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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LICENSING AGREEMENTS IN THE FASHION **INDUSTRY: KEY LEGAL ISSUES**

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Abstract

The concept of licensing agreements has become one of the foundations of the contemporary fashion industry, allowing brands to grow without taking a direct hand in the production or distribution of its products. Licensing in the context of fashion constitutes a legal agreement between the owner of intellectual property, usually trademarks, logos, designs or celebrity personas, and gives permission to the other party to exercise the property under limited purposes, time-frames and even territories in recompense of royalties or fees¹. With the growing level of interconnectedness the global fashion ecosystem is experiencing, licensing has become a central component when it comes to managing the brand identity in continents and classes of consumers.

The emergence of digital fashion and non-fungible tokens (NFTs), virtual clothing, and metaverse branding has also altered the nature and complexity of licensing². This has created new legal issues on ownership, jurisdiction and enforceability to digital and cross-border circumstances. The article examines the various legal implications of fashion licensing- intellectual property protection and interpretation of contracts to international enforcement of laws and regulatory defiance³.

The fast-growing technology and changing consumer demands bring new challenges to licensing in fashion, where it is necessary to respond to the problems of the new age and to go over the conventional doctrines of the trademark law, design rights, moral rights, and commercial contracts. These intersections are critically analysed in this paper based on both the Indian and international perspectives of law.

¹J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 18:1 (5th ed. 2024).

²WIPO, *NFTs and Intellectual Property: Questions and Perspectives*, WIPO Magazine, Jan. 2023.

³Peter K. Yu, *Intellectual Property and Global Licensing Strategies in Fashion*, 41 *Hastings Int'l & Comp. L. Rev.* 123 (2022).

1. Introduction

Licensing agreement can be described as a strategic means in the fashion industry whereby a brand can license its intellectual property and earn revenue through it without necessarily involving itself in direct manufacturing, marketing, or retailing. A licensing agreement is a legal document through which a holder of intellectual property rights, the licensor, transfers some of the rights to a licensee to commercially benefit in some specific intellectual property, usually in exchange of a royalty payment or a licensing fee⁴. These agreements tend to be accompanied by the provisions on the elements of exclusivity, quality control, territorial coverage as well as the length of duration, which establishes the foundation of a win-win commercial relationship⁵.

In the modern fashion industry licensing has grown in importance acting as a liaison between brand identity and mass-market availability. Luxury houses to fast fashion retailers, brands often use a licensing model to expand to new geographies or product category without degrading the core aesthetic. As a case in point, Armani Exchange is the form of a licensed diffusion line focusing towards younger markets but does not undermine high fashion legacy of Giorgio Armani, whereas Karl Lagerfeld x Puma is an excellent case illustrating the phenomenon of celebrity licensing where fashion meets the lifestyle branding and sportswear⁶.

Licensing now has a greater legal depth than before in relation to upsurge intricacy in developing global fashion supply chains alongside emerging e-commerce and digital fashion. The emergence of virtual clothes, non-fungible tokens (NFTs) and metaverse fashion has presented the IP licensing of tangible goods with new types of questions regarding ownership, authenticity and jurisdiction⁷.

In the light of this changing environment, the current paper seeks to discuss the major legal aspects of licensing agreements within the fashion industry. These may be: (i) issue of protection of intellectual property as it relates to national and international regimes, (ii) contract law issues of drafting and enforcement, (iii) moral rights concerns based on misuse of celebrity

⁴Peter K. Yu, *The Anatomy of a Licensing Agreement*, 42 U. Miami Inter-Am. L. Rev. 201, 205 (2021).

⁵ Jane C. Ginsburg, *Licensing Intellectual Property: Legal Framework and Business Context*, in *Intellectual Property and Fashion* 43–61 (Susan Scafidi ed., 2022).

⁶Ashley Mears, *Pricing Beauty: The Making of a Fashion Model* 168–74 (Univ. of California Press 2020).

⁷World Intellectual Property Organization (WIPO), *Legal and IP Issues in the Fashion Metaverse*, WIPO Magazine, Mar. 2024.

personalities or artistic designs, and (iv) cross-border enforcement aspects emanating by territorial fragmentation of IP. With references to the Indian law and other jurisdiction examples, the paper attempts to provide a wholesome approach to the issues of fashion licensing in the 21st century.

2. Types of Licensing in Fashion

There are numerous forms in licensing in the fashion industry and they are developed by the opportunities of the intellectual property and they are dictated by the strategy of the brand. Such arrangements enable fashion houses to commoditize many elements of their brand identity, such as logos and patterns, celebrity personalities and accessories to wearable technology, over markets, demographics and platforms.

2.1 Brand Licensing

The most popular is the brand licensing, which involves one company offering to license its trademark, trade name or logo to another organization to appear in certain products or services. The model allows the fashion houses to increase their scope without any form of direct investment in production or sales. As an example, Calvin Klein licenses its brand to PVH Corp. that markets it and distributes in the world with close attention to quality control measures⁸. Licensing trademarks is the subject of national trademark legislation, including the Trade Marks Act, 1999 in India or the international regime, the Madrid Protocol⁹.

2.2 Character & Celebrity Licensing

The category involves right to exploit a name, image, signature or likeness of a celebrity on fashion products. It combines IP law and personality rights or right of publicity. The collaboration of Rihanna with Puma and the Yeezy-Adidas partnership are good cases. In 2022, the deal with Ye was called off after the artist had decided to act in public in an unacceptable way, which returned the topic of the moral clauses in agreements between celebrities and the company to the agenda¹⁰. Legal concerns, in this case, embraces appropriation, brand image degradation and infringement of moral rights¹¹.

⁸PVH Corp., Annual Report 2023, at 14–17 (discussing Calvin Klein licensing strategy).

⁹The Trade Marks Act, No. 47 of 1999, § 48 (India); *Madrid Agreement Concerning the International Registration of Marks*, Apr. 14, 1891, as amended.

¹⁰Vanessa Friedman, *Adidas Ends Partnership With Kanye West Over Antisemitic Remarks*, N.Y. Times (Oct. 25, 2022).

¹¹J. Thomas McCarthy, *The Rights of Publicity and Privacy* § 3:3 (2d ed. 2024).

2.3 Design Licensing

Licensing of designs implies the permission of the reproduction and sale of the definite fashion designs or patterns. It is different to copyright assignment, where the title passes. In India, protection of design can be availed of under Designs Act, 2000, and in case the design is artistic in nature-copyright protection can also be sought¹². Licensing helps many upcoming designers to make money out of their work without loss of ownership.

2.4. Technology/Utility Licensing

As fashion-tech has been gaining momentum, patent and utility model licenses to brands on smart wearable devices, fabrics that integrated sensors, and augmented reality (AR) perception are being issued. As an illustration, collaboration between Levi and Google in Project Jacquard enabled the development of touch-sensitive denim jackets that are connected with smartphones¹³. Such deals may include patent licenses and they must be in line with the laws protecting utility.

3. Legal Framework Governing Fashion Licensing

The fashion industry licensing is situated between intellectual property law, contract law and international legal frameworks. The legal areas form the framework of the negotiation, performance and enforcement of the licensing deals both at the domestic and cross-border level.

3.1 Intellectual Property Law

The concept of licensing in fashion is based on the protection of intellectual property (IP) because the majority of contracts are related to trademarks, artistic works, or industrial designs. In India the trademark law is practiced under the Trade Marks Act, 1999, and a trademark is defined as a mark that can be graphically represented and can distinguish the goods or services of one individual or organization with another one¹⁴. The registered proprietor is the only person that can use the mark and sue in case of infringement of the mark is used without the permission of the proprietor in a way that creates confusion to the consumers or dilutes the brand identity.¹⁵ The names, logos, slogans and even patterns are normally registered by the fashion houses to create high brand control.

¹²The Designs Act, No. 16 of 2000, § 11 (India); Copyright Act, No. 14 of 1957, § 2(c) (India).

¹³ Levi Strauss & Co. and Google Inc., *Project Jacquard Smart Jacket Partnership Overview*, TechCrunch (Apr. 2019).

¹⁴*The Trade Marks Act, No. 47 of 1999*, § 2(1)(zb) (India).

¹⁵*Id.* §§ 28, 29.

Copyright Act, 1957 is available to the original artistic work like sketches, fashion illustrations, textile prints, and embroidery patterns¹⁶. These rights play a very important role in design licensing, particularly when the design is a high-fashion illustration to be commercially reproduced. But, the protection under the Designs Act, 2000 should be sought in case of a design that has been applied to more than fifty articles under Section 15 of the Copyright Act¹⁷. This dual system brings about duplication in protection of fashion, and brands are usually forced to protect designs strategically as copyrights and industrial designs.

The aesthetic features of an article in terms of shape, configuration, pattern or ornamentation are also secured under the Designs Act, 2000 provided they are registered with the Controller General of Patents, Designs and Trademarks¹⁸. Fashion companies typically register this to guard silhouettes of garments, the style of draping fabric or accessories, and license them to manufacturers or distributors.

3.2 Law of Contract

Licensing agreements are confidential contracts that have to be in accordance with the Indian Contract Act, 1872. A licensing contract should include such essential elements to be enforced by the law: offer, acceptance, lawful consideration, competent parties, and a lawful object¹⁹. A fashion licensing agreement would normally incorporate:

1. Exclusivity (is the license exclusive, non-exclusive or sole),
2. Territorial Scope (geography of the area to which rights are given),
3. Royalty Terms (fixed fee, sales-based royalties or hybrid)
4. Conditions of Term and Renewal, and
5. Quality Control Measures (in order to preserve integrity of brand)²⁰.

Quality control clauses are particularly important in fashion where the perception of the brand is everything. In absence of such controls, the courts can either declare a license void, or hold it as a naked license (unauthorized)²¹.

¹⁶*The Copyright Act, No. 14 of 1957*, § 2(c) (India).

¹⁷*Id.* § 15(2).

¹⁸*The Designs Act, No. 16 of 2000*, § 2(d) (India).

¹⁹*The Indian Contract Act, No. 9 of 1872*, §§ 2–10 (India).

²⁰Peter K. Yu, *Drafting IP Licensing Agreements in Fashion*, 44 J. Intell. Prop. L. & Prac. 101, 109 (2023). Q

²¹*Dawn Donut Co. v. Hart's Food Stores, Inc.*, 267 F.2d 358 (2d Cir. 1959).

3.3 Treaties between countries

Licensing of fashion is usually international in nature and as such, international IP treaties are very pertinent. The World Trade Organization (WTO) administers the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which establishes minimum IP standards in all member countries and requires the establishment of enforcement procedures of IP protections, such as injunctions and damages in case of infringement²².

Berne Convention for the Protection of Literary and Artistic Works to which India is a signatory provides automatic copyright protection without registration in any member country and also provides moral rights of authors which are critical in the licensing of character and design.²³

The World Intellectual Property Organization (WIPO) is another important organization that helps in cross-border protection of IPs by providing mechanisms such as Madrid Protocol that is used in registration of trademarks and Hague Agreement that is used in protection of designs. Such instruments enable fashion brands to gain international protection by filing the application process once²⁴.

4. Key Legal Issues in Fashion Licensing

The fashion industry can easily be susceptible to complex legal issues associated with licensing agreements due to the mutual interaction of intellectual property (IP) licenses, contractual performance, brand ownership, and civilization. In our section, we will outline and scrutinize six of the most acute legal issues, which are faced by licensors and licensees.

4.1 Infringement and Counterfeiting

The infringement and counterfeiting could be considered as one of the greatest risks to fashion licensing. Spread of counterfeits devalues the brands reputation of exclusivity, and devalues the reliability of the consumer. The problem has been exacerbated with the rise of e-commerce stores and online fashion, including products that one can just download or wear using

²²Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 41–61, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

²³Berne Convention for the Protection of Literary and Artistic Works art. 6bis, Sept. 9, 1886, as revised at Paris, July 24, 1971, S. Treaty Doc. No. 99-27.

²⁴WIPO, *Understanding Industrial Design Protection: Hague and Madrid Systems*, WIPO Publication No. 943 (2023).

augmented reality. There is also the problem of enforcement of the platforms who unknowingly have vendors who sell imitations of the licensed designs and as such it is logistically and legally difficult.

In the landmark judgement of *Christian Louboutin SAS v. Nakul Bajaj & Ors.*,²⁵ the Delhi High Court ruled that the defendant could not offer protection under the intermediary status of S 79 of the Information Technology Act, 2000 to his online site, which actively engaged it in making illegal sales of luxury shoes.

4.2 Quality inspection and brand dilution

When it comes to licensing, there is no commercial imperative in ensuring a consistent quality, but rather a legal one. One should take precaution on naked licensing by giving control to the trademark licensor on how their brand is to be used by the licensee. The impact of non-observation of quality standards may result in diluting the brand, losing the rights to trademarks, or even defraud people.

In *U.S. Polo Assn, Inc. v. PRL USA Holdings, Inc.*²⁶, however, the U.S. Court of Appeals for the Second Circuit ruled that the defendant had infringed on the logo of the polo player, so the idea of having a similar logo was to create confusion and dilute the brand of Ralph Lauren. The Indian law also has the solution to trademark dilution and misrepresentation in the 29 and 30 of Trade Marks Act, 1999.²⁷

4.3 Assignments vs. License confusion

IP disputes are often caused by misunderstandings between an assignment and a license. An assignment refers to transfer of the ownership rights, and a license is simply an authorization to make usage of IP, but by consent of title. When parties do not specify their arrangement clearly in the contract, this might attract litigation on the matter of control, scope and the right of re use.

It has undergone various judicial pronouncements that throughout courts have upheld that the nature of the transaction be read into the terms of the contract, and not into the terms

²⁵*Christian Louboutin SAS v. Nakul Bajaj & Ors.*, 2018 SCC OnLine Del 13032 (India).

²⁶*U.S. Polo Ass'n, Inc. v. PRL USA Holdings, Inc.*, 800 F. Supp. 2d 515 (S.D.N.Y. 2011), *aff'd*, 511 F. App'x 81 (2d Cir. 2013).

²⁷The Trade Marks Act, No. 47 of 1999, §§ 29–30 (India).

themselves, also stating that terms of the fashion industry would be read on the nature of the license an agreement between parties, and that by licenses only scope and durations and ownerships needed to be stated that courts would not intervene and reclassify a case where the license was labelled an assignment.

4.4 Territorial reach and jurisdiction

The geographical coverage where a licensee can operate is usually identified in the licensing contract agreements. Nevertheless, when living in a digital world, territorial limits become unclear, at least, when we sell our production worldwide, using the Internet and social media. This leads to jurisdiction issues and the possible violation of the exclusive territory provisions.

The Court of the UK in *Caterpillar Inc. v. Jorange Ltd.*²⁸ construed that defendant had breached the territorial boundaries of licence by selling goods out of the licensed area, and the defendant was guilty of trademark infringement. This case pointed at the importance of strong monitoring in place to ensure the territorial boundaries of licence are not breached.

In Indian, the courts would usually need substantial cause of action in the jurisdiction of the forum selected to adjudicate on IP cases, which may be despite an adequate jurisdiction is prescribed in the contract of joint venture.

4.5 Celebrity licensing and Moral Rights

Licensing Celebrity and character licensing commonly collide with the principle of moral rights, that is the right of people to regulate how the personal identity or their creative works are portrayed. Moral rights cannot be transferred or licensed and so rest in the owner (the writer or the celebrity in most jurisdictions).

In 2022, Kanye West made troublesome public statements that triggered the termination of his Yeezy licensing deal with Adidas, which made Kanye very wealthy.²⁹ This example made it clear that properly designed morals clauses in celebrity licenses were necessary so as to terminate a license in the situation of reputational damage.

²⁸*Caterpillar Inc. v. Jorange Ltd.*, [2006] EWHC 1322 (Ch) (Eng.).

²⁹Vanessa Friedman, *Adidas Ends Partnership With Kanye West Over Antisemitic Remarks*, N.Y. Times (Oct. 25, 2022).

The Copyright Act, 1957 provides an author with a right of authorship in S 57³⁰ under which an author has the right to prevent the distortion or mutilation of his work such distortion or mutilation being prejudicial to his honor or reputation. Although not a statutory right, there are some judgments of courts which recognize the existence of image or publicity rights.

4.6 Termination and Breach of Treaty

The licensing relationships can dissolve prematurely as a result of a breach of contract, non-performance, insolvency or reputational damages. The reasons of breach are often a failure of payment of royalty, low quality of the product, selling the product beyond the authorized territory, or infringement of exclusive rights.

Among legal remedies, there is:

1. Under Specific Relief Act, of 1963³¹; Injunctions;
2. Damages, which pay real losses or damage to reputation;
3. Specific performance where only monetary relief is insufficient, and where the contract is one to which the Specific Relief Act of 1890, section 10, applies.

Other termination clauses must answer the issues of de-branding, sell off inventory, and after-use of IP to avoid misuse of IP after termination.

5. Evolving Trends and Challenges

Fashion licensing is an area that is rapidly changing due to the technological advancements, changing consumer values and the redefinition of legal systems. Whether it is virtual clothing, ethical sourcing or any other emerging aspect, it brings new legal and regulatory questions that need to be addressed by the traditional models of licensing.

5.1 Digital Fashion and Metaverse era licensing

Licensing into the digital realm including augmented reality (AR), virtual reality (VR) and the metaverse has opened a new frontier. To maintain the momentum, brands are even issuing non-fungible tokens (NFTs) of clothing and accessories a recognizably unique piece of digital data (stored on a blockchain). An example is the Gucci Virtual 25 that is a pair of sneakers that were sold as an NFT and can be worn exclusively in AR-based virtual worlds such as Roblox and VR Chat.³²

³⁰The Copyright Act, No. 14 of 1957, § 57 (India).

³¹The Specific Relief Act, No. 47 of 1963, § 36 (India).

³²Andrew Chow, *Gucci's Virtual Sneakers Are Available for \$17.99—But You Can't Wear Them in Real Life*,

This poses difficult IP issues: When you own an NFT, do you own any copyrights or design rights in the underlying digital asset? And who has the right to the virtual garment when an AI-made 3D model is subsequently tokenized and resold? The legal structure is immature in most jurisdictions leaving a gap of regulation on the fashion brands using digital licensing.³³ This is also unclear whether the traditional IP registrations (such as trademarks or designs) would apply to the digital-only asset.

5.2 Green licensing and Sustainable fashion

Sustainability has become a trend on consumer behavior, and companies in the fashion industry are forced to change the brand values to include environmental and ethical responsibilities. Green clauses, which are representations on sustainable material, fair labor and carbon neutrality, are now frequently found in licensing agreements but false sustainability claims or greenwashing has brought about consumer backlash and regulatory attention.³⁴

As an example, international regulators, including the Advertising Standards Authority (U.K.) and the Federal Trade Commission (U.S.), are beginning to scrutinize fashion companies making inflated or untrue green declarations³⁵. In order to reduce liability, licensors and licensees are encouraged to insert audit privileges and sustainable measures into licensing agreements, which put them into the spotlight.

5.3 Fashion Designs based on AI

Generative artificial intelligence (AI) tools, including DALL·E, Midjourney, and fashion-specific design software, have brought up the question of authorship and IP ownership³⁶. In case a fashion design is generated by an AI model with minimal human contribution, can it be copyrighted or covered by design law?

The majority of IP regimes, such as the one in India, demand the existence of a human author in order to have copyright subsist³⁷. This begs the question of how AI-generated garments can

TIME (Mar. 19, 2021), <https://time.com/5947633/gucci-virtual-sneakers/>.

³³World Intellectual Property Organization [WIPO], *NFTs and Intellectual Property: Questions and Perspectives*, WIPO Magazine (Mar. 2023).

³⁴Sophie Elmhirst, *The Greening of Fashion Licensing Contracts*, 21 Int'l J. Fashion L. & Ethics 45, 53 (2022).

³⁵Advertising Standards Authority (UK), *Green Claims Code Compliance Guidance* (2022); Federal Trade Commission (USA), *Guides for the Use of Environmental Marketing Claims* ("Green Guides"), 16 C.F.R. Part 260 (rev. 2023).

³⁶Emily Leaver, *Who Owns AI Fashion?*, 14 J. Tech. & Design L. 77, 83 (2024).

³⁷The Copyright Act, No. 14 of 1957, § 2(d) (India); *see also* U.S. Copyright Office, *Policy Statement on Works Containing AI-Generated Content*, 88 Fed. Reg. 16190 (Mar. 2023).

be licensed at all- never mind being enforceable in court. The World Intellectual Property Organization (WIPO) has already recognized this gap and is already conducting stakeholder consultations on how far AI-generated works can or should be secured³⁸. Until that happens, brands can enter into contractual agreements to claim ownership of AI-generated work that falls under their creative direction.

5.4 Fast Fashion and Ethical Licensing

The low cost labor and quick production cycles of the fast fashion industry have come into the spotlight in terms of exploitation of workers and unethical sourcing practices all over the world. Several supply chain reform issues have received mass appeal due to the Rana Plaza disaster in Bangladesh (2013) that claimed the lives of more than 1,100 garment worker³⁹s.

The licensing agreements, and those that deal with third-parties manufacturers or suppliers in particular, now need to take into consideration the ethical sourcing, labor compliance, and human rights due diligence⁴⁰. When brands do not track or govern the practices of their licensees, their reputation and legal exposure to possible ESG lawsuits are subject to jeopardy.⁴¹ In some countries, such as Germany, new laws may require a brand to exercise due diligence over its supply chain, such as the Supply Chain Due Diligence Act (2023).

Consequently, licensors are adding more provisions in which they can cancel licenses in case of breach of ethical codes, environmental impact limits, or standards of human rights.

6. Comparative Overview: India and Other Jurisdictions

There are various jurisdiction-related legal issues which are apposite to fashion licensing such as the interpretation of intellectual property laws, enforcement and sensitivity to brand protection by courts. India, the United States, and the European Union can be compared to demonstrate the differences in the implementation of the fashion industry legal enforcement and regulatory routines.

³⁸ WIPO, *AI and Intellectual Property: A Balanced Approach*, Discussion Paper No. 3 (2024).

³⁹ Human Rights Watch, *“Whoever Raises Their Head Suffers the Most”: Workers’ Rights in Bangladesh’s Garment Factories* (2020), <https://www.hrw.org>.

⁴⁰ European Commission, *Corporate Sustainability Due Diligence Directive* (2023); see also L. Freeman, *Ethical Failures in Fashion Licensing*, 18 *Fashion & Law Rev.* 109, 117 (2023).

⁴¹ Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten [Supply Chain Due Diligence Act], Bundesgesetzblatt Teil I 2021 Nr. 46, p. 2959 (Germany).

6.1 United States

The United States provides one of the most elaborate legal settings in which fashion licensing can be conducted especially in matters touching on business exploitation and the rights to integrity. Although moral rights do not exist in U.S. copyright law (though these rights are provided in case of visual artists under the Visual Artists Rights Act), the issue of the integrity of source has at times been addressed by the courts in a less restricted sense. The same U.S. Supreme Court case (*Dastar Corp. v. Twentieth Century Fox Film Corp.*⁴²) decided that the Lanham Act protects against infringement only in the literal things rather than the origin of ideas or creative materials. The case placed an emphasis on the minimal protection accorded to the moral aspect of fashion designs and indicated the necessity of alternative forms of contractual protection.

Licensing of trademarks in the United States may be very well but it should also make the licensors retain quality control. Otherwise, it might be construed as naked licensing such that the rights over a trademark might be forfeited. Moral clauses, rights to audit and branding guidelines are some common risks avoided in licensing arrangements in the U.S.

6.2: European Union

European union has a positive position towards design right, where there is the 'centralised registration of the design right under the European Union Intellectual Property Office (EUIPO)'. EU also acknowledges unregistered community designs (UCDs), providing temporary protection of designs after they are publicly disclosed.⁴³ The European Court of Justice (CJEU), in *PepsiCo, Inc. v. Grupo Promer Mon Graphic SA*, upheld the registered design, asserting the influence of the utility to the informed user with respect to the individual character and the visual impact.⁴⁴ This case provided the guideline on the standard of originality and is most often referred to in fashion design litigation.

Moreover, the EU is proceeding with Digital Services and Sustainability Due Diligence legislation that will affect transparency in licensing and enforcement of IP online⁴⁵.

⁴²*Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003).

⁴³Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs, 2002 O.J. (L 3) 1.

⁴⁴*PepsiCo, Inc. v. Grupo Promer Mon Graphic SA*, Case C-281/10 P, ECLI:EU:C:2011:679 (CJEU).

⁴⁵European Commission, *Proposal for a Directive on Corporate Sustainability Due Diligence*, COM/2022/71 final.

6.3 India

There is a mixed situation of enforcement of fashion related IP in India. Although the statutory frameworks as provided under the Trade Marks Act 1999, Copyright Act 1957 and Designs Act 2000⁴⁶ are quite exhaustive, their practical interpretation differs depending on the forum especially when it comes to address IP issues related to fashion brands and online marketplace and intermediary liability.

In The case of *Christian Louboutin SAS v. Nakul Bajaj & Ors.* the Delhi High Court has reiterated that online sites cannot evade liability where they are directly engaged in peddling counterfeit products, and this was seen to extend the protection of IP to the online retail businesses⁴⁷. The increased awareness of the Indian judicial system regarding brand devaluation and unfair trade practices has created a friendlier environment to the rights of licensors, although delays in enforcement and procedural difficulties continue to challenge it.

7. Recommendations

Considering the issues and dynamic approaches discussed in the above paragraphs, the overall outlook of the future-forward and legally perspective approach to fashion licensing is a necessary consideration. As a sign of legal clarity, protection of brand integrity, and futuristic licensing activities within the international fashion industries, the author presents the following recommendations:

1. Interchangeable Licensing Regimes to novice Designers

New labels do not have the legal knowledge or the monetary capacity to come up with strong licensing agreements. These would include such clauses as exclusivity, royalties, quality control, digital rights, and termination. Government and industry bodies must publish model licensing templates specific to fashion IP, and these must include freelance designers and small ateliers.

2. Online IP Business and Surveillance Software

Fashion brands will have to embrace the introduction of blockchain-based IP tracking and live surveillance means to control digital licensing, particularly in the area of NFT and the metaverse. Regulatory authorities should also reflect on the ability of the current system of IP to accommodate digital fashion assets to bridge the enforcement breach.

⁴⁶The Trade Marks Act, No. 47 of 1999 (India); The Designs Act, No. 16 of 2000 (India); The Copyright Act, No. 14 of 1957 (India).

⁴⁷*Christian Louboutin SAS v. Nakul Bajaj & Ors.*, 2018 SCC OnLine Del 13032 (India).

3. Incorporation of Sustainable Clauses

As the consumer trend has also moved to more ethical fashion, it would be prudent to have binding sustainability representations, audit rights, and ESG (Environmental, Social and Governance) benchmarks in licensing contracts. Green licensing can also be promoted by cost-effective ways, such as through IP filings being fast-tracked or tax assistants.

4. Firmer Morals and Reputation Bars

Licenses over celebrity names and character should include specific morals clause that enables the licensor to disengage the other party provided that such a personality fails to conduct as expected to protect brand image, at least when the brand is perceived to be luxurious.

5. Dispute Resolution Means through the Jurisdictional Clarity

Applicable law, territorial scope and forum of dispute settlement, e.g WIPO arbitration or national IP adjudicators, should be clarified in licensing agreements. In transnational agreements, to avoid litigation, disputes can be referred to mediation or expedited arbitration.

8. Conclusion

The concept of fashion licensing as a one-dimensional commercial tool has been transformed to a multidimensional legal component which is a key factor in a brand strategy, IP monetization, and market penetration. Luxury brand houses and urban clothing brands alike have realized the value of the idea of licensing agreements, offering it as an opportunity to expand the product line, to enter new markets, and to cooperate with celebrities, influencers, and even AI-powered content creators. The increasing dependence on licensing however comes with convoluted legal issues which must be seen with proactive planning and a strong system of governance based on contracts.

As it can be illustrated, the most important legal concerns are IP infringement, as well as brand dilution, lack of clarity regarding licenses and assignments, territorial enforcement problems, and the increasing use of morality and ethical clauses, especially in celebrity-related partnering. The cases may be found in India, U.S. and EU, with judicial activity more advanced in such countries as India and the U.S. than in the EU, with courts shifting towards licensors setting out clear terms in the contract, the active role of the latter.

Current developments like digital clothing, NFTs, designs created with the help of AI, and eco-friendly licensing make the situation even more complex to regulate. Current IP systems tend to be underqualified to manage such innovations, and the associated legal vacuum creates a new layer of uncertainty. In the meantime as far as proper international guidelines are not developed, protection of brands will depend on the accuracy of the licensing deals, foreseeing contractual protective measures and imaginative legal solutions to guard the rights.

When it comes to Indian fashion, specifically, increasing judicial involvement and better access to international IP instruments such as the Madrid Protocol and WIPO arbitration can be a solution allowing the development of more secure licensing behaviors. Ultimately, fashion law takes a creative, flexible stance, balancing creativity, commerce, and compliance.

Bibliography

▪ *Statutes and Regulations (India)*

1. The Trade Marks Act, No. 47 of 1999 (India).
2. The Copyright Act, No. 14 of 1957 (India).
3. The Designs Act, No. 16 of 2000 (India).
4. The Indian Contract Act, No. 9 of 1872 (India).
5. The Information Technology Act, No. 21 of 2000 (India).
6. The Specific Relief Act, No. 47 of 1963 (India).

▪ *Cases*

1. *Christian Louboutin SAS v. Nakul Bajaj & Ors.*, 2018 SCC OnLine Del 13032 (India).
2. *Titan Industries Ltd. v. Ramkumar Jewellers*, 2012 SCC OnLine Del 2387 (India).
3. *Dhodha House v. S.K. Maingi*, (2006) 9 SCC 41 (India).
4. *U.S. Polo Ass'n, Inc. v. PRL USA Holdings, Inc.*, 800 F. Supp. 2d 515 (S.D.N.Y. 2011), *aff'd*, 511 F. App'x 81 (2d Cir. 2013).
5. *FreecycleSunnyvale v. Freecycle Network*, 626 F.3d 509 (9th Cir. 2010).
6. *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003).
7. *PepsiCo, Inc. v. Grupo Promer Mon Graphic SA*, Case C-281/10 P, ECLI:EU:C:2011:679 (CJEU).
8. *Caterpillar Inc. v. Jorange Ltd.*, [2006] EWHC 1322 (Ch) (Eng.).

▪ **Books**

1. J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* (5th ed. 2024).
2. Susan Scafidi, *Who Owns Culture? Appropriation and Authenticity in American Law* (2d ed. 2023).
3. Ashley Mears, *Pricing Beauty: The Making of a Fashion Model* (Univ. of California Press 2020).

▪ **Journals and Articles**

1. Peter K. Yu, *Drafting IP Licensing Agreements in Fashion*, 44 J. Intell. Prop. L. & Prac. 101 (2023).
2. Sophie Elmhirst, *The Greening of Fashion Licensing Contracts*, 21 Int'l J. Fashion L. & Ethics 45 (2022).
3. Emily Leaver, *Who Owns AI Fashion?*, 14 J. Tech. & Design L. 77 (2024).
4. L. Freeman, *Ethical Failures in Fashion Licensing*, 18 Fashion & Law Rev. 109 (2023).
5. Hannah A. Cooper, *Blockchain and the Future of IP in Fashion Licensing*, 29 Harv. J.L. & Tech. 41 (2024).

▪ **International Instruments and Bodies**

1. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994, Marrakesh Agreement Establishing the WTO, Annex 1C, 1869 U.N.T.S. 299.
2. Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris, July 24, 1971.
3. Council Regulation (EC) No 6/2002 on Community Designs, 2002 O.J. (L 3) 1.
4. European Commission, *Proposal for a Directive on Corporate Sustainability Due Diligence*, COM/2022/71 final.
5. Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten [Supply Chain Due Diligence Act], BGBl. I 2021, 2959 (Ger.).

▪ **Reports and Policy Papers**

1. WIPO, *NFTs and Intellectual Property: Questions and Perspectives*, WIPO Magazine (Mar. 2023).
2. WIPO, *AI and Intellectual Property: A Balanced Approach*, Discussion Paper No. 3 (2024).

3. WIPO, *Guide on Drafting IP Licensing Agreements for Creative Industries*, WIPO Publication No. 903 (2023).
4. WIPO Arbitration and Mediation Center, *Model IP Clauses for Fashion Contracts*, <https://www.wipo.int>.
5. U.S. Copyright Office, *Policy Statement on Works Containing AI-Generated Content*, 88 Fed. Reg. 16190 (Mar. 2023).
6. European Commission, *Green Claims Directive – Proposal for a Regulation*, COM (2023) 166 final.
7. Federal Trade Commission (USA), *Green Guides*, 16 C.F.R. Part 260 (rev. 2023).
8. Advertising Standards Authority (UK), *Green Claims Code Compliance Guidance* (2022).
9. Human Rights Watch, *“Whoever Raises Their Head Suffers the Most”: Workers’ Rights in Bangladesh’s Garment Factories* (2020).



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