



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

## ABOUT WHITE BLACK LEGAL

*White Black Legal – The Law Journal* is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

## AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

# **"THE FASHION INDUSTRY AND INTELLECTUAL PROPERTY RIGHTS: CHALLENGES OF DESIGN PROTECTION AND COUNTERFEIT PRODUCTS."**

AUTHORED BY - VAISHALI SAMADHIA

Final Year Law Student, Amity University Madhya Pradesh

## **ABSTRACT**

The fashion sector has become a very evolving / changing area and the way to achieve success within the fashion industry relies heavily on aesthetics & creativity along with branding. Fashion industry innovators and creators rely on intellectual property protection, such as copyrights and/or trademarks for protection against copyright infringement, to be able to maintain control of their works product or designs. However, this type of intellectual property protection is hindered by the rapid cycle of change in style, along with the fast way that products are taken off the shelves (within weeks of being sold), as well as the low-cost production of imitated merchandise overseas; including from these counterfeit goods being extensively available on the global markets, and, as well as, being used to inundate markets by spreading "ideas" from one designer to another; ultimately taking away from the original designer's profits and therefore undermining consumer confidence in that brand. The proliferation of counterfeit fashion goods through various e-commerce platforms, now enables counterfeit merchandise to reach global markets faster than traditional distribution channels. The digital marketplace has expanded significantly over last several years due to social media making it easier for millions of people to view and purchase counterfeit fashion; therefore, the purpose of this research is to gain an understanding of the level of protection that exists in relation to original design and/or fashion products, here on a global basis. Instead of relying on assumptions with regards to the protection afforded to original fashion designs, a more detailed understanding will be obtained by reviewing the actual laws that exist to define original fashion design ownership and limitations on their use. The enforcement of the protections available to original designers and manufacturers are often problematic when dealing with copycat merchandise being offered for sale on the Internet and across borders. However, the Indian courts along with international bodies, show varied responses to such violations. Some of the judgements adapt well; others lag behind due to outdated technology. Online world create new

issues- speed, anonymity, volume - that traditional systems struggle to manage. Current legal tools reveal gaps when tested against modern infringement patterns. One path forward involves refining those instruments for better real-world impact. The study concludes by suggesting different measures to increase and strengthen design protection, and improving current legal tools so as to better apply them to the real world.

**KEYWORDS:** Intellectual Property Rights, Fashion Law, Design protection, Brand Protection, Counterfeiting Goods, Design Piracy.

## INTRODUCTION

The fashion industry has a huge impact on the world economy as it includes developing, making and distributing clothes, shoes, handbags fashion accessories and luxury items as well. Yet even though the fashion industry is always discovering new ways to express themselves creatively, it continues to change constantly. This is due to continuing evolution of new consumer preferences and changes in their shopping behaviour and developing trends in the retail market. As the new products produced by the fashion industry can be valued only because they have unique designs (designs that reflect artistic expression) there is no longer simply the need for protecting the intellectual property of designers; today's designers have increasingly demanded more rigorous protection of their intellectual assets.

Therefore, through the use of intellectual property laws, designers and companies have exclusive rights to keep others from using their original ideas. To accomplish that designers use three different forms of intellectual property to protect their work. Designers use real property to protect their logos, names of products and designers while copyright protects patterns or other artistic works incorporated into fabric ultimately by protecting all appearances of a product as a whole from being copied. Limiting the amount of copying using various forms of intellectual property, fuels the creativity and innovation of the designer creating new products will lead to the existence of fair-trade conditions in the marketplace and creates an opportunity for designers to generate revenue for their creativity.

Despite the availability of legal protection, the fashion industry faces huge challenges in protecting its designs. Because trends shift so quickly, copying designs happens fast, often before a design gains traction. Production spread across countries adds layers of complexity when trying to enforce ownership rules. Counterfeit products and design piracy have emerged

as a major concern, causing major financial losses to businesses, misleading consumers, and Creativity suffers too, as originality gets overshadowed by mass replication.

This research paper focuses on intellectual property rights within fashion industry, particularly the complexities in shielding designs and fighting counterfeit goods. The paper explores different laws that shape IP in clothing, it examines how imitation items affect creators, brands, and consumers. Though protection gaps persist, certain strategies could improve oversight. Where innovation thrives, weak enforcement often lags. Some reforms may balance creativity with control.

## **1. MEANING AND IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS (IPR)**

Intellectual Property Rights refer to the rights that are provided to an individual or an organisation in respect of creations of the mind, like inventions, creative and artistic work, literary work, designs, symbols, names and images. With these rights, owners and creators have exclusive control over the use, reproduction, and commercialization of their intellectual artistic creations for a specific period. The main aim of IPR is to encourage innovation and creativity by making sure that the creators receive their proper recognition of their work as well as the economic benefits for the same.

Intellectual property plays a crucial role in the fashion industry, as the fashion goods and products are largely driven by creativity, originality and brand identity. Creations like garments, bags, shoes, or high-end items take long hours, significant effort, and money to bring them to life. When laws fail to shield such work, competitors can easily copy these creations further reducing the incentive for innovation, and owner of the work suffer financial losses and motivation dips. Fresh ideas slow down when theft goes unchecked.

The IPR importance in the fashion industry can be understood from the following aspects:

- Originality in design gains a stronger footing when creators know their work is shielded. Protection fuels fresh ideas, making space for unique expressions in fashion. When effort is recognised, inventiveness and creativity grow without fear of imitation. Security around creations pushes boundaries further, one garment at a time.

- It is legal protection that guards names, marks, and signs linked to a company. These elements help buyers recognize where items come from, as well as what standard to expect. Over time, such clarity builds trust without words being spoken.
- Because intellectual property rights are well enforced, companies feel more secure putting money into new designs and studies. This confidence often leads to better products that stand out in stores. As a result, the fashion industry tends to expand steadily over time. When brands invest in original work, they build stronger positions against rivals without copying others. Growth follows when creativity is rewarded through legal safeguards.
- Because of intellectual property rights, buyers can tell real items apart from fake ones. This means less chance of being misled when shopping. Quality stays more reliable as a result. Fakes find it harder to copy what stands out. Trust grows when people recognize authentic brands. Clear differences protect those who purchase. Counterfeits lose ground where recognition is strong.
- Prevention of unfair competition using ideas comes through laws that block imitation or improper use of creations. A system exists to limit how rivals copy work they did not make themselves. Protection begins when rules step in against shortcuts meant to mimic original efforts. Copying without permission faces barriers shaped by legal boundaries. What belongs to one creator stays theirs because systems guard against unfair gains by others.

## **TYPES OF IPR APPLICABLE TO FASHION PRODUCTS**

The fashion industry relies on different forms of intellectual property protection, as a single fashion product may contain several elements that are capable of protection or already protected. The major types of IPR that are mostly applicable to fashion products are discussed below:

### **1. Trademark Protection**

A trademark is a sign, symbol, word, logo, slogan, or combination thereof that distinguishes the goods or services of one person or business from those of others. In the fashion industry, trademarks are among the most valuable intellectual property assets of the proprietors being an intangible -assets as they represent and protect the brand identity and consumer trust.

Fashion brands use trademarks to protect the logo. Label, slogans, brand names, and the

packaging of the products.

## **2. Copyright Protection**

Original creations like art or design get protection once they exist in physical shape. For clothing lines, legal rights can cover unique patterns when stitched into fabric. Sometimes drawings of garments qualify if later made real. Designs showing personal expression might fall under these rules, too. Protection begins automatically after creation. What matters most is how ideas take visible form, like Textile prints, Fabric patterns, Artistic sketches, Embroidery designs, and Graphic elements.

Most times, useful parts of clothes fall outside copyright reach yet unique art elements sewn into garments might still qualify. The moment a design takes shape, legal safeguards begin without any paperwork being filed. From that point onward, only the creator holds power over copying, sharing, or modifying what was made. What counts often depends on how clearly the artwork stands apart from the garment's purpose.

## **3. Industrial Design Protection**

Appearance matters when it comes to how items are legally shielded - industrial design rights cover aspects like shape, layout, patterns, decorative elements, and overall look. Because buyers in fashion frequently choose goods based on how they appear, such legal backing becomes significant.

Design protection may apply to Garments, Handbags, Footwear, Jewellery, Accessories. Protection begins once a design is officially recorded under India's 2000 law. This shield stops others from mimicking the look without permission. Lasting only so long, the coverage applies strictly to visual aspects. Copying gets blocked as long as rights remain active.

## **4. Patent Protection**

A fresh invention may earn a patent if it shows creativity and can be made in industry. Even though fashion sector depends more on trademarks and design rights, patents now matter more because technology keeps moving forward.

Because of Patents, new kinds of fabric can stay protected. It includes textiles. Production techniques also fall under legal safeguards. Eco- friendly clothing ideas are also covered, example like temperature regulating materials that adjust according to body heat without effort.

### **5. Trade Dress Protection**

Looking at how a product appears visually helps show its origin. Its shape, colour patterns, and layout often play a role. Design choices like the signal origin without using words. Sometimes, even texture or arrangement matters just as much. Recognition builds through consistent look and feel over time. Product shape, packaging style, colour combinations, Store layout and visual features tied to a specific clothing label can be shielded from imitation through trade dress rules. Such safeguards stop rivals from mimicking recognisable design elements. Consumers often link these traits directly to one source. Distinctive looks, rather than function, form the core of this legal coverage. Imitation risks confusion in the marketplace. Protection arises when appearance plays a key role in brand identity.

### **6. Geographical Indications (GI)**

A product's origin can define its traits when those traits come from a distinct area - this link forms the core of a Geographical Indication. Though often unseen, such recognition matters deeply in textiles and clothing, where methods passed through generations rely on place-based identity. Because skills tied to regions risk fading without support, GI status helps maintain authenticity over time. If something is produced by soil or tradition in one zone it may not exist elsewhere, making location more than just a label; it becomes part of the fabric itself. India examples: Banarasi Saree, Chanderi Fabric, Kanchipuram Silk Saree, they have GI Tag, so local craftspeople can keep their products genuine while stopping outsiders from using place-based names without permission.

## **DESIGN PROTECTION IN THE FASHION INDUSTRY**

Creative work in fashion stands as a core asset, showing each designer's unique vision and a brand's market character. Protection for these creations means using laws to shield how garments look from being copied without permission. Staying competitive relies on strong safeguards that support fresh ideas while upholding fairness among rivals. With styles changing fast and knockoffs spreading quickly, legal tools become vital, defending inventors' rights stops others from stealing their concepts too easily.

In simple language, design protection means to protect the design in every possible manner. As per the Designs Act, 2000, design is considered as, "a feature of shape, configuration, pattern, ornament or combinations of lines and colours applied to any article in two dimensional or

three dimensional or both by any industrial process or means.” Legal protection accorded by the Designs Act, 2000, tries to protect designers’ creativity by giving them exclusive rights over the original and novel designs of clothing, textiles and other allied products like footwear and accessories for an initial period of ten years, further be extended by five years. It prevents unauthorised imitation of design as well as providing recognition and generating financial incentives for designers to continue innovating. Through this legislation, the designs are register by the designers with the Design Office, and it also provides various remedies against infringement of such registered designs, such as damages, injunctions, seizure of infringing goods, thereby contributing significantly to the growth and protection of the fashion industry.

## **COUNTERFEITING AND LEGAL CHALLENGES IN THE FASHION INDUSTRY**

Imitation of fashion designs and products can be seen in many ways. Another form is through counterfeiting, whereby the designs and logos of the brand are copied by the counterfeiter to make the consumers believe that what they are buying is an original product from that specific brand. For example, famous brands like adidas with three stripes or Gucci are usually copied by the counterfeiters and deliberately misspelt as Gucci, and consumers are deceived into buying these counterfeited products.

There is a great threat from the counterfeit products to both brands in fashion labels and their consumers. To fashion brands, counterfeit results in loss of revenue, dilution of brand value, damage to reputation of the brand, and reduced incentives for innovation. On the other hand, to consumers, counterfeit products pose a danger as consumers may be deceived into purchasing fake products of inferior quality, which can affect their trust in genuine brands. Economy also suffers from the counterfeit products in many ways including by reducing tax revenues and discouraging investment in creative industries. The term counterfeit in relation to the fashion industry is synonymous with duplicates, fakes and dupes. With the increase of counterfeiting in both the real and virtual world both, which affects the protection which is provided by way of trademark.

The impact of counterfeiting goes beyond these brands as it also directly affects consumers and the economy. Because of counterfeiting activities, consumers are deceived, and they unknowingly purchase poor-quality products that lead to dissatisfaction and potential safety

concerns. Another concern is the loss of tax revenue, reduced employment opportunities and high costs associated with enforcement and litigation. If such counterfeit trade is linked to any criminal activities, then it raises a broader social concern.

Although legal protection is available through different IP's like trademark, copyright and design laws, their enforcement remains difficult due to digital platforms, cross-border trade and various emerging technologies such as fashion in the virtual world, artificial intelligence and the metaverse. Due to these developments, laws must be stronger with an effective enforcement mechanism to protect the interests of fashion designers and brand owners.

## **LEGAL FRAMEWORK AND ENFORCEMENT MECHANISMS**

Fashion design protection does not rest on a single statute. In India, it is spread across the Designs Act, 2000, the Copyright Act, 1957, the Trade Marks Act, 1999, and customs-based enforcement rules that deal with imported counterfeit goods. The international framework, especially the WTO's TRIPS Agreement, adds another layer by requiring member states to provide effective remedies, border measures, and fair enforcement procedures.

The reason this layered approach matters is that fashion products are not protected by one type of right alone. A garment may involve its shape, surface pattern, logo, packaging, and brand identity all at once. If the law protected only one of these features, counterfeiters would easily shift to the others. Fashion law, therefore, works through overlap rather than isolation.

### **Indian legal framework**

The Designs Act, 2000, is the most direct form of protection for fashion design as design. It protects features of shape, configuration, pattern, ornament, or composition of lines or colours applied to an article by an industrial process, provided the feature is judged solely by the eye. This definition is highly relevant to clothing, footwear, handbags, and accessories, because much of their value comes from appearance rather than technical function.

At the same time, the Designs Act is deliberately narrow. A design must be new or original, must not have been publicly disclosed earlier, and must be sufficiently distinct from existing designs. Once registered, the owner receives protection for ten years, extendable by five years. This short term reflects the policy behind design law as it rewards creativity, but only for a limited period, so that ordinary commercial styles do not remain locked up forever.

Section 22 of the Designs Act <sup>1</sup>provides the main remedy against piracy. It covers unauthorized application of the design, or any obvious imitation of it, to an article for sale without the owner's consent. In the fashion context, this is important because copying often happens quickly and at scale. Weeks after a new dress, shoe, or bag hits stores, knockoffs often show up fast. That speed means stopping them quickly matters just as much as penalties later on.

Art crafted on fabric, like patterns or hand-drawn designs, finds shelter under the Copyright Act, 1957. Though quiet in tone, it guards sketches and visual details woven into clothing. Each drawing, each printed idea, stands covered when born from fresh thought. Protection kicks in once creation takes visible form. Originality matters more than popularity here. Works made unique by touch or vision gain shield without need for shout. But Section 15(2) creates an important limitation is that if a design is capable of registration under the Designs Act and has been applied more than fifty times industrially, copyright protection will cease unless the design has been registered. That rule prevents designers from turning copyright into a longer and broader monopoly than the law intended.

This distinction became extremely important in Indian fashion litigation. Courts have consistently said that once a design has moved from artistic concept into industrial reproduction, it must be dealt with under the Designs Act rather than copyright law. For fashion houses, this means that registration strategy is not optional; it is the foundation of enforceable protection.

Brands in fashion rely on the Trade Marks Act, 1999,<sup>2</sup> just as much as luxury labels do. Logos, names, symbols these get shielded, along with tags and how things are packed. Sometimes even unique color mixes or overall look of a product fall under its reach. When fakes, copies flood the market, copying both item and image, trademarks tend to matter more than design rights. That's because knockoffs go after brand recognition, not only shape or style.

Out front, the website makes clear that Customs allows no leeway when it comes to intellectual property breaches. Instead of ignoring the issue, brand owners have the chance to share specifics both about real items and fake ones to guide border staff in spotting questionable cargo. Particularly in clothing trade flows, massive batches of knockoffs often pass through shipping hubs long before storefronts would see them.

---

<sup>1</sup> The Designs Act, 2000, Section 22

<sup>2</sup> The Trade Marks Act, 1999.

### **Border and customs enforcement**

Counterfeit fashion goods are often manufactured outside India and brought in through import channels. That is why customs enforcement is one of the most effective anti-counterfeiting mechanisms. In India, border protection is supported by the Customs Act, 1962 and the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

The customs system allows right holders to record their IP rights with Indian Customs through the official IPR recordation portal. Most fakes never make it to stores when border staff catch them early. Officials say they allow no exceptions for trademark breaches. Information shared by brand owners about real versus fake items helps screen cargo at entry points. Think of handbags, sneakers items often shipped in bulk under false labels. That Intel becomes key during inspections at busy docks

Stopping fake items begins the moment a right gets documented. Customs staff then hold back questionable shipments, alerting the owner without delay. Confirmation of violation leads to seizure, wiping those goods out of legal markets completely. Early intervention matters counterfeits do the most damage when they spread fast after entry. Blocking them at borders keeps problems from growing further.

### **International framework**

The international baseline is the TRIPS Agreement. TRIPS do not merely acknowledge the existence of intellectual property rights; it requires states to provide real enforcement mechanisms. For fashion, this matters because copying is fast, seasonal, and often cross-border. If enforcement takes too long, the economic value of the original design is already lost.

When it comes to enforcing rules, Part III of TRIPS sets the stage. Fairness matters so do simplicity and speed in legal steps nations must offer. Courts may block knockoffs, order payouts, or hold fact driven talks, tools that matter when designs get ripped off. A brand spotting fake product online might lean on these fixes fast. Speed helps, since delays can mean lost sales or blurred identity.

Out here, border controls under TRIPS really matter -especially when fake clothes cross paths with real brands. Once a rights owner files proof strong enough, customs can hold back knockoff products tied to trademarks or stolen creative work. Importers might get tipped off before decisions land. Goods could face checks if suspicion rises. When things clearly break rules, taking them apart becomes possible. Moments like this shape how fakes move - or don't. India's customs recordation system sits comfortably within this broader TRIPS structure.

TRIPS, however, sets only minimum standards. It does not solve modern enforcement

problems such as marketplace anonymity, social-media selling, or AI-assisted copying. Because of that, national law and judicial practice still matter enormously. In practice, the effectiveness of fashion IP protection depends not just on what the statute says, but on how quickly customs, courts, and platforms respond.<sup>3</sup>

### **How the system works together**

The best protection for fashion usually comes from combining rights. A design registration may protect the visual appearance of a product, a trademark may protect the brand name or logo, a copyright may protect the underlying artistic sketch or print, and customs law may block the import of counterfeit goods. This is not duplication; it is a practical response to the way fashion products are made and sold.

The main weakness of the system is enforcement, not doctrine. Counterfeiters move quickly, online sellers are difficult to trace, and many infringing goods cross borders before the rights holder can react. Fashion IP, therefore, has to be treated as a continuing enforcement strategy, not a one-time filing exercise.

## **3. JUDICIAL APPROACH AND LANDMARK CASES**

Most times, Indian courts move slowly when handling fashion IP cases. A real idea gets shielded, yet claims that blur lines often fall apart. While fairness matters, jumping from one legal area to another rarely holds up. The overall judicial message is that fashion businesses must use the correct legal category from the beginning, because courts will not rescue a rights holder who has relied on the wrong one.

*Microfibres Inc. v. Girdhar & Co., 2009 SCC OnLine Del 1647*<sup>4</sup> it is one of the leading Indian decisions on the relationship between copyright law and design protection. The dispute involved upholstery fabric patterns, and the Delhi High Court had to determine whether the plaintiff could continue to claim copyright protection over artistic works that had been commercially applied to fabrics.

The court held that where a design is capable of registration under the Designs Act and is industrially reproduced, the Copyright Act cannot be used to circumvent the limitations of

---

<sup>3</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, signed on 15 April 1994, 1869 U.N.T.S. 299

<sup>4</sup> *Microfibres Inc. v. Girdhar & Co., 2009 SCC OnLine Del 1647*

design law. In particular, Section 15 of the Copyright Act<sup>5</sup> bars copyright protection once a registrable design has been reproduced industrially beyond the statutory limit without design registration.

The importance of the case lies in the distinction it drew between original artistic works and industrial designs. A painting or sketch may initially qualify as an artistic work protected by copyright, but once that work is applied commercially to products through industrial reproduction, the legal regime may shift from copyright protection to design protection.

The decision has had significant influence in fashion and textile disputes because many clothing, fabric, and accessory patterns originate as artistic creations but are later mass-produced commercially. The judgment clarified that copyright cannot provide perpetual or overlapping protection for designs that properly belong within the framework of design law.

*Louis Vuitton Malletier v. Abdul Salim, 2009 SCC OnLine Del 1312*<sup>6</sup> in which counterfeit luxury goods bearing marks deceptively similar to the original brand were challenged before the court. Judicial intervention in such cases demonstrates the importance attached to safeguarding brand reputation and preventing market confusion caused by counterfeit products.

*Ritika Private Limited v. Biba Apparels Private Limited, 2016 SCC OnLine Del 1979*<sup>7</sup> It followed the principle established in *Microfibres Inc. v. Girdhar & Co.* and applied it directly to clothing designs. The Delhi High Court held that a copyright claim could not be maintained where the garments in question were capable of registration under the Designs Act, had not been registered, and had crossed the industrial reproduction limit prescribed under Section 15(2) of the Copyright Act. The court relied heavily on the reasoning in *Microfibres* and clarified that the distinction between copyright and design protection is a fundamental part of Indian intellectual property law.

The case is especially important for the fashion industry because it concerned ordinary commercial garments rather than only textile patterns or abstract artistic works. The judgment demonstrated that clothing designs, once industrially reproduced on a commercial scale, cannot

---

<sup>5</sup> Copyright Act, 1957, Section 15

<sup>6</sup> *Louis Vuitton Malletier v. Abdul Salim, 2009 SCC OnLine Del 1312*

<sup>7</sup> *Ritika Private Limited v. Biba Apparels Private Limited, 2016 SCC OnLine Del 1979*

continue to receive copyright protection as purely artistic works. These things fit under design law rules instead. Originality won't shield a design if there's no paperwork behind it. When clothes hit factories, the clock starts ticking on rights. Registering under the Designs Act isn't optional, it's what keeps copying at bay. Once items flood the market, silence in the registry means losing ground legally.

### **Trade dress and passing off**

Fashion disputes are not always about registered rights. Many cases are decided through passing off or trade dress claims, especially where the issue is the overall presentation of the product rather than the formal registration of one feature. Trade dress protects the visual impression created by packaging, labels, get-up, and product presentation when those features identify a commercial source.

This is very useful in counterfeit cases because fake goods usually copy the whole commercial image, not just the design of the item itself. A counterfeit bag, for example, may imitate the logo, packaging, hang tags, and retail appearance, all of which contribute to consumer confusion. Passing off allows courts to respond to that broader deception even when design registration is missing or incomplete.

## **4. EMERGING CHALLENGES**

The old model of fashion enforcement assumed a physical market and identifiable sellers. That model no longer fits reality. Fashion counterfeiting now happens through e-commerce platforms, social media shops, private messaging channels, and cross-border digital trade. These new channels have made enforcement more difficult, more expensive, and far less predictable.

### **E-commerce and digital counterfeiting**

Online marketplaces have changed the scale of counterfeiting. A seller can now list fake fashion products with very little investment, reach a large audience, and disappear almost immediately after detection. What India says about fake goods online shows rules lag behind how fast copies spread. Responsibility gaps remain when sites host sellers who hide identities. Legal systems find it tough to keep pace with digital sharing speeds.

What makes fake goods tricky isn't only their presence on websites. They're pushed through methods that seem real at first glance. Fake sellers might borrow genuine-style images, team

up with social media figures, or mimic official product wording to appear trustworthy.

In fashion, where visual impression matters so much, that kind of deception is especially effective.

For rights holders, this means constant monitoring. A takedown in one place may not solve the problem because the same seller can reappear under a different account or on another platform. This creates a cycle of notice, removal, and re-listing that is costly and often frustrating. The law has not yet caught up fully with this volume-based model of infringement.

### **Social media and informal sales**

Social media has made counterfeit fashion even harder to control because selling no longer depends on a formal storefront. A seller can market products through private messages, short-lived stories, or influencer-style posts, all of which can be deleted quickly. This form of micro-selling is difficult to monitor, difficult to prove, and difficult to trace.

The legal difficulty is compounded by the fact that the platform may see itself as a passive intermediary rather than an active participant. That creates a gap between the speed of infringement and the speed of enforcement. In fashion, where trends rise and disappear rapidly, a delayed remedy can be almost meaningless.

### **Artificial intelligence and fashion design**

Speed brings complications. Today's generative systems draft visuals sketches, shapes, layouts in moments. This shifts how creation unfolds, Questions emerge around credit who made what, who owns it, whether ideas truly begin anew. Originality feels less certain when machines shape outcomes so fast. Recent scholars said that on AI-generated work in India notes that the law still lacks a settled answer on how to treat machine-assisted creation.

That uncertainty matters in fashion because design development increasingly uses AI as a creative aid. If an AI system generates a near-copy of an existing design, the line between inspiration and infringement becomes hard to define. If a designer uses AI heavily, it may also become difficult to establish who owns the resulting design and whether human creativity is sufficient for protection.

### **Digital fashion and virtual goods**

Digital fashion adds another layer of complexity. Garments may now exist as virtual items in games, online worlds, and digital marketplaces, and those items may be copied, traded, or monetized without any physical product at all. Traditional design law was not built for that

environment, so rights holders often have to fall back on trademark, copyright, contract, or platform rules.

This creates a new kind of enforcement problem. In physical markets, you can seize goods; in digital markets, you often have to rely on metadata, licensing terms, and platform cooperation. As fashion becomes more digital, the legal system will need to think beyond the ordinary product copying model and move toward digital provenance and identity protection.

## 5. SUGGESTIONS AND RECOMMENDATIONS

- The first recommendation is that designers should register early and register strategically. A fashion business should not wait until copying begins. Design registration, trademark filing, and copyright documentation should all be planned from the start so that protection is in place before the product enters wide commercial circulation.
- The second recommendation is stronger border and customs enforcement. Since a large share of counterfeit fashion goods enters through import channels, customs recordation should be used more actively by rights holders. Better coordination between brand owners and customs officers can prevent counterfeit goods from reaching the consumer market in the first place.
- The third recommendation is platform accountability. E-commerce sites and social media platforms should be required to improve seller verification, repeat-offender tracking, and takedown responsiveness. A notice-and-takedown process alone is not enough if the same seller can reappear immediately under a new name.
- The fourth recommendation is clearer legal treatment of AI-generated fashion content. The law should clarify how much human input is needed for originality, who owns AI-assisted outputs, and how rights are allocated where a fashion design is created through mixed human-machine collaboration. Without such clarity, disputes will multiply as AI design tools become more common.
- The fifth recommendation focuses on teaching buyers. Demand keeps fake products alive, since many want inexpensive copies. Campaigns can show how knockoff clothing hurts creators, lowers government income, and damages company reputations, while sometimes posing health concerns too.

## 6. CONCLUSION

Fashion IP law is ultimately about balance. It must reward creativity without turning every visual feature into a monopoly. Indian law, supported by TRIPS and customs-based enforcement, gives designers meaningful tools, but those tools only work when used correctly and early. The central lesson from the case law is that design law, copyright law, and trademark law each have distinct jobs, and fashion businesses must choose the right one rather than hoping one right will do everything.

The larger challenge is enforcement in a digital economy. Counterfeit fashion now moves through online channels, social media, and international supply chains with a speed that traditional legal remedies struggle to match. The future of fashion protection will therefore depend on a combination of registration, customs action, platform cooperation, and adaptive legal reform.

## 7. BIBLIOGRAPHY

### Primary sources

- Designs Act, 2000.
- Copyright Act, 1957.
- Trade Marks Act, 1999.
- Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.
- WTO TRIPS Agreement.

### Cases

- Microfibres Inc. v. Girdhar & Co. & Anr.
- Ritika Private Limited v. Biba Apparels Private Limited.
- Christian Louboutin SAS v. Abubaker & Ors.
- Christian Louboutin SAS v. Nakul Bajaj
- Louis Vuitton Malletier v. Abdul Salim

### Secondary sources

- Indian Customs IPR Recordation Portal.
- Indian enforcement and border protection materials.
- Trade and WTO guidance on IP enforcement.
- Commentary on fashion law, trade dress, and AI issues.