ASSIGMENT

Topic:IPR fashion business and cases

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**IPR IN THE FASHION INDURSTRY**

In the last few decades, the ever-evolving fashion industry of creative expression has been one of the most significant social phenomena of contemporary societies. The fashion industry at the heart of the business is not just about garments and apparel, but it is a company’s ability to build and monetize a unique brand to achieve the competitive edge essential for success. As and when a design or a brand becomes popular, others tend to copy it shamelessly which leads to a huge loss faced by the manufacturers of the original products. Quite often, we also come across counterfeit products of widely known brands which not only cause distress to the fashion industry but also pose a huge threat to the economy as well. **Intellectual Property (IP) Rights** are the rights governing the intangible innovations of the human intellect. They represent an important body of law in almost every industry including the fashion business due to their ability to protect creations of the mind. It is a matter of fact that yes; IPR and the fashion industry move hand in hand as the creations or designs which are accepted as fashion in the industry are considered as the intellectual creations of an individual who owns an exclusive right to protect them. With that in mind, each industrial design asset and the brand that markets that asset within the fashion industry must be protected through Intellectual Property Rights. Therefore, it is imperative for any country’s legal system to promote creativity and protect the Intellectual Property Rights of the creations of the fashion industry.

IP law has played an enormous role in the proliferation of fashion. Take runways, for example; very few designs on display are sold in stores. The runway is an opportunity for designers to display their creative talent, attract media attention and build awareness of their brand. They also provide an opportunity for a brand to sell more affordable items, such as perfumes, cosmetics or T-shirts, with brand names prominently displayed on them. So much of the fashion industry thrives on this type of IP licensing. IP is a core asset of the fashion business. In the United States, we talk a lot about copyright law as the main source of protection for designs and its interaction with fashion. But trademarks are really the most widely used means by which fashion brands protect themselves in the United States.

**[Copyright](https://www.kashishworld.com/copyright/):**

Copyrights are the exclusive rights which protect the original artistic works. Anything that is functional or has a physical function in the real world can never be copyrighted. In the fashion industry, the elements of fashion designs are afforded protected if they meet the requisite levels of creativity, originality, and are fixed in a tangible medium.

In the fashion business, jewelry gets ****copyright protection**** as it is decorative and resembles miniature sculptors. Another area of fashion that gets copyright protection is two-dimensional designs including fabric prints, lace patterns, and jacquard weave. This kind of protection turns out to be super beneficial for a designer who is creating his or her own fabric.

**[Trademark](https://www.kashishworld.com/trademark):**

A Trademark could be a word, name, symbol, logo, or a design that distinctively identifies the origin of the goods and services. When it comes to the fashion industry, trademark protection cannot typically protect an entire accessory or garment, but can at least protect the logo or the fashion label. **Trademark Protection** is a relatively strong form of protection for famous and recognized fashion brands, therefore it is highly advisable for the fashion designers to register their mark to protect their brand’s right to revenue and also help the customers distinguish between genuine and counterfeit items.

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In the fashion business, the names and logos can be trademarked by the type of products which includes clothing, accessories, shoes, fabric, to name a few. Another relevant type of **Trademark Law**in the fashion world is “TRADE DRESS” which extends to the configuration including the design and shape of a product and/or its packaging. Trade dress creates a visual impression of the total image of a product.

**[Patent](https://www.kashishworld.com/patent):**

A Patent is an exclusive IP right granted to inventors whose skill or labor produces an idea of a new process. Coming to the fashion industry, a patent has to be something that is not only useful but is also new or novel to the entire world around. Therefore, **Patent Protection**is an important aspect leading to the successful commercialization of fashion brands that particularly need a huge amount of investments to complete development to the commercial stage.

In the fashion business, footwear, specifically athletic shoes, and foundation garments or lingerie are few categories which have been subject to patent protection for a long period of time. There is another subcategory of patents extending to “DESIGN PATENTS”which protect the ornamental and decorative aspect of functional items. Handbags or shoes which are particularly sculptural or decorative might have a possibility for a design patent.

### **Trends issue in fashion business**

A good visual imagination and creativity are the most important aspects of the fashion industry. On one hand, the plethora of creativity and visual imagination, help brands achieve recognition and on the other hand, counterfeit and duplicate fashion items pose a major threat to this industry. If one follows the news daily, one may come across several cases of **Intellectual Property Rights Infringement** around the globe. For instance, there was one case in which the France fashion house, Louis Vuitton sued a women’s shoe retailer in China for selling footwear that strongly replicated noteworthy attributes and features of its latest spring collection. Such cases not only adversely affect the brand’s name and reputation in the fashion industry but also cause a violation of the rights of the original rightful owners.

**IPR FASHION BRAND CASES**

**Star Athletica, LLC v Varsity Brands, Inc.**

The recent landmark case – Star Athletica, LLC v Varsity Brands, Inc. – is likely to have an impact on the fashion industry in the United States. The case, which went to the US Supreme Court, centers on the copyrightability of designs on the surface of cheerleader uniforms and the concept of “separability,” which is a pre-requisite for a garment or other useful article to be protected under US copyright law. As copyright law does not seek to protect or create a monopoly over useful articles, and as garments, dresses, shoes, bags and so forth are considered useful items, they don’t qualify for copyright protection as a whole. Only design features that can be separated from a garment or other utilitarian or useful item, so to speak, qualify for copyright protection in the United States. The whole issue has been a major source of frustration for designers in the United States for some time because it means that only certain aspects of their garments, and not the garment as a whole, are protectable.

With that as a baseline, fashion businesses in the United States are using IP in interesting and creative ways. For example, we now see growing reliance on design patent protection, even though it is more expensive and time-consuming to obtain than copyright protection. More businesses are also relying on trademark protection to protect their brands and trade dress (i.e.  the appearance and packaging of their products)

****Louis Vuitton Malletier v. Atul Jaggi:****

In the present case, the Delhi High Court restrained the defendants for the influence and passing off their famous trademarks “*LOUIS VUITTON*” and “*LV*” by using identical marks and granted damages. Through Trademark, designers can protect logos and brand names and specific features of products.

****Ritika Apparels v. BIBA:****

The case of Ritika Apparels has been a unique one. Rather than lifting the design from the other party’s creation, one party copied, reproduced and sold that by having their name. The party claimed the case in court and moved to the court alleging copyright infringement. Have good day defendants who lived in the same design to defend [section 15 (2) of the Copyright Act 1957](https://indiankanoon.org/doc/991805/" \t "https://ipbulletin.in/ipr-in-fashion-industry/_blank)and submitted that the Act does not make to infringe as the original right owners Ritika apparels has lost the legal ownership to the product of more than 50 numbers of products by industrial production. Since the same design was not registered under designs act Ritika apparel. But using the loophole under IPR, BIBA escapes from having any liability.

****Christian Louboutin v. Mr. Pawan Kumar & Ors**:**

The present case was one of the most important cases of all time where the brand shoes were copied and were sold at lesser prices, which led to a significant loss for the brand. Christian Louboutin red sole shoes are quite popular among celebrities and people, and the red-coloured high heel shoes are quite a rage among the customers who have seen their favourite star wearing them. It has been declared that Louboutin is one of the most expensive brands of all time and the quality of these products are very distinct from that of other brands products. Plaintiff Christian Louboutin moved to the court seeking permanent compensation and claimed from the two stores were Kamal footwear and Adhara steps to stop selling counterfeit products of red sole shoes. The court, in the judgements, held the defendant company to pay a total amount of rupees 10.7 lakhs, while they were rejected permanently from selling the counterfeit again. The judge declared Christian Louboutin as a well-known mark. The infringement of the Louboutin mark and successful prosecution of the defendant’s shoe company owners are the best examples of how a designer or a brands owner needs to protect his or her Trademark through IPR.

**People Tree v. Dior**

The Case of [People Tree v. Dior](https://spicyip.com/2018/02/people-tree-v-dior-ip-infringement-cultural-appropriation-or-both.html" \t "https://blog.ipleaders.in/take-ip-fashion-conglomerates-india/_blank) deals with an act of plagiarism of designs by Dior. Plaintiff of the case alleged that Defendant had plagiarized some block printing designs that were made by Plaintiff in collaboration with some artisans from Rajasthan. The Geographical Indication of Goods Act could have protected the rights of the artisans, the reason being a GI Tag of Rajasthani artistic work has been granted by the Government of India. However, the flaw, in this case, was that the ‘Dabu’ technique that was used by Plaintiff did not have any GI protection. This flaw was very cleverly used by Defendant in this case, leaving no legal recourse for Plaintiff.

**[Rajesh Masrani v. Tahliani Designs](https://indiankanoon.org/doc/111285241/" \t "https://blog.ipleaders.in/fashion-industry-challenges-ip-protection/_blank)**

This was one of the cases where the Delhi High Court took into consideration the designs of the clothing. The plaintiffs, in this case, alleged that the drawings which were made in pursuance of the development of accessories and garments were artistic works Section 2(i)(c) as under the Copyright Act, 1957. In addition to this, the plaintiff even claimed that the embroidery and the printed patterns on the fabric also came under the garb of artistic work. In response to the claims put forth by the plaintiffs, a single bench judge issued an injunction order in favour of the plaintiffs.

## ****Puma v. Forever 21****

With the aforementioned case in mind, the lawsuit that Puma filed against Forever 21 in early April is significant. On the heels of reports that Forever 21 is offering lookalike versions of footwear from Rihanna’s Fenty line for Puma, the German sportswear giant slapped the copycat retailer with a design patent, trade dress, and copyright infringement lawsuit.

According to Puma’s suit, which was filed in the U.S. District Court for the Central District of California, the Los Angeles-based fast fashion brand has copied three of the most prominent footwear designs from Rihanna’s collection for Puma in attempts to “trade on the substantial goodwill of Puma, Rihanna, and the Fenty shoes.”particular, Puma cites the following as the copyright-protected elements of its footwear: The “ridged vertical tooling and grainy texture encompassing the thick rubber outer sole” for the Creeper; the “wide plush fur strap extending to the base of the sandal” for the Fur Slide; and the “casually knotted fabric bow with pointed endings atop a lined side strap that extends to the base of the sandal” for the Bow Slide.This is noteworthy as it is one of the first – if not the first – cases to put the Supreme Court’s new separability test to use. It will be interesting – and telling – to see how the U.S. District Court for the Central District of California, a court that sees a fair amount of fashion cases, applies it (assuming the case is not dismissed (as Forever 21 recently moved for) and/or the parties do not settle before trial, that is).

**[Adidas America Inc. v. Payless Shoesource Inc.](https://law.justia.com/cases/federal/district-courts/oregon/ordce/3:2001cv01655/5340/1035/" \t "https://legamart.com/articles/intellectual-property-in-fashion-cases/_blank)**

The famous three stripes have been well defended by Adidas as a registered trademark. In 1994, Adidas sued Payless over these same stripes. Adidas has been using the three three stripes designs since 1952.Payless confusingly enough started to sell nearly identical athletic shoes but with 2 and 4 parallel stripes. At first, the two companies settled that year but then again in 2001, Payless again started to sell shoes which was the cause of their scuffle. Therefore now in fear that their customers might be tricked into buying the same shoes from their competitors, Adidas decided to demand a jury trial.

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