Snapshot: intellectual property for fashion goods in India

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Intellectual property

Design protection

Which IP rights are applicable to fashion designs? What rules and procedures apply to obtaining protection?

In India, fashion designs are protected by several types of IP rights, which ensure that designers' creative works are safeguarded against unauthorised use or duplication. Copyright protection applies to artistic elements of fashion, such as textile designs, embroidery and printed patterns on fabrics. Under the Indian Copyright Act 1957, such designs are eligible for protection as artistic works, provided they are original. However, functional aspects like the cut or shape of a garment are not covered by copyright law. The Designs Act 2000 provides specific protection for the visual appearance of a fashion product, including garments, accessories and even packaging. To qualify for protection, the design must be original, novel and visually appealing, rather than purely functional.

Trademark protection is also important in the fashion industry, particularly for brand names, logos and distinctive features such as colours or shapes associated with a brand, such as the famous red sole of Christian Louboutin shoes. The authors of this chapter recently worked with renowned Indian designer Rajesh Pratap Singh to protect a Selvedge (the self-finished edge of woven fabric) design that runs through the centre back of his garments. Unique textures and patterns, such as the Louis Vuitton Epi (embossed leather) Pattern, can also be protected.

Personality rights can also apply and be invoked and enforced through licensing arrangements in place. Periodically enforcing rights is also an effective mechanism to ensure market share remains intact and the counterfeiters are deterred. Manish Malhotra, the leading designer in India, recently obtained favourable orders against third parties. Fashion brands can protect their identity through registered trademarks, which prevent other companies from using similar marks that could cause confusion in the market.

In addition, patents can be applied to innovative technological advances in fashion, such as new fabric materials or clothing production techniques, like wrinkle-free fabrics or embedded radio frequency identification (RFID) chips for tracking garments. Geographical indications can also be used to protect traditional or regionally distinctive fashion items, such as Kanchipuram silk sarees or Pashmina shawls, under the Geographical Indications of Goods Act 1999.

The process for obtaining protection varies: copyright does not require mandatory registration but provides legal presumption of ownership upon registration; design protection requires filing with the Designs Registry within six months of publication; trademarks are registered through the Trademarks Registry; and patents must meet the criteria of novelty and utility before being granted by the Indian Patent Office.

What difficulties arise in obtaining IP protection for fashion goods?

The fashion industry in India faces several challenges when it comes to obtaining IP protection. One of the primary difficulties is the rapid pace of fashion trends. As fashion is constantly evolving, designers often struggle to protect their creations before they become outdated or are copied. This leads to a significant issue of fashion piracy, where knock-offs and counterfeit products flood the market even before original designs are legally protected. Another challenge lies in the limited scope of copyright protection, as it only covers artistic aspects of a design, such as prints or embroidery, and not functional features like the shape or cut of garments. As a result, many key elements of a garment, such as its silhouette or functional design, cannot be safeguarded under copyright law.

Furthermore, although the Designs Act 2000 offers protection for visual designs, it requires the design to be novel and original, which can be challenging to prove, especially given the global nature of fashion and the sheer volume of existing designs. Additionally, the process of registering designs may be hindered by the fact that many designs are already in the public domain or are too similar to previously existing designs.

IP enforcement also presents significant hurdles in India, as the legal infrastructure for addressing infringement cases is often weak. There is a lack of awareness about IP rights, and the complexity of proving infringement, especially in counterfeit markets, makes it difficult for designers to protect their creations effectively.

Lastly, while geographical indications can protect region-specific fashion items, such as traditional textiles, enforcing GI rights outside of India remains a significant challenge due to the global nature of the fashion industry. Designers should encourage and have an innovation ecosystem in their companies (eg, there should be sign-offs from the designers empanelled internally on originality and water-tight agreements should be drafted with other vendors and fabric and accessory providers). The Amazon system of brand registry is a very effective method of controlling counterfeits through online distribution systems. Invoking intermediary liability clauses to control counterfeits through

online distribution systems is also an effective remedy.

Brand protection

How are luxury and fashion brands legally protected in your jurisdiction?

Luxury and fashion brands in India are primarily protected through various IP rights designed to safeguard their unique creations and business interests.

Trademark protection is essential for luxury brands, allowing them to protect their logos, brand names, slogans and product shapes, ensuring that consumers can identify their products and distinguish them from those of competitors. Additionally, non-conventional trademarks such as specific colours (eg, Tiffany Blue) or unique packaging are becoming increasingly recognised, especially in the luxury sector where visual identity is crucial. Recently, in India, the authors of this chapter worked with renowned designer Rajesh Pratap Singh on the protection of a Selvedge design that runs through the centre back of his garments. In addition, unique textures and patterns, such as the LV Epi Pattern, can be protected.

Design protection under the Designs Act provides exclusive rights over the appearance of a product, such as the shape, pattern and configuration of garments or accessories. Copyright protection is available for original fashion designs, textile prints and other artistic works under the Indian Copyright Act. This covers creative aspects like unique prints, embroidery and sketches, but does not extend to functional elements like the cut or fit of garments.

Patent protection is applicable for innovative materials or technologies used in fashion, such as water-resistant fabrics or RFID-enabled clothing, which may be protected under the Patents Act. Trade secret protection is also vital for luxury brands, which often rely on confidentiality agreements to protect proprietary manufacturing techniques, customer lists and unreleased designs.

Lastly, enforcement against counterfeits is an important avenue for luxury brands, which can take legal action through civil and criminal routes to combat counterfeiting, seeking remedies such as injunctions, damages and criminal penalties.

Licensing

What rules, restrictions and best practices apply to IP licensing in the fashion industry?

In India, licensing plays a crucial role in the fashion industry, allowing brands to expand their reach while maintaining control over their intellectual property.

Trademark licensing is the most common form of licensing, where a brand owner grants a third party the right to use their trademark on certain products. It is essential that licensees adhere to strict

quality control standards to ensure that the brand's reputation is upheld.

Design licensing allows a third party to produce and sell products based on a specific design, but the design must be registered under the Designs Act to ensure exclusivity and enforceability.

Character licensing, which involves using popular characters from movies, cartoons or entertainment franchises, is a frequent practice in fashion collections, particularly for collaborations or merchandising deals.

Exclusive licensing agreements grant a licensee exclusive rights to produce and sell products in a specific market, while sub-licensing permits the licensee to grant further licenses to other parties, allowing the brand to reach broader markets.

Private label licensing involves a retailer licensing its brand to a manufacturer to produce goods under the retailer's own brand name.

Best practices for licensing include ensuring that licensing agreements are clear and comprehensive, specifying terms like royalties, territories, quality control and dispute resolution mechanisms. Additionally, brands must be vigilant about maintaining quality control to protect their reputation and prevent counterfeiting or unauthorised use of their intellectual property

Enforcement

What options do rights holders have when enforcing their IP rights? Are there options for protecting IP rights through enforcement at the borders of your jurisdiction?

Rights holders in India have several legal avenues to enforce their IP rights, both through civil and criminal means. Civil actions can be pursued by filing lawsuits in Indian courts, where IP owners can seek injunctive relief (eg, stopping the infringing activity) and damages for the harm caused by the infringement. The courts may also order the accounting of profits made by the infringer, forcing them to return any profits earned from the unlawful use of protected IP. Criminal actions can be pursued for more serious violations, such as counterfeiting, under the Indian Penal Code. Specific provisions under the Copyright Act (section 63) and the Trademarks Act (section 105) allow for criminal penalties, including imprisonment and fines for infringement.

For border enforcement, Indian customs authorities play a critical role in preventing the import or export of counterfeit goods. IP rights holders can file an application with Indian Customs under the Customs (Import & Export) (Preventive) Rules, requesting assistance in seizing counterfeit goods at the border.

Enforcement agencies, such as the Controller General of Patents, Designs and Trademarks and the Copyright Office, are responsible for IP registrations and can also assist in enforcement matters. In

addition, industry trade associations and agencies like the Central Bureau of Investigation may support efforts to combat large-scale counterfeiting operations.

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