development of intellectual property. Identifying, developing, and leveraging innovation provides competitive edge and aids in long term success of the company. Intellectual property is not limited to technology companies, but is valuable for every business which invests huge sums in research and development for creating indigenous products and services. A company should be proactive in implementing IP solutions to identify novel innovations and increase revenues. A well-defined IP goal can result in achieving business objectives and help position the business as a leader in the marketplace¹. With growth in business revenues, the IP strategy can include protecting the unique aspects of the assets and foster innovations to explore new geographies. This can be achieved through licensing or joint ventures to create novel solutions that satisfy the unmet needs in the market. Intellectual property is vital to every possible industry. The investment of intellectual capital has propelled every sector towards IP creation and maintenance.

A company must evaluate its existing intellectual property to determine whether it is in line with business objectives. Successful companies must look for new avenues to expand their product offerings, increase their sales revenue, and foray into new markets². An organization's patent portfolio is vital for its future success along its various intellectual property assets as designs, trademarks, and copyrights.

This article discusses about Intellectual property rights in special reference to Fashion Industry. This Fashion design is a form of art dedicated to the creation of clothing and other lifestyle accessories³. To work as a designer, one must possess an artistic and creative personality. Fashion designers should be aware of the fashion market requirements such as protecting their Intellectual Property (IP). IP is the result of applying your mind or intellect to

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¹ Available at: <http://www.effectualservices.com/category/articles/page/3/>

² Available at: <http://economictimes.indiatimes.com/small-biz/legal/relevance-of-intellectual-property-for-business/articleshow/49563911.cms>

³ Available at: <https://www.quora.com/What-is-the-basic-difference-between-fashion-designing-and-apparel-designing>

create something new or original. The fashion industry is an IP intensive industry, continually generating and commercially exploiting creative ideas and innovation.

ROLE OF IPR IN FASHION INDUSTRY

IPR plays a vital role in fashion industry. In fact fashion is all about intellectual creation. When we talk of fashion industry it involves all kinds of designs i.e. clothing, footwear, jewelry, bags etc. Textile Designs are also considered as a form of art which is an inception of mind and soul of an Artist. When an artisan spends enormous amount of time and energy in putting a design into an outfit in the textile industry, it is the duty of the owner of such precious works to protect his right legally so that no one can copy and take a readymade benefit for such work. In an industry beset with creativity and high-level investments of intellectual capital, IP protection is an absolute necessity.

Versace's medusa motif, the Vera Wang wedding dress, Louis Vuitton handbag – all these are products of applied intellectual creativity and skill in the fashion industry⁴. No one doubts the tremendous value of intellectual capital to the creation and marketing of products in the fashion industry, be it high fashion or ready-to-wear. Yet many small and medium-sized enterprises pay little attention, if any, to protecting such intellectual assets. In the current business environment, the primary source of competitive advantage for all businesses, including those in the fashion industry, is innovation and original creative expressions⁵.

The Indian fashion market is growing better than ever. The number of "Fashion Weeks" in a year is growing in the country. Latest designs by Indian fashion houses have done well abroad. Since fashion is not just restricted to apparel but also extends to luxury goods, better standards of living in the country have meant a greater demand for the luxury goods. But, Intellectual Property Rights (IPR) has been a burning issue in this sector⁶. Fashion designers have frequently complained about their designs being copied without their permission. Such so-called piracy must be stopped as it is plaguing the growth of this industry.

IPR's INVOLVED IN FASHION INDUSTRY

The primary IP rights available to the fashion industry are as follows:

⁴ Available at: www.ipandbusiness.com/new-trend-this-season-role-of-ip-in-fashion-industry/

⁵ Available at: www.wipo.int/wipo_magazine/en/2005/03/article_0009.html

⁶ Available at: www.nlujodhpur.ac.in/ip_events.php

Designs

The fashion industry has design at its centre. At the heart of fashion are fresh, new designs. Among the range of IP tools, the protection of industrial designs – also simply referred to as designs – is the most clearly relevant to the fashion industry. Registration of a design helps the owner to prevent all others from exploiting its new or original ornamental or aesthetic aspects, which may relate to a three-dimensional feature, such as the shape of a hat, or a two-dimensional feature, such as a textile print⁷.

New and fresh designs need protection. Design registration helps owners to prevent others from copying their designs or lifting elements thereof. The design aspect of a product relates to aesthetic appeal or innovative ornamentation, coupled with new and original patterns and cuts relating to a shape or two-dimensional feature. Design protection may be perceived by some as difficult to achieve due to the short lifecycle of the product; however, while some fashion trends come and go, others never fade and become classic and iconic pieces⁸. If fashion houses succeed in creating such classic design pieces but do not have the appropriate IP protection, imitators will be able to take a ‘free ride’ on their creative work. For fashion items with a long lifespan, filing an application for a registered design may be the best way to prevent others from using the design.

The fashion industry invests huge sums to create new and original designs each season. Despite this significant investment, little use is made of relevant national and/or regional design law to register and protect these designs. In some countries, fashion designs may be adequately protected by copyright law as works of applied art. However, a frequently cited explanation for not registering fashion designs is that the short product life cycle – often no more than one six-to-twelve month, season – does not justify the considerable time and financial cost involved.

The arguments for registering a new design have to be considered on a case-by-case basis. Registering a design should help to deter others from copying it, and to fight unscrupulous competitors who do so. Moreover, design protection is not always a major financial burden, at least to begin with. Some countries and regions, such as the United Kingdom and the European Union (EU), offer an unregistered form of protection for industrial designs for a

⁷ Managing Intellectual Property: The Strategic Imperative, Vinod, V. Sople at 295, August 2012, 3rd Edition

⁸ Available at: www.slideshare.net/nehakestwal/ipr-in-fashion

relatively short period of time. Unregistered design protection, wherever available, is extremely useful for fashion designers or businesses with limited budgets and for all those that wish to test market new designs before deciding which to register. The unregistered community design right of the EU offers protection for a maximum period of three years, starting from the date on which the design is first made available to the public in any of the 25 countries of the EU⁹.

Copyright

Copyright is protection for the expression of ideas in a tangible medium. Fashion design is giving expression to the creative faculty, often resulting in an artistic product. Artistic expressions and prints on textiles may be protected as applied art under copyright law¹⁰.

Copyright protects original artistic works. A design can be protected as an artistic work; specifically as a graphic work which includes a painting or a drawing. Textile designs may benefit from copyright protection but an actual dress (when made) does not. In this situation, it will be necessary to rely on the Designs Act 2003 for protection. Copyright protection is also likely to be available for works of artistic craftsmanship, such as one-off fashion garments and jewellery¹¹. However, for producing or making multiple copies of items, design law should be relied rather than copyright law.

Copyright protects artistic expressions “that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” This is commonly referred to as the separability rule, which was developed from the 1954 case of *Mazer v. Stein*¹². In this case, the Supreme Court ruled that Balinese statuettes that formed the bases of lamps were copyrightable because the aesthetic work (the statuette) was separable from the functional article (the lamp). Even though they could be used as lamp bases, the statuettes had their own artistic merit and could be protected as such¹³.

With regard to copyright in fashion industry, in February 2008, Marc Jacobs was accused of plagiarizing an amateur Swedish artist named Gösta Olofsson. Olofsson, who passed away in 1982, ran a petrol station in a small village and made a living by selling postcards, scarves,

⁹ The Handbook of European Intellectual Property Management: Developing , managing and protecting your company’s Intellectual property, Adam Jolly, at 113 3rd Edition 2012, ISBN 9780 7494 64158

¹⁰ Available at: www.internationallawoffice.com/.../How-Can-Intellectual-Property-Assist-the-Fashion...

¹¹ Available at: www.tfia.com.au/ip-fashion-rulescopyright

¹² Available at: <https://supreme.justia.com/cases/federal/us/347/201/>

¹³ Available at: <http://www.altacit.com/publication/ipr-in-fashion-industry/>

and other tourist paraphernalia. Marc Jacobs (or rather one of his accessories designers) ripped off the design. The matter was eventually settled outside court when Jacobs offered monetary compensation to Gösta Olofsson's son. In this case the artistic work—Olofsson's original painting—exists beyond and entirely separate from the utilitarian aspects of the scarf. Hence design is subject to copyright laws¹⁴.

Trademark

Trademark is a word, phrase, symbol or design, or a combination of the same associated with a product or service which is used as market differentiators from similar products or services. Any product or service will always be identified with a name and logo in order to distinguish it from other similar products on the market. Designs are not the exception, as they will always bear a label distinguishing them from other creations.

These names and logos can be trademarked based on the type of products (clothing, shoes, accessories, fabrics, etc.). The slogans of advertising campaigns for each product can also be protected through trademark registration. Recently trademarks that generally do not fall within the standard categories but include marks based on visible signs (colours, shapes, moving images, and holograms) or non-visible signs (sounds, scents) considered as Non-conventional Trademarks or Non-traditional Trademarks can also be trademarked. Therefore, perfumes, fragrances and other aromatic products that play an important role within the world of fashion can also gain IP protection¹⁵.

Trademark law not only protects a brand's right to revenue, but also helps consumers distinguish between genuine products and counterfeit products.

Big fashion houses value their brand equity. Most develop a bond with their customers through their brand names and fiercely protect these through registration of trademarks and protection of associated artwork by copyright law. Trademarks are just as important for a small or start-up company in the fashion industry.

The Italian clothes company, Pickwick, offers an interesting example of the strategic use of a trademark to build a successful business in the fashion industry. Pickwick now sells a range of casual fashion wear to adolescents across Europe. But not so long ago, all that the

¹⁴ Available at: <https://antwerpsex.wordpress.com/2013/09/03/fashion-101-intellectual-property-laws/>

¹⁵ Available at: <http://www.altacit.com/publication/ipr-in-fashion-industry/>

company had was the trademark itself, which depicted a young, faceless boy with a spiky hairstyle. The trademark owner started his business by selecting items he judged would have particular style appeal to teenagers, adding his distinctive trademark and distributing them through the local shops in Rome. Initially, the business costs were kept low by operating from a garage.

Teenagers perceive the Pickwick logo as trendy and are willing to pay extra for clothes bearing its trademark. Today, the company subcontracts the manufacturing and focuses on marketing, distribution and monitoring and controlling the use of the trademark¹⁶.

Products of lasting quality are always in demand and over time a psychological association can develop with regard to product source and quality. The key to creating and maintaining this connection is through use of a trade name and logo on the product. Fashion houses across the world fiercely protect their trade names and logos against unfair practices.¹⁷ Trademarks also depict brand value, as they often become symbols of ideas propagated in association with the product. Trademarks are just as important as designs for the fashion industry.

Patents

Patents may not immediately spring to mind when considering the fashion industry. Artistic creations cannot be patented and therefore patents are not widely adopted by designers¹⁸.

Yet technical innovation can equally put a fashion business ahead of the competition. For example, inventions by Buck Weimer and CSIRO which control odour and body temperature respectively in garments have been successfully patented. Another example, can be Novozymes, a Danish biotech company specializing in enzymes and microorganism, pioneered the use of enzymes in the treatment of fabrics. Though not previously involved in the fashion industry, in 1987 the company developed and patented a technology for the treatment of “stone washed” denim jeans. This technology is based on an enzyme called cellulase, which removes some of the indigo dye from denim so as to give the fabric a worn look. Within three years, most of the denim finishing industry was using cellulase under license from Novozymes. Today, Novozymes’ technology for improving production methods

¹⁶ A Stitch in Time - Smart Use of Intellectual Property by Textile Companies, WIPO copyright 2005

¹⁷ Managing Intellectual Property : The Strategic Imperative, Vinod.V.Sople, at 329, PHI Learning Pvt Ltd., Delhi 2016

¹⁸ Available at: www.ipandbusiness.com/new-trend-this-season-role-of-ip-in-fashion-industry/

and fabric finishing has been licensed worldwide. The company holds more than 4,200 active patents and patent applications.

The fashion industry is no longer dependent on natural fabrics. Innovations in the creation of synthetic fabrics have increased the prevalence of patents as well. A patent portfolio reflects technologies for the creation of, for example, crease and weather-resistant fabrics.

Adding devices to clothing is fast becoming a trend in this age of technology, which means patents for new devices and new methods of use for devices are an option worth considering. American designer Lauren Scott is currently adding radio frequency identification tags to her line of children's wear¹⁹. The tags have previously been used to track shipments of freight. In clothes, the tags could carry medical information in case of an accident or emergency and could also prevent abductions by triggering an alarm if a certain perimeter is breached (e.g. tags inside pyjamas could trigger readers placed at various locations in a house if the child leaves the house). Novozymes, a Danish biotech company specializing in enzymes and microorganisms (www.novozymes.com), pioneered the use of enzymes in the treatment of fabrics. Though not previously involved in the fashion industry, in 1987 the company developed and patented a technology for the treatment of "stone washed" denim jeans. This technology is based on an enzyme called cellulase, which removes some of the indigo dye from denim so as to give the fabric a worn look. Within three years, most of the denim finishing industry was using cellulase under license from Novozymes. Today, Novozymes' technology for improving production methods and fabric finishing has been licensed worldwide. The company holds more than 4,200 active patents and patent applications, and pursues a pro-active licensing strategy to maximize royalty revenue from these IP assets.

The Italian company Grindi Sri Invented Suberis, an innovative fabric made of cork, said to be as smooth as velvet, light as silk, washable, unscratchable, stain-resistant, waterproof and fireproof. After testing and codifying the treatment, Grindi filed an international patent application under the PCT in 1998 to protect its unique product in a large number of countries. The Suberis fabric is used in the manufacture of clothing, footwear and sportswear, as well as in many other applications²⁰.

TRADE SECRETS AND NEW BUSINESS MODELS

¹⁹ Available at: <http://www.wipo.int/edocs/lexdocs/laws/en/au/au332en.pdf> as on 21st October, 2014

²⁰ *ibid*

Trade secrets are pieces of information which are crucial for successful trading. If leaked, such information would put competitors in an advantageous position²¹. In the fashion industry the sourcing of raw materials, key suppliers and software tools used in designing may all constitute trade secrets.

Business models pertain to the management of logistics across the value chain, from purchase of raw materials through to the manufacture of the products and their display in stores. Fashion houses introducing new clothing lines every season integrate fashion forecasting within their organization. Customized manufacturing through virtual shops is also a business model which can give a fashion house the competitive edge in the industry.

Trade secrets may range from a list of key suppliers and/or buyers, to use of software tools for fashion design, to logistics management of the entire value chain. In some fashion businesses, core trade secrets serve to protect the computer-implemented, software-based business models, which underpin an entire business strategy, based on stealth and speed, to supply a limited quantity of fashion products. For example, the Spanish retail fashion chain, ZARA, uses a proprietary information technology (IT) system to shorten their production cycle – i.e. the time from identifying a new trend to delivering the finished product– to a mere 30 days. Most of their competitors take from 4 to 12 months. The company receives daily streams of e-mail from store managers signaling new trends, fabrics and cuts, from which its designers quickly prepare new styles. The fabric selected is immediately cut in an automated facility, and sent to work shops. A high-tech distribution system, with some 200 kilometers of underground traces and over 400 chutes, ensures that the finished items are shipped and arrive in stores within 48 hours²².

Other fashion houses use IT to make customized products in response to an individual customer's request. For example, Shirtsdotnet (www.shirtsdotnet.com) aims to reshape the traditional clothing industry by reversing the process of decision making and following the made-to-order business model. Shirtsdotnet is a Business to Business clothing software platform provider, offering made-to-measure, mass customization clothing solutions for mail order companies. Customers can design and order apparel directly from the virtual shop. The business relies on proprietary software, which is protected as a trade secret and by copyright law. The above examples show that the strategic use of new information technology,

²¹ Available at: [www.ipo.org/wp.../IP Protection for Trade Secrets and Know-how1076598753.p...](http://www.ipo.org/wp.../IP-Protection-for-Trade-Secrets-and-Know-how1076598753.p...)

²² Available at: http://www.wipo.int/wipo_magazine/en/2005/03/article_0009.html as on 29th October, 2014

protected by the tools of the IP system, can play a critical role in establishing and consolidating a market position.

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This is especially true in an industry such as fashion, which is driven by creativity and by the intellectual capital invested in it²⁵. Protecting that intellectual capital in the form of IP assets serves to boost income through sale, licensing, and commercialization of differentiated new products, to improve market share, raise profit margins, and to reduce the risk of trampling over the IP rights of others. Good management of IP assets in a business or marketing plan helps to enhance the value of an enterprise in the eyes of investors and financing institutions.

GEOGRAPHICAL INDICATIONS AND TRADITIONAL KNOWLEDGE

Geographical indications are relevant to the fashion industry in terms of protecting unique handicrafts and fashion articles originating from a specific location and consisting of specific quality or reputation²⁶.

Traditional or indigenous knowledge is also relevant in terms of the need to protect unique cultural expressions in the designs, motifs and production methodologies of the artisans and

²³ Available at: www.thefashionlaw.com/.../what-is-the-defend-trade-secrets-act-and-how-does-it-affect-the-fashion-industry

²⁴ Available at: http://www.wipo.int/wipo_magazine/en/2005/03/article_0009.html as on 29th October, 2014

²⁵ Supra Note19

²⁶ Available at: https://www.wto.org/english/tratop_e/trips_e/t_agm3b_e.htm

craftspeople of the country. India has a rich textiles and handicrafts heritage in terms of abundant weaving, dying and printing techniques, embroideries, motifs, designs and production know-how, all of which are unique to the country and in need of protection.

Improved protection of IP assets would lead to more innovations and growth in the fashion industry²⁷.

INDUSTRIAL DESIGN AND FASHION DESIGNING

A design is the visual appearance of a product that is the decorative pattern on the garments. If the design is new and unique it can be registered. This means it can't be the same or similar to designs already produced (even in a sketch). There are certain designs that can't be registered, including designs featuring scandalous graphics. This gives the designer protection for the visual appearance of the product, but not its feel, material or function.

Among the range of IP tools, the protection of designs is most relevant to the fashion industry. Registering a design helps the owner to prevent all others from exploiting its new or original ornamental or aesthetic aspects, be they three-dimensional features, such as attractive shapes, or two dimensional features, such as aesthetically pleasing textile prints. Any three-dimensional design, such as a purse, garment, or accessory, can obtain intellectual property protection by being registered as an Industrial Model²⁸. Designs printed on fabrics can also be protected, not as an Industrial Model as there is no three-dimensional shape, but as an Industrial Design because of the combination of images, lines or colors that are incorporated into an industrial product for decoration purposes.

Legal rights can help a fashion designer in two distinct ways:

Protection: They can stop someone else benefiting from your hard work by copying or using your textile or product without your permission; and

Exploitation: They can generate revenue from your designs by allowing you to enter into licensing agreements for your designs with third parties.

IP rights are not just about protection against copying. Instead they may be viewed as performing a more subtle function, identifying the creator of content. By adopting an

²⁷ Available at: <https://www.internationalpropertyrightsindex.org/Italy>

²⁸ Available at: http://www.wipo.int/export/sites/www/sme/en/documents/guides/customization/stitch_in_time_pa.pdf

approach more akin to that taken within the media and entertainment industries, fashion brands can reach that next level of sophistication whereby they are strategically managing their IP rights distinctly from their commercial operations²⁹.

Intellectual property law offers a raft of rights to fashion designers. Some of these will arise automatically, such as copyright, while others require registration, such as trademarks.

NEED TO REGISTER

A registered IP can be a valuable commercial asset. A registered IP gives a right to enforce the design against infringement³⁰. It also provides an exclusive right to use the design and authorize other people to use the design as specified in the registration. It becomes a personal property and can grow in value and be sold.

The legal protection of IP rights provides designers, artists, business people, entrepreneurs and inventors with the exclusive right to use and control, and therefore profit from, their intellectual and creative work. IP is a very valuable asset for those in the design industry and an important differentiating factor between one designer and the next.

The rights that are most likely to be relevant to a fashion designer are: trademarks, copyright and design rights.

PROTECTION FOR IPR

Registered designs Two and three dimensional product designs (e.g. a fabric pattern or the shape of a bag). The visual appearance of a product is protected, but not the way it works. The owner has the exclusive right to use, sell or license the registered design or the appearance of the whole or part of a product resulting from the feature of, in particular, the lines, contour, colours, shape, texture and/or materials of the product itself and/or its ornamentation³¹.

Registration initially protects your design for five years from the date the application was filed³¹. The design registration can be renewed for a further five years up to the maximum term of 10 years. If you do not renew your registration it will cease. You can't make an

²⁹ Available at: <http://www.businessoffashion.com/2011/07/fashions-intellectual-property-conundrum.html> as viewed on 20th October, 2014

³⁰ Available at: www.altacit.com/publication/ipr-in-fashion-industry/

³¹ Available at: www.wipo.int/edocs/lexdocs/laws/en/au/au332en.pdf

application to re-register the same design. Once the design has ceased it passes into the public domain and is free for others to use.

Trade marks Letters, numbers, words, colours, a phrase, sound, scent, logo, shape, picture, aspect of packaging or any combination of these A trade mark identifies the particular goods or services of a trader as distinct from those of other traders. The owner has the exclusive right to use, sell or license the trade mark. A trade mark is initially registered for a period of ten years and continues indefinitely as long as the renewal fees are paid every ten years

CONCLUSION

The fashion industry invests huge sums every season to create new and original designs. Despite this significant investment, the fashion designers are reluctant in protecting their IP. However, a frequently cited explanation for not registering fashion designs is that the short product life cycle – often no more than one six-to-twelve month, season – does not justify the considerable time and financial cost involved. The arguments for registering a new design have to be considered on a case-by-case basis. Registering a design should help to deter others from copying it, and to fight unscrupulous competitors who do so. Moreover, design protection is not always a major financial burden, at least to begin with. For fashion items with a long life span, protecting the IP may be the best way to prevent others from using the design³².

The fashion industry is driven by creativity and by the intellectual capital invested in it. Protecting that intellectual capital in the form of IP assets serves to boost income through sale, licensing, and commercialization of differentiated new products, to improve market share, raise profit margins, and to reduce the risk of trampling over the IP rights of others. Good management of IP assets in a business or marketing plan helps to enhance the value of an enterprise in the eyes of investors and financing institutions.

³² WIPO Magazine/May-June 2005