**Intellectual Property Rights: Protection of Fashion Design in India**

**By:**-

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**ABSTRACT**

The fashion industry in India is growing day by day and it has experienced significant by the choice of expansion in the last decade mainly driven by the growth of domestic designers, some of whom have gained international **recognition** in recent years. The importance of innovation for a fashion business in the industry is determined by the choice of it’s competitive strategy. The growth of the Indian fashion industry is highlighted by the increase in the number of large fashion events (from 1 in 2004 to 5 in 2013). As per study conducted by the Associated Chambers of Commerce and Industry of India (ASSOCHAM), the domestic designer apparel industry in India, which was of worth Rs. 720crore and was reporting a **compounded** annual growth rate (CAGR) of about 40% in 2012, is likely to cross Rs.11,000 crore mark by 2020. On, the one side, the Indian Fashion Industry is thriving; on the other hand it is beleaguered by the menace of piracy in fashion design. A monopoly maintained by using intellectual property rights might very well, not extend the product lifecycle beyond the limits posed by the shifting changes of fashion; moreover an extended life cycle maintained in these circumstances could seriously limit the **innovators** agility in satisfying consumer demand in line with fashion trends and provoke an inappropriate allocation of resources to developing unfashionable innovations, resulting in much greater risk of product failure. Fashion industry has long being known for its **omni nature** of copying original fashion designs and **ample** availability of sophisticated software technology has made this practice of copying very easy. Fashion design, being considered as the creation of one’s intellectual innovation and original creativity, has escalated concern and demand **apropos** the Intellectual Property Rights (IPRs) Protection of fashion design. Against this backdrop, the present paper makes a modest attempt to analyse the present IPRs regime protecting fashion designs in India in a systematic manner.

**KEY WORDS :-** Recognition, Compounded, Innovators, Omni nature, Ample, Apropos.

**INTRODUCTION**

**Prolegomena**

[[1]](#footnote-2)Fashion in India originated thousands of years ago with magnificent traditions behind it. India features an upscale and varied textile heritage where each region and state has its own unique native costume and traditional attire and accessories during this globalised era, the apparel and accessory segment in India is enhancing itself at a rapid pace with international developments. garment industry in India is growing day by day and it's experienced significant expansion within the last decade mainly driven by the expansion of domestic designers, variety of whom have gained international recognition in recent years. The expansion of the Indian garment industry is highlighted by the increase within the amount of giant fashion events (from 1 in 2004 to 5 in 2013). [[2]](#footnote-3)As per a study conducted by the Associated Chambers of Commerce and Industry of India (ASSOCHAM), the domestic designer apparel industry in India, which was of worth Rs. 720 crore and was reporting a compounded annual rate of growth (CAGR) of about 40% in 2012, is perhaps getting to cross Rs. 11,000 crore mark by 2020. Although, the contribution of the Indian designer wear industry within the worldwide market4 could also be a minimal 0.32% but it's expected to achieve 1.7% by 2020.

On the one side, the [[3]](#endnote-2)Indian garment industry is thriving; on the other hand it's beleaguered by the menace of piracy in fashion design. Although, the contribution of the Indian designer wear industry within the worldwide market4 could also be a minimal 0.32% but it's expected to achieve 1.7% by 2020.

[[4]](#footnote-4)The industry people, particularly dressmaker, are found complaining about their innovations being imitated and copied. garment industry has long being known for its omnipresent nature of copying original fashion designs and ample availability of sophisticated software technology has made this practice of copying very easy. Fashion design, being considered because the creation of one’s intelle ctual innovation and original creativity, has escalated concern and demand apropos the property Rights (IPRs) Protection of fashion design. Against this backdrop, this paper makes a modest decide to analyse this IPRs regime protecting fashion designs in India during a scientific manner. However, before delineating this, it's pertinent to explicate briefly the notion of “fashion”, “fashion design” and “fashion design piracy” as they have been used throughout this paper. Further, paper also explores the overall arguments for IPRs protection within the garment industry .

Purchase decision is based on the product aesthetics i.e., the shape, look, color combination ornamentation, etc.

The issues under the Design Act have recently increased as organizations want to safeguard the aesthetic value of their products. Two prominent cases decided by the Indian Judiciary are as follow:

1. **Cello Household Products v. M/S Modware India and Anr**.

The case was filed by popular 'household products' production company 'Cello' against Modware India seeking an injunction for design infringement and passing off. The dispute was over the copying of design of the bottle name PURO launched by the plaintiff in the year 2016, the bottle was a two-toned color with certain specific phrases and words. The defendant launched a similar bottle called 'KUDOZ' in the following year for which they were sued by the plaintiff. Thus, here the subject matter is the infringement of the design of the bottle ilaunched by Cello for which the company has invested ample money in the market for selling and marketing purposes.

The court on the basis of merits decided that the plaintiff was justified in filing the suit against the defendant as Modware India introduced a bottle which is deceptively similar to the bottle of Cello and denied defendant's contention of lack of jurisdiction of Bombay High court to decide the case following a grant of injunction and relief to be given by the defendants to the plaintiff as damages keeping the loss faced by the plaintiff as the base. Therefore, cello won the case.

2**. M/S Crocs Inc. USA v. Liberty Shoes Ltd. & Ors.** The recent case filed by crocs against numerous footwear companies has established the importance of design act and given a verdict against crocs on the basis of prior publication of design. The case was filed in the Delhi High Court and was taken up by Hon'ble Justice Valmiki J. Mehta

Crocs USA filed cases against shoe manufacturers alleging infringement of their design which is related to perforated and non-perforated shoe design. The plaintiff claimed the design as registered from 25.8.2003, the defendant contended that the design registration is subject to cancellation as it does not qualify under the category of 'new' or 'novel'.

The Delhi High Court held that the registered design of the plaintiff with respect to its footwear, does not have the necessary newness or originality for the same to be called a creation or innovation or an Intellectual Property Right. The Court accordingly observed that the registered design of the plaintiff is liable to be cancelled as per [**Section 19(1)(d) of the Act**](https://www.vakilno1.com/bareacts/design2000/design.html#Section_19_Cancellation_of_registration)read with [Section 4(a) of the Act](https://www.vakilno1.com/bareacts/design2000/design.html#Section_4_Prohibition_of_registration_of_certain_designs). The Court in the case also awarded litigation costs as well presentto costs incurred by them towards time and man hours spent by these defendants for conducting their defenses in the present suits. An appeal filed in the Supreme Court by the plaintiff was dismissed, upholding the orders of the Delhi High court in January, 2019.

**Understanding “Fashion” and “Fashion Design”**

Fashion is an art, a reflection of life it is a language of signs, symbol and iconography that non-verbally communicate meanings about individuals and groups. it's a mode of expressing oneself and is an extension of one’s personality. Fashion may vary considerably within a society according to age, class , generation, occupation and geography also as over time. It changes constantly and therefore the changes may proceed before in most other fields of act . In common parlance, fashion refers to a popular way of dressing during a selected time or among a selected group of people . However, it's quite that and is best defined just because the design or kinds of clothing and accessories worn at any given time by groups of people . It also covers in its ambit footwear and jewelleries.

**Fashion, in brief, refers to anything that's the present trend in look and dress from an individual**

[[5]](#footnote-5)Fashion design is that the application of design and aesthetics beauty to the things of fashion. it's a sort of art dedicated to the creation of original clothing and other lifestyle accessories. Considered as “principle creative element” of apparel industry , a fashion design is influenced by cultural and social attitudes and has varied over time and place. Modern fashion design11 is split into three basic categories: (1) high fashion , (2) ready-to-wear and (3) mass market.

**Conclusion:**

The case laws underline various aspects hidden in the Designs Act where the court on various grounds has in case no. 1, observed infringement of design and in case no. 2, on the basis of legit ground of cancellation did not give relief to the plaintiff because of lack of novelty in the design. The case laws underline various aspects hidden in the provisions of the Design Act, making it clear-cut to understand the underlying intent and working of the law framed by the legislators. More judicial decisions means better interpretation and more usage of the law, thus establishing the increasing significance of design law. It is an imminent fact that Patents is not the only important IP that an organization should focus on, Design in itself holds significant place in the commercial value of a product. Design as an IP holds immense value because customers may also associate a product with a company or a particular quality standard based on product aesthetics. For companies, the design is the simplest way of differentiating one's products from competing products. As a result, it becomes important to protect the design from being copied. Thus, it is pertinent to note that businesses and companies are taking active step to protect the aesthetic value of their products under the Designs Act, 2000. Design as an intellectual property right holds as much value as any other subject matter under the umbrella of intellectual property rights.

*On Section 15 of the Copyright Act, 1957 1. Section 15 of the Copyright Act deals with the extent of, and the conditions for the copyright protection to an artistic work, as an artistic work under the Copyright Act, which is a design registered or capable of registration under the Designs Act. 2. As per Section 15 (1), once the design is created and got registered under the Designs Act, whether or not the design is eventually applied to an article by an industrial process, the design loses its protection as an artistic work under the Copyright Act. 3. If the design derived from the original artistic work is exploited beyond the specified limit (i.e. if the design is applied more than 50 times by an industrial process on an article) the copyright in the design ceases as per Section 15*

*(2) of the Copyright Act unless it is registered under the Designs Act. 4. The operation of Section 15(2) of the Copyright Act does not exclude from the ambit of Copyright protection either the original 'artistic work' upon which the design is based or the design which by itself is an artistic work. What stands extinguished under*

*Section 15 of the Copyright Act is the copyright in the design itself as applied to an article and not the copyright in the artistic work itself.*

<https://www.researchgate.net/publication/269106421_Intellectual_Property_Rights_Protection_of_Fashion_Design_in_India>

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1. <https://www.scribd.com/document/309745639/Intellectual-Property-Rights-Protection> [↑](#footnote-ref-2)
2. <https://www.researchgate.net/publication/269106421_Intellectual_Property_Rights>... [↑](#footnote-ref-3)
3. [↑](#endnote-ref-2)
4. <https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=2805346> [↑](#footnote-ref-4)
5. <https://www.shiksha.com/design/fashion-design/articles/window-dressing-what-is-it-all>... [↑](#footnote-ref-5)