Not flattery, plagiarism hurts designers business bottomlines says Safir Anand

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Safir Anand speaks to the Patriot on India's rising legal literacy, efforts by fashion designers to protect their originality and the saving of the entire creative industry itself.

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ALMOST FRENCH

THE AUTUMN/WINTER 2018 HAUTE COUTURE SHOWS IN PARIS WERE DOMINATED BY FLORALS, GLAMOUR AND CELEBRITIES

CATCH-22

COMING FROM A REPUTED FAMILY OF LAWYERS FOR OVER 100 YEARS, THE MAVERICK SAFIR ANAND, TELLS US HOW COPYRIGHT INFRINGEMENT AND PLAGIARISM IS A SOCIO-ECONOMIC ISSUE, HINDERING THE PROGRESS OF THE ENTIRE FASHION INDUSTRY

Drishti Vij

IF FASHION mirrors the times we're living in then India Couture Week, 2017 inhabited a universe where stardom surpasses skill and tradition veils commodification. However, some realities, like that of copyright and design infringement, even the most popular designers could not steer clear of. Rohit Bal, for instance, protected his designs. So did Anju Modi as some images of her couture collection came with a disclaimer, "Due steps have been taken to protect our IP. Any violation of our IP will invoke due legal action and consequences."

This is where lawyer Safir Anand steps in. Safir is the Senior Partner and Head Trademarks at Anand and Anand, an Intellectual Property law firm started in 1923. An Economics (Hons) graduate from SRCC, Safir started visiting courts quite early, while pursuing law at Delhi University. Over the course of 22 years, he felt the need to be a strategist and transactional specialist and has represented some of the biggest luxury houses like Louis Vuitton, Dior, Cartier and Chanel in India. He is now a consulting board member for the Fashion Design Council of India (FDCI) and believes that the issue of IPR, in fashion, is bigger than what it seems at the surface.

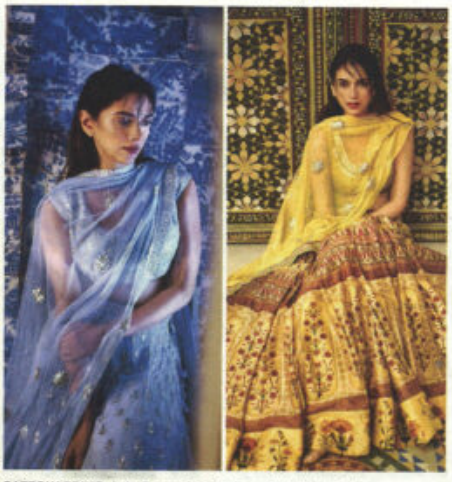
According to him, plagiarised designs can even potentially impact the evaluation of a company, which can disparage its chances of getting an investment in the future. He elaborates, "If you take the example of international brands, Louis Vuitton has patented not just their monogram, but also their epi pattern. Christian Louboutin has legally protected its red sole. Companies like Disney have trademarked characters like Mickey Mouse; they haven't even left their font. In India, Ritu Kumar had the first mover's advantage. Part of the reason why she got an investment of 100 crores from private equity investment firm, Everstone Capital in 2014, is because she had legally patented her designs, enforced rights and was IP savvy. The case of Anita Dongre is also based on a similar premise wherein her company, AND Designs, received an investment from General Atlantic."

So, why is it that Indian designers were slow in seeking legal help as compared to their Western counterparts? "The reason could be twofold," explains Safir, "First: Some designers believe that imitation is the best form of flattery. So, they didn't want to bring it to the court's notice. Customers, in this case, are anxious of paying an exorbitant price for such a product, the copies of which are sold at cheaper prices. Plus, times have changed. Earlier, designers didn't realise the importance of this, because making money was easy. The economy was open and there were fewer designers. With increasing competition, markets are getting squeezed. Now they can only differentiate themselves based on IP."

However, piracy, despite IPR, hasn't seized from existing. Countries like China, a lucrative target market for luxury houses, has several black markets that sell everything, from luxury handbags to clothing. Safir agrees, "There's no way to stop piracy completely. Of course, it's lucrative for those who're selling copies, not the brand owners. It also depends on how a certain government is conducive to these laws. Apple, for example, sued a store in China, that was selling identical products in an identical store format and they won. Many brands, however, don't want to undertake actions very aggressively. It's a choice."



DESIGNERS NEED TO MAKE CONTRACTS WITH THEIR TEAM. IT'S IMPORTANT TO REGULATE THE ECO-SYSTEM OF PRODUCTION
Safir Anand, Lawyer



SAFEGUARDING: Anita Dongre has legally protected her designs

Safir also believes that a systematic change needs to be initiated in the nature of work that goes behind a designer garment in India. "Designers need to make contracts with their creative team. It's important to regulate the eco-system in which you're producing your garments. Unregulated designs might give you short-term gratification in terms of profits, eventually the company suffers in terms of its evaluation. It's a mind-set, where the debate is similar to that of income v/s wealth."

He further sheds light on how sometimes intra-industry plagiarism does not even happen through intent. "Let's assume one Indian designer has a fight with another. In some cases, it has to do with intent, which is bad. But, in other cases, it has to do with a situation wherein a *karigar* left and joined another firm. And, you did not have any agreement in place. They may be making 80 *khakas* for you and you may have selected only 20 for your show. The *karigar* doesn't know about others and later you change your mind. He, then, takes the same *khakas* to a different designer. Sometimes, designers feel that their designs are already being copied, so they don't want to command rights to it now, as it will cost them money."

Nevertheless, legal literacy in India is slowly increasing, Safir says, "The IP history in India had no culture of granting damages in counterfeiting. Certain illegal activities have also changed the mind-set of the judiciary and a damage based enforcement has set in. When these illegal activities take place, the government loses out on tax and some of the highest duties are levied on luxury products. This, in turn, also causes a loss in employment opportunities. It's a socio-economic problem, not just financial. Pharmaceuticals and automobile industries have faced similar problems. However, the question is then of jeopardising your safety. If you look at YouTube ads for CEAT, for example, they no longer advertise about just their tires; they sell their product as a means for safety."

A classic example of an on-going legal battle is between Gucci and Forever 21. The fast fashion label has allegedly copied Gucci's trademark — 'blue-red-blue' and 'green-red-green' stripes. The American conglomerate is now defending itself from a lawsuit filed by the Italian luxury house. In India, however, the story is different as design actualisation is distributed in a multi-layered hierarchy. Craft clusters, in this case, are mere lambs in an industry ruled by cashmere-covered wolves. But, the government is now taking steps to legally protect even those, who do not have sufficient means to do it themselves. Safir concludes by disclosing, "There's this very interesting thing in IPR called 'Geographical Indication', which declares that handlooms and crafts that come from only certain geographical areas and have geographical traits are protected. For example: the pashmina shawl is inspected with a GI. And, this controversy is also going on with khadi. Khadi was created under an act which monitors its use and now people using it have to first seek permission and those just making concoctions are not allowed to sell it as khadi."



ANTI-PIRACY: French luxury house, Louis Vuitton, has copyrighted not just its monogram but also its Epi pattern

PHOTOS: LOUIS VUITTON & ANITA DONGRE

EVENT: • LULU AND SKY GOES OFFLINE WITH THEIR FIRST STORE AT SELECT CITYWALK, SAKET

Safir Anand has been invited by the Fashion Design Council of India to its Board of Directors to "help members solve copyright issues".

Business World had reported how better awareness of their rights will help designers better protect their rights.

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