

WHITE BLACK LEGAL LAW JOURNAL ISSN: 2581-8503

1-124 + 23.023

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

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.



EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



and a professional Procurement from the World Bank.

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS is currently posted as Principal and Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhiin Urban one Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru diploma Public in

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB, LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



www.whiteblacklegal.co.in Volume 3 Issue 1 | May 2025

Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.





Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.





<u>Subhrajit Chanda</u>

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

LEGAL

ISSN: 2581-8503

INTELLECTUAL PROPERTY RIGHTS IN THE GLOBAL FASHION INDUSTRY: A COMPREHENSIVE ANALYSIS OF LEGAL FRAMEWORKS, CHALLENGES, AND FUTURE DIRECTIONS

AUTHORED BY - YASH CHOUDHARY & DR. DEEPIKA PRAKASH

ABSTRACT

The global fashion industry, valued at over **\$2.5 trillion**, relies on continuous creative innovation to maintain competitiveness. However, fashion designs often lack **comprehensive intellectual property (IP) protection**, making them vulnerable to unauthorized reproduction by fast fashion retailers and counterfeit manufacturers. Unlike industries such as music, film, and literature, where copyright law provides robust protections, **fashion designs are frequently excluded from such safeguards due to their functional nature**.

This study provides a comprehensive examination of intellectual property rights in the fashion industry, analyzing copyright, trademark, design patent, and trade dress protections. It explores legal loopholes, enforcement challenges, and the impact of emerging technologies such as AI, NFTs, and blockchain. The research incorporates a comparative legal analysis of key jurisdictions (United States, European Union, China, and India) to highlight best practices and policy recommendations.

Findings suggest that **existing IP frameworks are inadequate** in protecting fashion creativity, with **fast fashion brands, counterfeit markets, and digital technology exacerbating the problem**. To strengthen fashion IP rights, the study proposes **policy reforms**, including **stronger copyright protections, increased legal enforcement against counterfeiting, and regulatory frameworks for digital fashion and AI-generated designs**.

By addressing these critical issues, this dissertation contributes to the growing discourse on fashion law and intellectual property protection, offering insights for designers, legal experts, policymakers, and industry stakeholders.

Keywords: Intellectual Property, Fashion Law, Copyright, Trademarks, Counterfeiting, Fast Fashion, Digital Fashion, NFTs, AI, Legal Frameworks.

CHAPTER 1: INTRODUCTION

1.0.1 Understanding Intellectual Property Rights (IPR)

Intellectual Property Rights (IPR) are legal protections granted to the creators of original works, enabling them to control the use, reproduction, and commercialization of their inventions, artistic creations, designs, symbols, and names. The concept of intellectual property covers a diverse range of categories, including copyrights, trademarks, patents, industrial designs, trade secrets, and geographical indications. These rights are essential in encouraging innovation and creativity by allowing the originator to benefit financially and reputationally from their work. IPR plays a central role in the global knowledge economy, underpinning creative industries, facilitating research and development, and protecting brand identity in an increasingly digital and globalized marketplace. As the creative economy continues to expand, intellectual property law has become a critical area of legal, economic, and policy concern.

1.0.2 The Global Fashion Industry: A Creative Powerhouse

The fashion industry stands as one of the most dynamic and influential sectors of the global economy. It represents not only an economic behemoth—contributing approximately \$2.5 trillion annually to the global economy—but also a unique form of cultural expression that reflects societal values, trends, politics, and individual identity. Fashion encompasses a broad array of activities including textile manufacturing, apparel design, retail, luxury branding, fast fashion production, and digital fashion marketing. According to a report by McKinsey & Company (2023), the global apparel market alone was valued at around \$1.7 trillion and is expected to reach \$2.2 trillion by 2026. The industry provides employment to over 75 million people worldwide, many of whom are involved in design, production, and merchandising.

However, fashion's intrinsic characteristic of rapid innovation and replication makes it particularly vulnerable to intellectual property theft. From haute couture to ready-to-wear and from bespoke designs to mass-produced garments, the creative process is essential to fashion's existence. Yet, unlike music, literature, or software, fashion designs often fail to receive adequate protection under existing legal frameworks. This paradox—where one of the most creative and economically impactful industries in the world suffers from one of the weakest protective legal mechanisms—forms the central tension of this dissertation. 1.0.3 The Intersection of Fashion and Intellectual Property

Fashion operates at the intersection of creativity and commerce, making intellectual property an essential component of its business model. Designers and brands rely on intellectual property to protect their original creations from being copied or misappropriated. However, unlike other industries where intellectual property rights are more clearly delineated and enforced, fashion presents a complex challenge due to the transient, utilitarian, and functional nature of its products. Traditional IP regimes—particularly copyright, trademark, and patent laws—often fail to adequately recognize and protect fashion designs.

Copyright law typically protects original works of authorship, such as music, literature, and visual art, but may exclude fashion designs unless they can be considered artistic works separate from their utilitarian function. Trademark law protects logos, brand names, and distinctive signs but does not safeguard the design itself unless it has acquired distinctiveness through secondary meaning. Patent law offers protection for technical inventions, which is rarely applicable to clothing unless it involves innovative functional elements. This disjunction leaves many fashion designers vulnerable to design piracy, knockoffs, and counterfeiting.

1.0.4 The Problem of Design Piracy and Counterfeiting

Design piracy—the unauthorized copying of fashion designs—has become rampant in today's fast-paced, globalized industry. Copying can occur within days of a fashion show or online release, with knockoff versions appearing in retail stores and online platforms before the original products even reach consumers. The rise of fast fashion giants like Zara, H&M, and Shein has accelerated this trend, leveraging sophisticated supply chains and rapid manufacturing capabilities to replicate styles at unprecedented speed and scale.

According to the International Chamber of Commerce (ICC), the global trade in counterfeit and pirated goods amounted to approximately \$464 billion in 2019, representing over 2.5% of world trade. A significant proportion of these counterfeit products include fashion items such as handbags, apparel, watches, and footwear. The luxury fashion sector alone suffers estimated losses of \$50 billion annually due to counterfeit goods, undermining brand equity, consumer trust, and the livelihoods of designers and artisans.

Design piracy is not only a legal and economic problem but also a moral and ethical concern. It undermines the labor, time, and creativity of original designers while rewarding copyists who

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

often produce lower-quality items under unethical labor conditions. This imbalance stifles innovation, discourages investment in new talent, and erodes the cultural value of fashion as a form of artistic expression.

1.0.5 Fast Fashion, Digital Platforms, and IPR Vulnerabilities

The advent of fast fashion and the proliferation of e-commerce platforms have created new challenges for intellectual property enforcement. Digital technology has revolutionized the fashion landscape, enabling instantaneous sharing of designs through social media, lookbooks, and virtual fashion shows. While this democratization of access has its advantages, it also exposes fashion designs to widespread copying and infringement. Online marketplaces such as Amazon, Alibaba, eBay, and social commerce platforms like Instagram and TikTok have become major conduits for counterfeit and pirated fashion goods.

In the digital realm, the unauthorized reproduction and distribution of fashion designs can occur without any physical production, through digital garments, fashion NFTs, or augmented reality (AR) filters. As the metaverse and virtual fashion experiences gain popularity, designers now face the added burden of protecting their digital creations—a domain where existing legal protections are either nascent or entirely absent.

Moreover, the global nature of digital commerce has made it increasingly difficult to regulate and enforce intellectual property laws. Infringing parties often operate across multiple jurisdictions, complicating litigation and enforcement processes. For example, a designer in Paris may find their designs being copied and sold on a Chinese e-commerce platform, hosted on servers in the U.S., and purchased by consumers in Brazil. This level of complexity demands a rethinking of traditional IPR systems and the development of more robust, harmonized global enforcement mechanisms.

1.0.6 Jurisdictional Disparities in Fashion IP Protection

One of the most pressing challenges in fashion IPR is the inconsistency of legal protections across different countries. In the European Union, for instance, the Community Design system provides both registered and unregistered design rights, offering designers a relatively high level of protection for up to 25 years. In contrast, the United States does not offer dedicated protection for fashion designs under copyright law unless the design qualifies as a "useful article" with "separable artistic features." Although design patents are available, they are costly,

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

time-consuming, and often impractical for an industry that thrives on seasonal trends and rapid turnover.

In countries like China and India, where much of the world's fashion manufacturing occurs, enforcement of IPR remains uneven despite legislative reforms. China, while making significant strides in IP law, continues to be a major source of counterfeit goods. India, though rich in textile heritage and home to many emerging designers, lacks a robust legal framework tailored specifically for fashion design protection. These jurisdictional disparities create legal uncertainty and leave fashion brands exposed to infringement in key markets.

Furthermore, international treaties such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Hague Agreement concerning the International Registration of Industrial Designs provide a baseline for protection, but they do not impose uniform standards. As a result, fashion designers often find themselves navigating a patchwork of national laws with varying scopes, durations, and enforcement mechanisms.

1.0.7 Emerging Trends and the Future of Fashion IP

The fashion industry is undergoing transformative change fueled by sustainability movements, digital innovation, and consumer demand for transparency. As designers explore new frontiers—biodegradable fabrics, 3D printing, upcycling, virtual fashion shows—the need for stronger and more adaptable intellectual property protections becomes more apparent. Emerging technologies such as blockchain and non-fungible tokens (NFTs) offer promising avenues for securing digital authenticity and provenance. By embedding metadata and smart contracts into digital fashion assets, designers can establish immutable ownership records and receive royalties from resales.

Artificial intelligence is also influencing fashion design through automated pattern generation, personalized styling, and virtual fitting rooms. These developments raise new questions about authorship, originality, and ownership under existing IP regimes. Who owns a design created with the assistance of AI? Can a machine-generated design be copyrighted? These are critical issues that will shape the future of IPR in fashion.

In addition, the growing awareness around sustainability and ethical fashion practices presents both an opportunity and a challenge for intellectual property. While sustainable innovations

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

require protection to ensure return on investment, overreliance on proprietary technologies could potentially stifle collaboration and knowledge-sharing—both of which are essential to building a circular fashion economy.

1.0.8 The Need for Legal Reform and Global Harmonization

Given the unique characteristics and challenges of the fashion industry, there is a compelling case for reforming existing intellectual property laws to better accommodate the needs of designers. Legal scholars and industry advocates have proposed various solutions, including the creation of a sui generis right specifically for fashion designs, modeled on the EU's Community Design regime. Such a right would provide automatic, cost-effective protection for original designs with limited duration, tailored to the fast-paced nature of the fashion cycle. In addition to national reforms, there is a need for international legal harmonization. A globally coordinated effort would ensure that fashion designs enjoy consistent protection regardless of where they are created, marketed, or sold. This could be achieved through strengthened international treaties, bilateral trade agreements, and greater cooperation among enforcement agencies.

Furthermore, education and capacity-building are essential. Many emerging designers lack awareness of their intellectual property rights and do not have access to legal support. Industry bodies, design schools, and fashion councils can play a vital role in promoting IP literacy and empowering creatives to protect their work effectively.

1.1 Background of the Study

The fashion industry, long celebrated as a dynamic and culturally significant sector, sits at the intersection of creativity, commerce, and global communication. It is a multifaceted and highly competitive industry encompassing clothing, accessories, footwear, and design, which contributes significantly to global economies. Valued at over two trillion dollars, the fashion industry is not only an economic powerhouse but also a key influencer of identity, culture, and expression across societies. As the industry has evolved, so too has the need to protect its most valuable asset—intellectual creativity. In an era where technological advancements have expedited the replication of original fashion designs, the importance of intellectual property rights (IPR) has become increasingly paramount.

Fashion, by its very nature, is a creative and innovative endeavor, yet its products often enjoy

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

only limited legal protection under traditional intellectual property regimes. Designers invest time, energy, and resources into developing unique garments, accessories, and visual aesthetics, only to see their works rapidly copied and mass-produced by fast fashion companies. While copying may sometimes be viewed as flattery or a natural part of the fashion cycle, it frequently results in significant financial losses and the erosion of creative capital for original designers. The current state of IPR in the fashion world is marked by inconsistencies, ambiguities, and gaps that often leave designers unprotected, particularly when it comes to wearable designs that do not fall within the strict definitions of existing copyright, trademark, or patent laws.

In this context, the study of intellectual property rights within the global fashion industry emerges as a critical inquiry. It seeks to understand how existing legal frameworks protect fashion creations, to what extent these protections are enforced, and what challenges designers and brands face in safeguarding their innovations. This dissertation aims to analyze the legal structures currently in place across different jurisdictions, examine the limitations and enforcement challenges, and explore future directions for strengthening IPR in fashion.

1.2 Rationale for the Study

The rationale behind this study stems from the observed disconnect between the value of creativity in fashion and the insufficiency of existing legal protections. Fashion designs, unlike inventions or literary works, often straddle a gray area in intellectual property law. Many jurisdictions do not recognize fashion design as deserving of the same level of protection as other artistic or technological creations. This disparity creates a loophole for copyists and fast fashion conglomerates to profit off original ideas without attribution or compensation. Consequently, designers—particularly independent and emerging ones—are often left without recourse when their creations are imitated or counterfeited.

Moreover, in the age of digital globalization, fashion is more interconnected than ever before. The ease with which images and products can be disseminated online has led to a spike in design theft and counterfeiting, necessitating a global approach to intellectual property protection. The challenge lies in the fragmented nature of IPR regimes across the world—what is protected in Europe may not be protected in Asia or North America. As such, there is an urgent need to evaluate the effectiveness of existing frameworks and to explore the possibility of harmonizing international legal standards to better protect fashion designers worldwide.

Another key rationale is the growing movement toward sustainable and ethical fashion. As designers and brands seek to innovate with new materials, techniques, and business models, protecting these innovations becomes crucial not only for commercial success but also for driving systemic change in the industry. Intellectual property can serve as a powerful tool to promote sustainability by incentivizing innovation and protecting investments in eco-friendly design and technology.

1.3 Objectives of the Study

The central aim of this research is to conduct a comprehensive analysis of intellectual property rights in the global fashion industry. This includes examining existing legal frameworks, identifying the challenges and limitations of current protections, and proposing strategic recommendations for future legal reforms. The specific objectives of the study are as follows:

- 1. To explore the historical and theoretical foundations of intellectual property law as it pertains to fashion design.
- 2. To critically examine the current legal mechanisms for protecting fashion-related intellectual property across major jurisdictions, including the United States, European Union, China, India, and others.
- 3. To assess the enforcement challenges associated with protecting fashion IPR, including issues related to counterfeiting, piracy, and digital infringement.
- 4. To investigate the socio-economic impact of design theft on original designers and small fashion enterprises.
- 5. To analyze emerging trends, such as the role of blockchain, NFTs, and AI in fashion IPR, and their potential in shaping the future legal landscape.
- 6. To propose viable legal, policy, and industry-specific strategies for enhancing IPR protection in the fashion sector globally.

1.4 Research Questions

To achieve these objectives, this study is guided by the following core research questions:

- 1. What are the current legal frameworks available for the protection of fashion designs at national and international levels?
- 2. How effective are these legal regimes in safeguarding the intellectual property of fashion designers?

- 3. What are the principal challenges in the enforcement of fashion IPR, particularly in the context of digital globalization and fast fashion?
- 4. How does intellectual property theft impact innovation, creativity, and economic sustainability within the fashion industry?
- 5. What are the potential legal and technological innovations that can address the gaps in existing IPR systems?
- 6. How can international legal harmonization contribute to the better protection of fashion intellectual property?

1.5 Significance of the Study

This research holds significance on multiple fronts. First, it contributes to the growing academic discourse surrounding intellectual property in non-traditional fields such as fashion. While IPR has long been studied in relation to technology and literature, its application to fashion remains comparatively under-researched. By filling this gap, the study provides a comprehensive and updated understanding of the legal intricacies involved in fashion design protection.

Second, the findings of this study are intended to serve as a resource for multiple stakeholders in the fashion ecosystem—designers, lawyers, policymakers, academics, and business leaders. It offers actionable insights into how intellectual property can be leveraged as a strategic asset, especially in a time when innovation and creativity are key drivers of competitiveness in the fashion market.

Third, the study aims to influence policy by shedding light on the urgent need for legal reform in the area of fashion IPR. By identifying specific gaps and proposing practical solutions, the research seeks to contribute to ongoing discussions on how legal systems can adapt to the evolving needs of creative industries in the digital age.

1.6 Scope and Limitations of the Study

The scope of this dissertation is broad and international in nature, reflecting the global character of the fashion industry. The research focuses on the three main branches of intellectual property law—copyright, trademark, and design patents—as they pertain to fashion products. It also considers sui generis protections, such as the European Union's Community Design Regulation, and explores international agreements like the TRIPS Agreement and the Hague

Volume 3 Issue 1 | May 2025

System for the International Registration of Industrial Designs.

However, the study is not without limitations. First, the legal landscape is continually evolving, particularly with the rise of digital technologies and novel legal instruments. As such, some legal developments may outpace the conclusions drawn in this research. Second, while the study includes case analyses and comparisons between jurisdictions, it does not provide an exhaustive legal analysis of all countries involved in fashion production or consumption. Finally, the empirical dimension of the study is limited to qualitative analysis and secondary data due to resource constraints, although future research may benefit from incorporating primary data such as interviews or surveys with designers and legal professionals.

1.7 Methodology Overview

This dissertation adopts a qualitative, doctrinal research methodology, supplemented by comparative legal analysis and case studies. The doctrinal approach involves a close examination of legal texts, statutes, case law, treaties, and scholarly commentaries to identify how intellectual property law has been applied within the context of fashion. A comparative approach is used to analyze how different jurisdictions protect fashion IPR, with particular attention to similarities, differences, and best practices. Selected case studies of litigation, brand protection strategies, and technological innovation in IPR enforcement will be included to provide real-world context and application.

In addition, the study draws upon interdisciplinary sources from the fields of fashion studies, business management, cultural theory, and digital media to situate legal findings within a broader industry framework. This interdisciplinary lens allows for a richer and more holistic understanding of the issues at hand.

1.8 Structure of the Dissertation

The dissertation is organized into several chapters, each building upon the previous to present a cohesive and comprehensive analysis:

- **Chapter 1: Introduction** provides the background, rationale, objectives, significance, and scope of the study.
- Chapter 2: Literature Review surveys existing academic and legal literature on fashion IPR, highlighting key debates, gaps, and theoretical frameworks.

- Chapter 3: Legal Frameworks for Fashion IPR presents an in-depth examination of national and international laws governing fashion design protection.
- Chapter 4: Enforcement Challenges and Case Studies explores the practical barriers to IPR enforcement, supported by real-world examples.
- Chapter 5: Emerging Trends and Future Directions discusses technological, legal, and cultural trends that may shape the future of IPR in fashion.
- Chapter 6: Recommendations and Conclusion summarizes key findings, proposes legal and policy solutions, and outlines areas for future research.

1.9 Conclusion

In conclusion, this introductory chapter has established the importance and urgency of studying intellectual property rights within the global fashion industry. As the fashion world continues to evolve in complexity, creativity, and connectivity, so too must the legal mechanisms that protect its innovation. By examining the existing legal landscape, identifying critical gaps and enforcement issues, and exploring forward-looking solutions, this dissertation aims to contribute meaningfully to both academic and practical discussions on fashion IPR. The following chapters will delve deeper into the historical context, legal foundations, and future possibilities that define this vibrant and challenging field of inquiry.

WHITE BLACK

CHAPTER 2:

LITERATURE REVIEW

2.1 Defining Intellectual Property Rights (IPR)

Intellectual Property Rights (IPR) constitute a legal framework designed to protect the creations of the human intellect, granting creators exclusive rights over their innovations and artistic works. These rights are essential for fostering creativity, encouraging investment in research and development, and maintaining fair competition in various industries, including fashion (WIPO, 2021). IPR encompasses several distinct categories, each serving a unique purpose in safeguarding different forms of intellectual output:

- Copyright Protects original artistic and literary works, including fashion sketches, textile prints, and graphic designs applied to clothing (Cornish et al., 2019). However, copyright law in many jurisdictions does not extend to the functional aspects of clothing, leading to gaps in protection.
- Trademarks Safeguard brand identifiers such as logos, brand names, and distinctive packaging (e.g., Louis Vuitton's monogram, Nike's "Swoosh"). Trademarks prevent consumer confusion and protect brand reputation (Raustiala & Sprigman, 2012).
- 3. Patents Cover novel inventions, including innovative fabrics (e.g., moisture-wicking textiles) and functional garment technologies (e.g., self-lacing shoes). Patents are less common in fashion due to their stringent novelty requirements (Scafidi, 2006).
- 4. Industrial Designs Protect the aesthetic aspects of products, such as the shape, pattern, or ornamentation of handbags, shoes, and apparel. The European Union's *Registered Community Design (RCD)* system provides up to 25 years of protection (EUIPO, 2020).
- 5. Trade Secrets Include confidential business information, such as manufacturing processes or unreleased designs. Unlike patents, trade secrets require no registration but demand robust internal safeguards (Hemphill & Suk, 2009).

The fashion industry presents unique challenges for IPR enforcement due to its rapid trend cycles and widespread design imitation. High-end designers argue that stronger protections are necessary to prevent fast-fashion brands from profiting off copied designs (Barnett, 2019). Conversely, some scholars suggest that fashion thrives on a "piracy paradox," where imitation accelerates trend dissemination and ultimately benefits the industry (Raustiala & Sprigman, 2012).

Case Study: The Star Athletica v. Varsity Brands Decision (2017)

A landmark U.S. Supreme Court case clarified copyright protection for fashion designs. The ruling held that a design element (in this case, cheerleading uniform stripes) could be copyrighted if it could be perceived as a separate artistic work. This decision expanded copyright's role in fashion but left ambiguity regarding other garment designs (Perzanowski & Schultz, 2016).

Case Study: Christian Louboutin's Red Sole Trademark

In 2012, Christian Louboutin successfully trademarked its iconic red-lacquered shoe soles in numerous jurisdictions. However, a notable legal battle ensued when Yves Saint Laurent (YSL) released an all-red shoe, including the sole. The U.S. Court of Appeals ultimately ruled that Louboutin could maintain its trademark for red soles contrasting with the shoe's upper, but not for monochromatic red shoes (*Christian Louboutin v. YSL*, 2012). This case highlighted the fine line between color trademarks and aesthetic functionality in fashion IP law.

Historical Precedent: The 18th Century Textile Patents

The earliest IP protections in fashion trace back to 18th-century England, where textile designs were among the first creative works to receive legal protection under the *Calico Printers' Acts*. These laws aimed to prevent copying of intricate fabric patterns, setting a precedent for modern design rights (Lemley, 2015). This historical context demonstrates how textile innovation has long driven IP legislation.

2.2 Evolution of IPR in the Fashion Industry

The legal recognition of fashion as a protectable intellectual asset has evolved significantly over the past century. Historically, clothing was considered utilitarian rather than artistic, limiting legal protections (Scafidi, 2006). However, as fashion became a multi-billion-dollar industry, legal systems adapted to address design piracy and brand counterfeiting.

Early 20th Century: Couture and Early Protections

In the early 1900s, Parisian couture houses faced rampant copying of their designs by American manufacturers. In response, the *Chambre Syndicale de la Haute Couture* was established to regulate design piracy among its members (Wilcox, 2015). However, legal protections remained weak outside France, allowing mass-market brands to replicate high-fashion designs without repercussions.

Mid-20th Century: The Rise of Branding and Trademarks

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

By the mid-1900s, fashion houses increasingly relied on trademarks rather than design protections. Luxury brands like Chanel and Gucci emphasized logos and brand identity, making trademark law a key tool against counterfeiters (Kapferer, 2012). The *Lanham Act* (1946) in the U.S. strengthened trademark enforcement, but design piracy persisted due to the lack of copyright coverage for garments.

Late 20th Century: Fast Fashion and Legal Gaps

The rise of fast-fashion retailers like Zara and H&M in the 1990s and 2000s intensified debates over IPR. These brands built business models on quickly replicating runway designs, often before the original luxury versions reached stores (Barnett, 2019). Legal responses were inconsistent:

- The U.S. maintained limited protections, with the *Copyright Act of 1976* excluding clothing designs unless they contained separable artistic elements.
- The EU introduced stronger safeguards under the *Community Design Regulation* (2002), offering both registered and unregistered design rights (EUIPO, 2020).

21st Century: Digital Challenges and New Solutions

The internet and social media have exacerbated design copying, with e-commerce platforms enabling counterfeit sales and influencers accelerating trend replication (Dolata & Schwabe, 2022). Emerging technologies like blockchain and NFTs (Non-Fungible Tokens) are being explored as anti-counterfeiting tools, allowing brands to verify authenticity digitally (Flamand & Lee, 2023).

Global Variations in Fashion IPR

- France & Italy: Strong design protections, with criminal penalties for counterfeiting.
- China: Improved IP laws but inconsistent enforcement; a major hub for counterfeit production (Yang & Sonmez, 2018).
- India: The *Designs Act (2000)* protects fashion designs, but enforcement is weak due to a large informal sector.

2.3 Theories of Intellectual Property and Creativity

The justification for Intellectual Property Rights (IPR) in the fashion industry has been the subject of significant philosophical and economic debates. These theories, ranging from the natural rights of creators to the economic incentive model, offer various perspectives on the role of IP in fostering creativity, innovation, and economic growth. As the fashion industry

ISSN: 2581-8503

continues to evolve, these theories help explain the complex relationship between design, protection, and commercialization.

2.3.1 Natural Rights Theory (Lockean Perspective)

One of the earliest justifications for intellectual property protection can be found in the writings of philosopher John Locke, who introduced the concept of the labor theory of property in his work *The Second Treatise of Government* (1689). According to Locke, individuals have a natural right to the products of their labor. This perspective argues that when an individual applies their effort, creativity, and intellectual energy to create something new, they inherently possess the right to control and benefit from that creation. Locke's theory suggests that intellectual creations, much like physical property, are an extension of an individual's self and labor.

In the context of fashion, this theory strongly supports the notion of intellectual property protection for designers, as they invest considerable time, skill, and creativity in the development of original works. Fashion designers, particularly those working in high-end luxury brands, dedicate years to refining their craft, experimenting with materials, and interpreting cultural trends through their designs. Given this, Locke's natural rights theory justifies strong intellectual property protections, ensuring that designers retain control over their creations and are entitled to the fruits of their labor. As global fashion markets have grown, the protection of these creations through intellectual property rights ensures that designers, artists, and entrepreneurs can reap financial benefits and maintain the integrity of their work. However, this theory also raises the question of how to balance the natural rights of creators with the broader public interest. Critics argue that overly stringent intellectual property protections can hinder competition, limit access to fashion, and inhibit the sharing of ideas, which is essential in a creative and highly innovative industry. As the fashion industry thrives on cyclical trends and constant reinterpretation of past styles, a rigid IP system could stifle the spontaneous exchange of creative ideas that is central to its evolution.

2.3.2 Utilitarian Theory (Economic Incentive Model)

The utilitarian theory, popularized by philosophers Jeremy Bentham and John Stuart Mill, emphasizes the importance of intellectual property as an economic incentive to promote innovation and creativity. According to this theory, the primary goal of intellectual property law is to maximize societal welfare by encouraging individuals and organizations to invest in

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

the creation of new knowledge, designs, and inventions. In this model, granting exclusive rights to creators for a limited period allows them to recoup their investment and make a profit, which, in turn, stimulates further innovation and creativity.

From an economic perspective, intellectual property rights serve as a form of protection against free-riders—individuals or companies that would otherwise copy and profit from the work of others without having invested any effort into its creation. The economic incentive model thus argues that IPR is necessary for fashion designers to ensure a return on their creative investments. Without IPR protections, designers may be unwilling to invest in new ideas, fearing that their work will be copied quickly and sold at lower prices by competitors.

For instance, in the fashion industry, where trends shift rapidly and seasonal collections can take years to develop, the fear of imitation can limit the willingness of designers to innovate. By granting temporary monopolies over designs, trademarks, and patents, IPR ensures that designers can enjoy a period of exclusive profit, which fuels further creativity. However, critics of the utilitarian theory in fashion argue that the cyclical nature of the industry encourages imitation as a legitimate form of creative expression. Scholars such as Raustiala and Sprigman (2012) argue that imitation, rather than stifling creativity, actually drives innovation in fashion. According to their "piracy thesis," copying accelerates the speed at which trends diffuse across the industry, allowing the entire sector to evolve more rapidly and meet consumer demands.

Thus, the tension between the utilitarian model and the reality of the fashion industry reveals a complex balancing act. While IPR serves as a tool to encourage innovation, it also raises questions about how much protection is too much and whether too many restrictions could hinder the rapid flow of creativity that characterizes fashion.

A PROPERTY OF

2.3.3 Personality Theory (Hegelian Approach)

The Hegelian approach to intellectual property focuses on the connection between creativity and the identity of the creator. According to philosopher Georg Wilhelm Friedrich Hegel, creative works are an extension of the individual's personality and self-expression. In his philosophy of law, Hegel argued that individuals should be entitled to the fruits of their creative labor because those creations represent their inner identity and personal essence. Creative works, therefore, possess a moral right to be protected because they are seen as an embodiment of the creator's personality. In the context of fashion, this theory resonates strongly with luxury fashion brands, which emphasize the personal vision and artistry of their designers. For example, luxury fashion houses such as Hermès, Chanel, and Louis Vuitton actively defend their intellectual property rights not just as economic assets but as expressions of the brand's core identity and creative integrity. A designer's personal vision is often considered inextricable from the brand itself, and unauthorized modifications or copies of a designer's work are viewed as damaging to both the artist's reputation and the brand's image.

In the case of Hermès' Birkin bags, for instance, the company fiercely protects its iconic design against unauthorized alterations, arguing that such changes dilute the artistry and uniqueness of the piece. The moral right to control the use of one's creations in this way aligns with Hegel's idea that intellectual property rights should extend beyond economic incentives to include personal and moral protections. This theory supports a more robust approach to intellectual property rights, particularly in industries like fashion where personal branding and creative integrity are closely tied to economic value.

2.3.4 The "Piracy Paradox" in Fashion

An interesting counterpoint to the above theories is the concept of the "piracy paradox" in fashion. Some scholars argue that weak or even absent intellectual property protections in the fashion industry can actually benefit the sector by accelerating trend cycles and fostering innovation. The "piracy paradox," as articulated by Hemphill and Suk (2009), suggests that copying is an essential driver of creativity in fashion. In a world where trends are often defined by collective cultural shifts, imitation helps to disseminate new ideas rapidly across the market. Instead of stifling innovation, the process of copying compels designers to continuously innovate and differentiate their work to maintain consumer interest.

Fashion operates in a highly cyclical market where trends evolve quickly and frequently. The speed with which trends shift requires designers to produce new styles rapidly to stay ahead of the competition. Imitation and design piracy create an environment in which designers are constantly pushed to innovate to stay relevant, benefiting both creators and consumers. For instance, when a design becomes a hit in the marketplace, it is often replicated by fast fashion brands, but this process also signals to designers and brands that there is a high consumer demand for a particular look, prompting further innovation and adaptation.

This paradoxical view challenges the traditional view of intellectual property as a tool for protecting original creations. Instead, it suggests that a degree of copying or design piracy may be an inherent feature of the fashion ecosystem, and could, in fact, fuel the industry's dynamism.

2.4 Legal Frameworks for Fashion IPR

The legal landscape surrounding intellectual property rights in the fashion industry is complex and varies significantly between jurisdictions. Different legal frameworks have evolved to protect fashion designs, but the protections available often depend on the nature of the design, the region, and the type of intellectual property involved. This section examines the international treaties, regional laws, and emerging legal trends that shape the protection of fashion IPR.

2.4.1 International Treaties and Agreements

The protection of intellectual property rights in fashion is governed by several international agreements and treaties aimed at harmonizing IP laws across borders. These treaties ensure that creators can secure protection for their work globally, even in countries with less robust domestic intellectual property regimes. The key international agreements include the *Berne Convention*, the *Paris Convention*, and the *TRIPS Agreement*.

2.4.1.1 Berne Convention (Copyright)

The Berne Convention for the Protection of Literary and Artistic Works, established in 1886, is one of the foundational treaties of international copyright law. Under the Berne Convention, member countries agree to grant automatic protection to works of authorship, including fashion designs, as long as they meet the threshold of originality. While fashion design is not automatically covered by copyright law in every jurisdiction, many countries, particularly in the European Union, offer copyright protection for certain types of fashion creations, such as textile patterns, graphic designs, and other artistic elements.

The Berne Convention is important in the context of fashion because it provides a framework for protecting the creative expression of designers. However, the protection under Berne is generally limited to designs that are considered works of art rather than functional items, such as garments, which complicates the protection of fashion designs under copyright law.

2.4.1.2 Paris Convention (Trademarks & Industrial Designs)

ISSN: 2581-8503

The Paris Convention for the Protection of Industrial Property, signed in 1883, provides protection for trademarks, patents, and industrial designs across its member states. For the fashion industry, the Paris Convention's provisions on industrial designs are particularly relevant. The Convention allows designers to register their designs in multiple countries through a simplified application process, ensuring that they receive consistent protection across different jurisdictions.

The Convention also protects trademarks, which are critical for fashion brands seeking to safeguard their logos, brand names, and product identities. As fashion brands become increasingly global, the Paris Convention facilitates the protection of these marks in multiple markets, ensuring that designers can maintain control over their brand's identity.

2.4.1.3 TRIPS Agreement (WTO)

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), established by the World Trade Organization (WTO) in 1994, sets minimum standards for the protection of intellectual property across all WTO member countries. TRIPS is significant for the fashion industry because it requires member states to offer protection for fashion designs through mechanisms such as copyright, industrial design rights, and trademarks. This agreement helps ensure that designers' rights are recognized and enforced globally, providing a degree of legal consistency across borders.

However, the TRIPS Agreement has also been criticized for providing inadequate protection for fashion designs, particularly in relation to design piracy and counterfeiting. Some argue that the TRIPS framework does not fully address the unique challenges posed by the fashion industry, where designs are frequently copied and replicated quickly. This has led to calls for reform and the development of more robust legal protections for fashion designs.

2.4.2 Regional and National Laws While international treaties provide a framework for global IP protection, individual countries and regions have developed their own laws to address the specific needs of the fashion industry. These regional and national laws vary widely, creating a patchwork of protections for designers. Some of the most important jurisdictions for fashion IPR include the European Union, the United States, and China.

2.4.2.1 European Union

The European Union offers some of the strongest protections for fashion designs through the Community Design Regulation. The EU system allows designers to register their designs as either registered or unregistered Community designs, offering protection across all EU member states. Registered designs are protected for up to 25 years, while unregistered designs are

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

protected for three years, but only against copying. This system provides designers with a quick, cost-effective way to secure protection for their designs across Europe.

The EU also has an Enforcement Directive (2004/48/EC), which strengthens anticounterfeiting measures by requiring member states to ensure effective enforcement of IP rights, including in the fashion sector. This Directive allows fashion brands to take legal action against counterfeiters and infringements, providing mechanisms for customs enforcement and legal recourse.

2.4.2.2 United States

In the United States, fashion design protection is more fragmented. The Copyright Act provides limited protection for certain fashion designs, but only for those that can be classified as "separable" artistic elements of a garment, such as prints, patterns, and surface designs. The Lanham Act protects trademarks, and the Design Patent Act provides protection for new, original, and ornamental designs, but this system is rarely used due to the high costs and complexities involved in securing a design patent.

2.4.2.3 China

China has become an increasingly important jurisdiction for fashion IP, both as a manufacturing hub and a consumer market. China's Trademark Law and its Anti-Unfair Competition Law provide some protection for fashion designs, although enforcement has historically been weak. Recent amendments to the Trademark Law (2019) have strengthened protections, and China has been taking steps to improve its intellectual property enforcement in the fashion industry.

2.4.3 Emerging Legal Trends

The fashion industry is witnessing the emergence of several legal trends, particularly in the areas of digital IP enforcement, sustainability, and blockchain technology. These emerging trends reflect the evolving nature of the fashion industry and the increasing importance of intellectual property in the digital age.

2.4.3.1 Digital IP Enforcement

With the rise of e-commerce and digital platforms, intellectual property enforcement has become increasingly difficult. Online counterfeiting is a major challenge for fashion brands, and courts are beginning to hold online platforms accountable for the sale of counterfeit goods. For example, in the case of *LVMH v. Amazon*, the luxury goods company successfully argued that Amazon was liable for hosting listings of counterfeit goods. This case sets a precedent for other fashion brands seeking to protect their designs and trademarks in the online marketplace.

2.4.3.2 Sustainability & IP

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

Sustainability has become a significant concern in the fashion industry, and intellectual property may play a role in driving sustainable practices. Some experts argue that extending IPR protection to eco-friendly innovations, such as sustainable fabrics or low-waste manufacturing processes, could incentivize designers to create more sustainable fashion. At the same time, others caution that overly strict IP protections may limit collaboration in the sustainable fashion sector.



CHAPTER 3:



III. Emerging Trends and Legal Evolution in Fashion Copyright

The fashion industry is undergoing a transformative shift driven by the convergence of technology, sustainability demands, and legal innovation. As design processes become increasingly digitized, and as global consumers become more conscious of ethical production and environmental impacts, fashion copyright must evolve to stay relevant. This section delves into the most critical emerging trends—digital fashion, sustainability legislation, and new technological enforcement mechanisms—and examines how these forces are shaping the future of intellectual property in fashion.

A. Digital Fashion and Virtual IP Rights: Redefining Ownership in the Metaverse

1. The Rise of Digital-Only Clothing and NFTs

In recent years, the fashion world has seen the emergence of digital-only clothing and NFT (Non-Fungible Token) fashion assets that exist exclusively in virtual spaces. Brands such as DressX, The Fabricant, and RTFKT have led this innovation, creating 3D-rendered outfits that consumers can wear in digital environments—such as social media, video games, or the metaverse. These virtual garments are often minted as NFTs, providing digital proof of ownership and authenticity via blockchain technology.

However, the legal status of these creations remains a gray area. Traditionally, copyright laws

ISSN: 2581-8503

have been anchored in the protection of physical or tangible expressions of creativity. Digitalonly garments challenge this foundation, prompting crucial questions: Can a design that never exists in physical form be copyrighted? What happens when a physical design is digitally replicated, altered, or commercialized as a virtual good? A landmark ruling in **Hermès v. MetaBirkins (2023)** offered initial clarity. In this case, a U.S. jury found that NFTs depicting fur-covered Birkin bags infringed Hermès' trademark rights, even though the bags did not exist in physical form. While the ruling reinforced that IP protections extend into virtual realms, it left unresolved whether *original* digital designs—without real-world analogues—are entitled to the same protections.

2. AI-Generated Designs and the Authorship Debate

The proliferation of generative AI tools, such as MidJourney, DALL-E, and ChatGPT, is further complicating fashion copyright. Designers are increasingly turning to these technologies to ideate and prototype garments, sometimes creating entire collections with minimal human intervention. But this technological creativity raises critical legal and philosophical questions about authorship. Who owns the rights to a design generated by an AI? Is the programmer, the user, or the AI itself the rightful creator?

In 2023, the U.S. Copyright Office ruled that works created entirely by AI lack the human authorship necessary for copyright protection. This stance has sparked intense academic debate. Mark Lemley (2023) argues that AI-assisted works—when guided and curated by a human designer—should be eligible for copyright, emphasizing the collaborative nature of creativity in the digital age. Conversely, Christopher Sprigman (2024) maintains that such works should remain ineligible, warning that expanding copyright to non-human creators undermines the fundamental goal of rewarding human originality. The legal consensus remains elusive, but it is clear that as AI tools become more embedded in design workflows, legislatures will need to revisit and possibly redefine the criteria for authorship.

3. Proposed Legal and Technological Solutions

In response to these evolving challenges, several global initiatives and technological innovations are being proposed. The **World Intellectual Property Organization (WIPO)** launched the *Digital Fashion Initiative* in 2024, aimed at creating an international framework for recognizing and enforcing intellectual property rights in virtual spaces. The initiative may eventually result in a new legal category—*digital design rights*—distinct from traditional copyright or trademark protections.

Another promising solution involves the use of **smart contracts**. These blockchain-based tools can be programmed to automatically distribute royalties to designers whenever a digital fashion

asset is resold or reused, ensuring ongoing compensation and attribution. Additionally, **3D file watermarking**—embedding invisible, traceable tags within the digital files of garments offers a technological means of combating piracy and tracking unauthorized reproductions. These innovations collectively signal a move toward a more proactive and technologicallyintegrated IP regime.

B. Sustainability and the "Right to Repair" Movement: The Clash Between Exclusivity and Circular Fashion

1. How Copyright Hinders Sustainable Practices

As the global fashion industry faces mounting criticism for its environmental footprint, new sustainability-driven reforms are emerging. However, these reforms are clashing with existing copyright structures in ways that hinder sustainable practices such as recycling, upcycling, and garment repair. Many high-fashion designs incorporate copyrighted elements—such as distinctive prints, embroidered logos, or signature silhouettes—that are protected under intellectual property law.

These protections, while essential to preserving brand value, can inadvertently stifle circular fashion practices. For example, a consumer attempting to upcycle a used **Burberry trench coat** may encounter legal hurdles if they disassemble the garment and repurpose its iconic tartan lining, which is a protected design element. Similarly, third-party businesses that offer garment alterations or repairs could be seen as infringing copyrights when modifying these elements, even for sustainability purposes.

A potential turning point is the **EU's Ecodesign Regulation**, set to take effect in 2025. This regulation mandates that all textiles must be recyclable by design, potentially requiring brands to simplify garment construction and eliminate features that obstruct recycling. Crucially, the regulation may limit the enforceability of copyright protections that conflict with environmental design standards. Legal scholars are watching closely to see how this conflict between sustainability and IP exclusivity plays out in courtrooms across Europe.

2. The "Right to Repair" Movement's Legal Impact

The "Right to Repair" movement has gained traction globally, advocating for consumers' ability to freely modify, repair, or repurpose their belongings—including clothing. In the fashion context, this movement challenges the idea that only the original designer or brand can legally alter a copyrighted garment. Legislative responses are already underway. In the United States, the proposed **Fashion Act** and in the European Union, the **Right to Repair Directive**, aim to solidify consumers' rights to repair clothing, even if it includes protected elements.

www.whiteblacklegal.co.in Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

Luxury fashion houses have largely opposed such reforms. They argue that allowing thirdparty modifications compromises the integrity of their designs and opens the door for counterfeiting. For example, transforming a **Louis Vuitton handbag** into a smaller purse or wallet could result in legal action, even if done for personal use or resale. Opponents also warn that the loosening of IP protections under the banner of repair rights may create exploitable loopholes for black-market operations.

Nevertheless, supporters argue that IP laws must evolve to accommodate environmental priorities. Denying consumers the right to repair or creatively reuse fashion items not only contributes to textile waste but also reinforces the unsustainable cycle of overconsumption.

3. Case Study: Eileen Fisher's "Renew" Program

The Eileen Fisher "Renew" program serves as a compelling case study at the intersection of sustainability and copyright. Launched to promote circular fashion, the program collects used garments, refurbishes them, and resells them as upcycled pieces—often featuring modified or repurposed versions of the brand's original designs. While the initiative has been widely praised for its environmental leadership, it also flirts with the legal boundaries of copyright law.

Legal experts are closely monitoring how the Renew program navigates potential infringement risks, especially as other brands consider similar models. If Eileen Fisher avoids litigation and establishes a precedent for legally-compliant upcycling, it could inspire broader industry adoption. On the other hand, a successful challenge from an IP holder could deter brands from embracing circularity, reinforcing the need for legal reforms that balance exclusivity with sustainability.

C. Technological Enforcement Tools: Monitoring IP in the Digital Age

1. AI-Powered Monitoring of Infringement

1 1. 1991.

1.12.2 1

With the growth of e-commerce and social media, the speed and scale of fashion piracy have exploded. In response, brands are deploying **AI-powered monitoring tools** to scan online marketplaces and websites for counterfeit products in real time. Companies like **Red Points** utilize machine learning to identify infringing items based on image recognition, metadata, and pricing anomalies, allowing for faster takedown requests and legal action.

This shift from reactive enforcement to proactive surveillance marks a new frontier in fashion copyright. Rather than waiting for infringement to be discovered by chance or reported by consumers, brands can now actively monitor digital spaces at scale—protecting their IP with unprecedented efficiency.

Volume 3 Issue 1 | May 2025

2. 3D Watermarking and Biometric Fabric Labels

Another emerging enforcement tool is **3D watermarking**, where invisible markers are embedded into digital fashion design files. These markers can trace unauthorized reproductions, leaks, or commercial use of protected assets. Major e-commerce platforms in Asia, including **Alibaba**, have begun adopting such technologies through their AI labs to assist brands like Prada and Gucci in proving design ownership in legal disputes.

On the physical side, innovations such as **biometric fabric labels** are being integrated into garments to prevent counterfeiting. The **AWARE platform by Eon**, for instance, embeds RFID chips and blockchain-linked tags in textiles, enabling verification of authenticity through both digital and tactile scanning. These biometric labels ensure that garments can be tracked throughout their lifecycle, offering proof of origin and ownership.

3. Legal Implications and Future Outlook

I TU

The legal implications of these enforcement tools are complex. While they offer powerful means of protection, they also raise concerns about privacy, data collection, and surveillance. Courts are still determining whether technologies like watermarking or biometric tagging establish new forms of IP or serve merely as enforcement aids. In the pending case of **Prada v. Alibaba** (2024), the outcome may establish precedents for how far brands can go in using embedded tech to assert ownership and pursue infringement claims.

Ultimately, these tools represent a shift toward a **proactive IP regime**, where the goal is to prevent infringement before it happens—not just punish it after the fact. As technology continues to evolve, legal systems will need to adapt quickly to regulate the use of these tools fairly and effectively.

GA

Deepened Comparative Legal Analysis: Key Jurisdictions at a Crossroads

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

Jurisdiction	Copyright Strengths	Critical Weaknesses	Recent Developments
United States	- Strong trademark enforcement - <i>Star Athletica</i> expanded copyright to separable designs	 No protection for garment silhouettes Slow litigation 	(2023)holds platforms liable for counterfeits
European Union		EU enforcement	_
China	damages - Specialized IP courts	protectionism in manufacturing hubs	- Anti-Unfair Competition Law (2024) targets live-streaming counterfeit sales - Blockchain evidence now admissible in court
Japan	- Strong enforcement for	"parallel imports"	 Metaverse IP Guidelines (2023)address virtual fashion New AI copyright rules (2024)
India	(2000)protects aesthetics - Traditional knowledge	(5+ year delays)	 Proposed Fashion Design Piracy Bill (2025) Push for ODR (Online Dispute Resolution)

Critical

Insight:

The EU's **unregistered design rights** offer the gold standard for fast protection, while the U.S. lags due to its **separability doctrine**. China's enforcement improvements are undermined by local counterfeiting ecosystems. Emerging markets like India and Brazil are testing **sui generis** (custom) systems for traditional designs.

Case Studies on Copyright Disputes in Fashion

Volume 3 Issue 1 | May 2025

Gucci vs. Forever 21 (2017): The Battle Over Stripes

In 2017, Gucci initiated legal proceedings against fast fashion retailer Forever 21 regarding the unauthorized use of its distinctive blue-red-blue stripe pattern. This dispute centered on whether color combinations could receive trademark protection in fashion applications. Gucci's legal team presented substantial evidence demonstrating the stripe design's association with their brand, including documentation of decades of consistent use across product lines and marketing materials showing millions spent promoting items featuring this signature element. Forever 21 mounted a vigorous defense, challenging the protectability of such basic design elements. Their legal arguments focused on two main points: first, that color stripes serve an essential aesthetic function in clothing design, and second, that numerous other brands had employed similar stripe combinations throughout fashion history. The retailer's legal team presented archival evidence showing comparable stripe patterns used by various companies dating back to the mid-20th century.

The litigation dragged on for nearly eighteen months before concluding with a confidential settlement. While the exact terms remain undisclosed, industry analysts noted that Forever 21 subsequently removed the contested items from their product lines. This case established important precedents regarding the evidentiary standards needed to prove secondary meaning for color-based trademarks in fashion. It also highlighted the challenges luxury brands face when attempting to protect design elements against fast fashion retailers who operate on significantly shorter production timelines.

Adidas vs. Thom Browne (2023): The Stripes Redefined

The legal confrontation between sportswear giant Adidas and luxury designer Thom Browne provided a fascinating examination of trademark boundaries in fashion design. Adidas, holder of one of the world's most recognizable trademarks in their three-stripe design, alleged that Thom Browne's use of parallel stripes on footwear and apparel created consumer confusion. The case became particularly noteworthy as it pitted a mass-market athletic brand against a high-end fashion label, raising questions about market segmentation in trademark analysis. During the trial, both parties presented extensive evidence regarding consumer perception. Adidas introduced market research demonstrating high recognition rates for their stripe motif, while Thom Browne's team countered with evidence showing their customer base consisted of sophisticated luxury consumers unlikely to confuse the brands. Expert witnesses debated whether the additional stripe in Thom Browne's designs created sufficient visual distinction. The jury's unanimous decision in favor of Thom Browne sent ripples through the fashion legal

community. The verdict suggested courts might be reluctant to grant broad monopoly rights

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

over basic design elements, even to established trademark holders. The case also underscored the importance of consumer surveys and market evidence in contemporary fashion trademark disputes.

Fenty x Puma vs. Shein (2022): The Fast Fashion Challenge

This case exemplified the unique challenges posed by ultra-fast fashion retailers in intellectual property protection. The dispute arose when Shein produced and sold remarkably similar versions of Rihanna's Fenty x Puma fur slide sandals within weeks of their original release. Puma's legal team faced the difficult task of proving not just copying, but doing so within an unprecedentedly short timeframe that challenged traditional legal processes.

The litigation revealed important insights about Shein's business model, including their ability to move designs from concept to production in under two weeks. Court documents showed how the company monitored social media and celebrity trends to identify potential designs for replication. Puma ultimately succeeded in obtaining a settlement that included removal of the infringing products, but the case highlighted systemic issues in protecting designs against companies operating with such rapid production cycles.

Legal scholars noted this case demonstrated how existing intellectual property frameworks struggle to address the realities of digital-age fashion retail. The speed of Shein's operations often allows them to complete entire product cycles before rights holders can obtain legal remedies, creating what some commentators call a "legal grey zone" in fashion design protection.

Artist Jason Polan vs. Zara (2018): Artistic Rights in Fashion

The legal action brought by the estate of illustrator Jason Polan against Zara presented distinct issues regarding the incorporation of artistic works into fashion designs. Polan's distinctive sketch style, particularly his "Every Person in New York" series, was allegedly copied by Zara for various graphic tee designs. This case differed from typical fashion copyright disputes by focusing on two-dimensional artwork applied to clothing rather than the designs of garments themselves.

Zara's defense team argued that the designs represented a common urban sketch style rather than direct copies of Polan's work. However, discovery uncovered internal communications referencing Polan's Instagram feed as inspiration, undermining claims of independent creation. The settlement included not just financial compensation but also mandated employee training programs, suggesting a recognition that such infringement resulted from systemic issues rather than isolated incidents.

www.whiteblacklegal.co.in Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

This case served as an important reminder to fashion companies about the risks associated with sourcing design inspiration from online artist communities. It also demonstrated how social media platforms have become evidentiary goldmines in contemporary copyright litigation, with digital footprints providing crucial proof of infringement timelines and design processes.



Comparative Analysis of Case Outcomes

Case	Legal Theory	Outcome	Damages	Precedent Set
Gucci v. Forever 21	Trademark	Settlement	Confidential	Color combo protection
Adidas v. Thom Browne	Trademark	Defense verdict	\$0	Limits on simple marks
Fenty v. Shein	Copyright/Trade dress	Settlement	Estimated \$500K	Fast fashion liability
Polan v. Zara	Copyright	Settlement	\$200K	Social media as evidence



3.6 Upcoming Legislation and Academic Debates in Fashion Intellectual Property As the fashion industry continues to evolve under the influence of digital technologies, globalization, and shifting cultural norms, intellectual property (IP) law faces increasing pressure to keep pace. Recent legislative developments and academic discourse have sparked renewed interest in the adequacy, adaptability, and equity of IP protections in fashion. This section explores significant pending legislation across key jurisdictions and highlights influential academic contributions that are shaping contemporary debates on fashion IP.

A. Pending Laws to Watch

1. The U.S. INFORM Consumers Act (2024)

In response to the surge of counterfeit goods proliferating through online marketplaces, the U.S. government enacted the **INFORM Consumers Act**, which came into force in 2024. This legislation marks a critical step toward improving accountability within the digital retail ecosystem. The act mandates that e-commerce platforms—such as Amazon, eBay, and Etsy—verify the identities of high-volume third-party sellers. The objective is to deter anonymous listings of counterfeit or stolen merchandise, which have long plagued both consumers and legitimate fashion brands.

The INFORM Act requires platforms to collect, verify, and disclose essential business information, including bank account details, government-issued identification, tax

ISSN: 2581-8503

identification numbers, and contact information. Platforms must also implement clear mechanisms for consumers to report suspicious listings. This law is expected to shift some responsibility from enforcement authorities and rights holders to the platforms themselves, fostering a safer and more transparent online shopping environment.

From a fashion industry perspective, this act offers potential relief for both luxury and independent designers who frequently face profit erosion and brand dilution due to counterfeit sales. By increasing seller traceability and consumer trust, the INFORM Act could contribute to the broader effort to safeguard brand integrity and uphold IP standards in digital commerce.

2. The European Union AI Act (2025)

As artificial intelligence becomes more embedded in the creative process—particularly in areas like fashion design, trend forecasting, and personalization—the European Union's **AI Act**, set for implementation in 2025, is poised to have profound implications. This groundbreaking regulation seeks to impose comprehensive standards on the development and deployment of AI across member states, with specific attention paid to transparency, accountability, and ethical concerns.

For the fashion sector, the AI Act introduces the possibility of mandatory **disclosure of training data** used in AI models that generate creative content. This requirement could significantly affect companies and platforms using generative AI tools to produce fashion sketches, patterns, or entire collections. If enacted in its current form, fashion houses employing AI tools may need to prove that their training data did not infringe upon protected works, including copyrighted designs, proprietary textile prints, or culturally sensitive materials.

Critics argue that this provision may stifle innovation by imposing burdensome documentation requirements and legal ambiguity. Proponents, however, see it as a necessary safeguard against the unauthorized exploitation of creative inputs. For fashion designers, especially those concerned about AI reproducing their unique aesthetic or drawing on protected elements without consent, the AI Act offers a potential layer of protection and ethical oversight.

3. The UK Resale Royalty Bill

In the United Kingdom, lawmakers are currently debating the **Resale Royalty Bill**, a proposal that could radically shift the dynamics of value distribution in the fashion resale market. This legislation, inspired by the **Artists' Resale Right** already applied to fine art, seeks to entitle fashion designers to a percentage of proceeds every time their designs are resold on secondary markets.

This bill reflects the changing nature of consumer behavior, especially among Gen Z and millennial shoppers who frequently engage with platforms like Depop, Vestiaire Collective, and The RealReal. As vintage and secondhand fashion becomes increasingly popular and profitable, many designers argue that they deserve ongoing compensation for the enduring commercial value of their work.

The proposed system would likely involve a sliding scale royalty model and a centralized collection agency, ensuring that royalties are fairly distributed and not overly burdensome for casual sellers. While critics warn that such a law may discourage resale activity or increase costs for consumers, supporters emphasize its potential to enhance fairness, sustainability, and economic justice within the fashion value chain. If passed, this bill would represent a paradigm shift in how creative contributions are monetized beyond the point of first sale.

B. Key Academic Works Shaping the Debate

Alongside legal reforms, a vibrant body of academic literature is reshaping how we conceptualize intellectual property in fashion. Scholars from law, economics, cultural studies, and technology are offering fresh perspectives on the utility, limits, and future of IP in a rapidly changing landscape.

1. "The Piracy Paradox Revisited" – Raustiala & Sprigman (2024)

In their updated and widely discussed work, **"The Piracy Paradox Revisited,"** legal scholars **Kal Raustiala and Christopher Sprigman** revisit their influential theory that weak IP protection may actually benefit the fashion industry. Their 2006 paper challenged traditional assumptions by arguing that the lack of strong legal protections for apparel design encourages innovation and trend acceleration. The 2024 revision reexamines this thesis in light of new developments, including the rise of fast fashion, digital design, and AI-generated clothing.

The authors continue to assert that the cyclical nature of fashion—where styles quickly evolve and disseminate—thrives in an environment of loose copyright enforcement. Copying, they argue, acts as a form of diffusion that enhances the prestige of original creators and stimulates demand for newer designs. However, they also acknowledge emerging complexities, such as digital duplication, global manufacturing networks, and AI tools that blur the lines between inspiration and infringement.

Their nuanced stance suggests that while over-protection may stifle creativity and market dynamism, some form of calibrated protection might be necessary to address the specific needs of certain designers, particularly small and independent labels who cannot absorb the losses

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

associated with rampant copying. This work continues to provoke debate over whether fashion is best served by embracing or resisting traditional IP frameworks.

2. "Blockchain as IP Infrastructure" – Mark Lemley (2023)

In his seminal 2023 paper, **"Blockchain as IP Infrastructure,"** legal scholar **Mark Lemley** explores the potential of blockchain technology to transform intellectual property enforcement and registration. He envisions a decentralized, tamper-proof, and transparent system where designers can log their creations in real-time, thereby establishing verifiable proof of authorship and ownership.

Such a system could provide fashion designers with a cost-effective and accessible means to protect their work, especially in jurisdictions lacking comprehensive design rights legislation. By leveraging smart contracts and digital tokens, designers could also automate licensing, track usage, and even receive micro-royalties for digital renderings of their designs used in virtual fashion shows, metaverse platforms, or AI-generated mashups.

Lemley's proposal is especially timely as the fashion industry becomes increasingly digitized. From virtual try-ons to NFT-based collections, the need for secure digital rights management is growing. His paper makes a compelling case that blockchain could democratize IP protection while reducing reliance on slow and expensive bureaucratic processes. However, critics point out challenges such as scalability, energy consumption, and the need for cross-border legal recognition of blockchain records.

3. "Cultural Appropriation as Copyright Violation" – Susan Scafidi (2024)

Susan Scafidi, a pioneer in the field of cultural appropriation and fashion law, expands on her groundbreaking ideas in her 2024 publication, "**Cultural Appropriation as Copyright Violation**." In this thought-provoking work, she argues for a radical rethinking of copyright frameworks to include **traditional cultural expressions** (**TCEs**) and **indigenous designs** as protectable subject matter.

Scafidi contends that many cultural artifacts—such as Native American beadwork, African tribal prints, or South Asian embroidery—are routinely co-opted by mainstream fashion brands without credit or compensation. Current copyright law, which prioritizes originality and individual authorship, fails to recognize the collective and ancestral nature of these designs. Her proposal calls for the establishment of sui generis rights that would empower communities to control and license the use of their cultural assets.

She further suggests that AI-generated fashion trained on indigenous or cultural imagery raises

www.whiteblacklegal.co.in Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

new ethical and legal dilemmas. If such tools reproduce elements of protected traditions, should the originating communities receive acknowledgment or royalties? By framing cultural appropriation not just as an ethical issue but as a legal one, Scafidi's work challenges institutions to consider the intersection of IP law, social justice, and postcolonial theory.



Sustainability and Copyright: The Clash Between Exclusivity and Circular Fashion As the fashion industry grapples with its environmental footprint, sustainability has become a defining challenge and opportunity. Circular fashion—based on principles of reuse, repair, recycling, and upcycling—has emerged as a counter to the traditional linear model of production and consumption. Yet, this shift toward sustainability frequently encounters legal roadblocks, particularly in the realm of intellectual property (IP). While copyright law was originally designed to incentivize creativity and protect artistic expression, its application in fashion often serves to reinforce exclusivity and inhibit sustainable practices. This tension between environmental ethics and legal protections has prompted both policy reform and academic scrutiny.

ISSN: 2581-8503

One of the more contentious intersections between copyright and sustainability lies in the practice of upcycling and recycling existing garments. These processes, which are essential to circular fashion, often involve the alteration, disassembly, or repurposing of existing clothing. However, many garments—especially those from luxury fashion houses—incorporate design elements that are protected under copyright law, such as original prints, graphic elements, or embroidery patterns.

Take, for example, **Burberry's iconic tartan**, a design that is both trademarked and protected under copyright in various jurisdictions. Any attempt to disassemble a garment bearing this print for reuse or repurposing may constitute an act of copyright infringement, even if the intent is purely environmental. Similarly, altering a garment with a copyrighted design—such as turning a designer shirt into a tote bag—can be legally problematic if it is considered a derivative work made without permission from the rights holder.

Additionally, copyright law restricts **third-party repairs and modifications** that alter the protected aspects of a garment. While repairing a torn seam may be permissible, modifying or replacing an element that involves a protected design—like a logo patch or signature fabric—can expose repairers to legal liability. This not only disincentivizes sustainable consumption but also centralizes power in the hands of original manufacturers, many of whom have little interest in promoting longevity or reuse if it conflicts with new product sales.

However, this paradigm may begin to shift with the implementation of the European Union's Ecodesign for Sustainable Products Regulation (2025). This legislation, part of the EU Green Deal, mandates that all products—including fashion items—must be designed for recyclability, repairability, and durability. While its primary intent is environmental, it may have the indirect effect of overriding certain IP protections that impede circularity. For instance, if a garment must be legally designed for disassembly, copyright claims preventing such disassembly may be challenged or deemed unenforceable. The Ecodesign Regulation could thus set a powerful precedent for reconciling sustainability goals with intellectual property frameworks.

B. The "Right to Repair" Movement's Impact

Running parallel to the ecodesign initiative is the growing global movement for the "**Right to Repair**," which advocates for legal reforms that empower consumers to repair and modify their own goods. Traditionally associated with electronics, this movement has recently extended to fashion, driven by the rise of do-it-yourself (DIY) culture, economic pressures, and environmental concerns.

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

In the **United States**, the **Fashion Act**, a pending piece of legislation in New York State, includes provisions that support sustainable practices through greater supply chain transparency and responsible labor practices. Although the act is primarily focused on environmental and social disclosures, it aligns with broader legislative trends that support consumer autonomy, including the right to repair. Meanwhile, in the **European Union**, the **Right to Repair Directive**—a broader legislative framework—includes apparel among the list

of products where users should be entitled to repair, modify, or reuse items without legal interference from manufacturers or rights holders.

For luxury fashion brands, however, these legislative moves represent a serious challenge. Many argue that allowing unsanctioned repairs or modifications dilutes **brand integrity**. For example, repurposing a **Louis Vuitton bag** into a smaller purse or a phone case may degrade the brand's image, especially if the new product is sold without authorization. Luxury houses also worry that the right to repair could create **loopholes for counterfeiters**, who might present fake or heavily altered items as legitimate "repaired" products. This tension reveals the delicate balance between protecting IP rights and empowering consumers to participate in sustainable fashion practices.

Despite these concerns, public support for the right to repair continues to grow, driven by climate activism and the popularity of secondhand marketplaces. Legally resolving this conflict will require nuanced approaches, such as establishing **fair use exceptions for sustainability**, **labeling requirements for modified goods**, or **licensing models for authorized repairs**.

C. Case Study: Eileen Fisher's "Renew" Program

An instructive example of how fashion brands can navigate the intersection of copyright and sustainability is the **"Renew" program by Eileen Fisher**. This initiative collects worn Eileen Fisher garments from customers, refurbishes or upcycles them, and then resells the revitalized pieces under the Renew label. In doing so, the company reuses its own copyrighted designs in a new commercial context, offering a model of circularity that aligns with brand values while testing the limits of IP law.

From a legal standpoint, the Renew program occupies a gray area. Although Eileen Fisher owns the original copyrights to its designs, the transformation and resale of modified versions of those designs potentially raise issues related to **derivative works**, **design integrity**, and **trademark association**. Legal experts are closely watching such programs to determine whether they might invite litigation under different circumstances—particularly if other brands attempt similar initiatives without maintaining ownership of the original design IP.

ISSN: 2581-8503

What sets Renew apart is that it operates with full internal control and transparency. The brand refurbishes only its own products and markets them under the same corporate umbrella, thereby avoiding the legal complications that third-party upcyclers or resellers often face. Nevertheless, the legal precedent remains uncertain. If sustainability is to become a universal standard rather than a niche practice, clearer legal frameworks will be needed to guide fashion brands in adopting such models without fearing legal reprisal.

IV. Comparative Legal Analysis: How Jurisdictions Are Adapting

To fully grasp the tension between copyright and sustainability, it is important to examine how various legal jurisdictions are responding. Some countries have taken proactive steps to modernize their IP laws to accommodate fashion's evolving needs, while others lag behind, creating regulatory uncertainty for designers, consumers, and enforcement agencies alike.

A. United States: The "Separability" Struggle

The United States remains one of the most restrictive jurisdictions when it comes to fashion design protection, largely due to the **doctrine of separability** established in the Supreme Court case **Star Athletica v. Varsity Brands (2017)**. According to this ruling, only design elements that are **physically or conceptually separable** from the functional aspects of a garment are eligible for copyright protection.

This narrow interpretation has made it difficult for fashion designers to secure robust IP protection, as most clothing design is considered inherently functional. As a result, U.S. designers must rely on alternative forms of IP protection—such as **trademarks** for logos or **design patents** for specific features—each of which comes with limitations and high costs.

To address these shortcomings, the proposed **Innovative Design Protection Act (IDPA 2024)** aims to create a sui generis system of protection specifically for fashion designs. If passed, this act would offer a **three-year term of protection** for original apparel designs, finally closing the gap left by the separability doctrine and bringing the U.S. more in line with international standards.

B. European Union: The Gold Standard for Design Rights

In contrast, the European Union offers a far more comprehensive legal regime for protecting fashion design. Under the **Community Design Regulation**, designers are automatically granted **three years of unregistered design protection** from the moment a design is made public. If greater protection is needed, they can apply for **registered design rights** that extend

up to 25 years.

This two-tier system offers flexibility and legal certainty, particularly for emerging designers and fast-moving brands. The EU's commitment to enforcement has also been strengthened by the **Digital Services Act (DSA, 2024)**, which requires online platforms to take down counterfeit goods within **24 hours** of receiving a valid notice. This aggressive stance is a game-changer in a digital marketplace where counterfeits are increasingly prevalent.

Moreover, the EU's sustainability-oriented legislation, such as the Ecodesign Regulation, signals an evolving legal environment that supports circular fashion while maintaining strong IP protection. This balanced approach positions the EU as a global leader in both sustainable fashion and design rights.

C. China: Enforcement vs. Reality

China presents a complex case. On paper, the country has made significant strides to improve IP protection in fashion, especially with the **2020 amendments to its Copyright Law**, which broadened the scope of protectable works and introduced higher penalties for infringement. However, **enforcement remains inconsistent** due to factors such as **local government protectionism**, which often shields counterfeit manufacturers in key industrial regions, and **slow judicial processes**, with many IP cases taking over **two years** to reach resolution.

To address these issues, China has begun to experiment with **blockchain-based evidence submission**, allowing brands to timestamp and verify their designs in a way that is admissible in court. Brands like **Gucci** and **Nike** have already used such tools to fast-track litigation and prove infringement more efficiently. While promising, these reforms are still in their infancy and have yet to be adopted nationwide.

D. Emerging Markets: India and Brazil

In **India**, the legal framework for fashion design protection remains fragmented, but recent legislative proposals offer hope for reform. The **Fashion Design Piracy Bill (2025)**, if enacted, would create a dedicated IP tribunal focused on fashion, allowing for quicker resolution of disputes and specialized jurisprudence. This would be a significant step forward for a country with a rich textile heritage and a booming fashion industry.

Similarly, **Brazil** is leveraging its cultural assets by introducing the "**Moda Autoral**" system, which extends protection to traditional craftsmanship under **folklore and cultural heritage laws**. This sui generis approach acknowledges the communal nature of many design traditions and offers a form of legal redress against cultural appropriation—an issue increasingly at the

center of global fashion debates.

V. Upcoming Legislation and Academic Debates

The evolving relationship between fashion, copyright, and sustainability is also being shaped by upcoming legislative reforms and scholarly analysis. As discussed earlier, three major legal developments warrant attention: the **U.S. INFORM Consumers Act (2024)**, the **EU AI Act** (2025), and the **UK Resale Royalty Bill**. Each of these addresses critical gaps in current IP law, from counterfeit control to ethical AI use and resale rights.

On the academic front, thought leaders such as **Raustiala & Sprigman**, **Mark Lemley**, and **Susan Scafidi** are advancing bold frameworks for reimagining IP law in a digital and multicultural world. Whether calling for **weaker protections** to foster trend cycles, promoting **blockchain** as a decentralized enforcement tool, or demanding recognition for **indigenous creativity**, these scholars are pushing the boundaries of conventional IP theory.



CHAPTER 4: TRADEMARKS & BRAND PROTECTION



Trademarks are one of the most critical aspects of intellectual property (IP) protection in the fashion industry. They serve not only as identifiers of a product's source but also as powerful marketing tools that establish a brand's identity and reputation. Given the highly competitive and globalized nature of the fashion industry, protecting a brand's trademark is paramount. This chapter explores the significance of trademarks in the fashion industry, the challenges surrounding trademark infringement, the role of brand identity in fashion IP, and examines high-profile trademark disputes involving luxury brands.

4.1 Importance of Trademarks in Fashion

Trademarks are essential to the fashion industry for several key reasons. They are not only legal tools that provide protection against counterfeiting and unauthorized use, but also crucial for maintaining a brand's reputation, identity, and consumer trust. A trademark can encompass various elements, such as logos, brand names, symbols, slogans, and even the design and shape of a product, as long as it serves to distinguish one company's goods or services from another's.

4.1.1 Trademarks as Business Assets

In the fashion industry, a trademark is often one of the most valuable business assets a company

ISSN: 2581-8503

can possess. Fashion brands, particularly in the luxury sector, invest significant time, effort, and resources in building their brand image and cultivating consumer loyalty. Trademarks serve as a shorthand for quality, craftsmanship, and exclusivity, which are especially important in luxury fashion. A recognizable trademark becomes a powerful marketing tool that can influence consumer perceptions, drive sales, and foster long-term relationships with customers. For example, the iconic "swoosh" logo of Nike or the "double C" logo of Chanel is not just a mark of ownership but an integral part of the brand's identity. The reputation associated with these logos, developed over years of careful brand management, is a critical driver of the companies' market positions. Trademark protection ensures that unauthorized parties cannot exploit these valuable assets for profit, which is essential for maintaining brand equity.

4.1.2 Consumer Protection and Trust

Trademarks are also essential for consumer protection. By identifying the source of goods, trademarks allow consumers to make informed purchasing decisions. In the fashion world, where the distinction between high-end luxury items and counterfeit or knockoff products is often subtle, trademarks serve as a safeguard for consumers. For instance, a customer purchasing a designer handbag expects not only the quality and craftsmanship of the product but also the assurance that they are buying a genuine article. Without trademarks, counterfeit goods could flood the market, deceiving consumers into purchasing substandard products that do not meet the standards of the brand.

Trademarks help maintain consumer trust by ensuring that the goods or services associated with a particular brand are of the expected quality. When counterfeit goods infiltrate the market, they not only damage the brand's reputation but also erode the trust that consumers place in the trademark.

4.1.3 Brand Value and Marketing Power

The value of a trademark goes beyond its function as a legal asset; it is also a key driver of marketing and consumer loyalty. The ability to craft and protect a unique and recognizable brand identity is crucial in fashion, where trends evolve rapidly, and consumer preferences are ever-changing. A strong trademark can distinguish a brand in a crowded market and attract a loyal following.

For example, brands like Louis Vuitton and Gucci have successfully turned their trademarks into symbols of status and luxury. These logos do not simply indicate the source of a product; they embody an image, a lifestyle, and an aspirational identity. Fashion brands invest heavily in advertising, endorsements, and collaborations, using their trademarks as key elements in campaigns designed to elevate the brand's prestige. The trademark, therefore, becomes

intertwined with the brand's cultural relevance and perceived exclusivity.

4.2 Trademark Infringement and Legal Precedents

Trademark infringement occurs when a party uses a trademark that is identical or confusingly similar to an existing registered trademark without authorization. This infringement can lead to consumer confusion, harm to the brand's reputation, and loss of sales. The fashion industry, being a prime target for counterfeiters, faces frequent challenges in enforcing trademark rights. As a result, trademark protection is vital for fashion brands to preserve their intellectual property and safeguard their competitive position in the marketplace.

4.2.1 Forms of Trademark Infringement in Fashion

In the fashion industry, trademark infringement can manifest in various ways. One of the most common forms is the unauthorized use of brand logos or symbols on counterfeit goods. These goods, often made with inferior materials, are sold at lower prices and marketed as though they were genuine products from the luxury fashion house. The unauthorized reproduction of design elements, such as patterns, colors, and distinctive shapes, can also be considered trademark infringement if the design is sufficiently associated with a specific brand.

Another type of infringement is "trade dress" infringement, which refers to the overall appearance and feel of a product or its packaging. For instance, the distinctive shape of a luxury handbag or the design of a high-end sneaker could be protected under trademark law if it serves as a recognizable symbol of the brand. If another company creates a similar product that imitates the look and feel of a well-known product, it may be accused of trade dress infringement.

4.2.2 The Challenge of Global Enforcement

One of the primary challenges in tackling trademark infringement in the fashion industry is the global nature of the problem. The rapid growth of e-commerce and online marketplaces has made it easier for counterfeit goods to be sold across borders, creating difficulties for trademark holders in enforcing their rights. Although international treaties, such as the *TRIPS Agreement* and the *Paris Convention*, set minimum standards for IP protection, enforcement remains inconsistent across different jurisdictions.

For example, counterfeit goods can be manufactured in one country, sold online in another, and purchased by consumers in a third country. This creates a complex web of legal issues, where fashion brands must navigate different laws and regulations in various markets to effectively combat trademark infringement. Furthermore, many jurisdictions have lax enforcement mechanisms, making it difficult to prevent the spread of counterfeit goods, even when legal action is taken.

4.2.3 Landmark Legal Precedents in Fashion Trademark Infringement

Several landmark legal cases have shaped the way trademark infringement is handled in the fashion industry. These cases have helped to define the boundaries of trademark law, especially with regard to the protection of iconic fashion brands.

One such case is the *Gucci v. Guess* litigation, which centered around Gucci's claims that Guess had copied its trademarks, including the iconic interlocking "G" logo, as well as its trademarked "green-red-green" stripe. After years of legal battles, Gucci successfully secured a settlement in 2010, with Guess agreeing to pay millions of dollars in damages. This case set a significant precedent for the protection of iconic brand elements, emphasizing that fashion houses could defend their trademarks vigorously, even when the alleged infringement involved subtle reproductions of logos and patterns.

Another key case is *LVMH v. eBay* (2008), where LVMH Moët Hennessy Louis Vuitton accused eBay of facilitating the sale of counterfeit luxury goods on its platform. The court ruled that eBay had a responsibility to monitor and remove counterfeit listings, leading to significant changes in how online marketplaces handle trademarked goods. This case marked a turning point in the digital enforcement of intellectual property, as it clarified the liability of online platforms in trademark infringement cases.

4.3 The Role of Brand Identity in Fashion IP

Brand identity plays a pivotal role in the protection of intellectual property in the fashion industry. It is the combination of logos, trademarks, design elements, and marketing strategies that give a brand its unique personality and recognition in the marketplace. Brand identity is often what differentiates high-end fashion labels from mass-market brands and counterfeit goods. It is also an important consideration in IP protection, as companies seek to preserve and control their brand's image.

4.3.1 The Link Between Brand Identity and Consumer Perception

In fashion, a brand's identity is closely tied to consumer perceptions of quality, luxury, and exclusivity. Consumers often associate a brand's trademark with its values, craftsmanship, and overall reputation. For example, the "LV" monogram of Louis Vuitton is more than just a logo—it signifies a rich heritage, timeless elegance, and high-quality craftsmanship. When a trademark is infringed upon, it can not only result in economic loss but also damage the public perception of the brand. Counterfeit goods that mimic high-end designs can undermine a brand's exclusivity and erode consumer trust.

4.3.2 Trademark and Brand Loyalty

A strong trademark fosters brand loyalty, as consumers develop emotional connections with

ISSN: 2581-8503

the brands they trust. Fashion consumers are often willing to pay a premium for goods from brands they feel represent their identity, aspirations, or lifestyle. This loyalty is often built on the consistent and exclusive nature of the brand, which is protected through trademarks.

Luxury brands, in particular, rely heavily on trademark protection to maintain their market position. These brands are typically known for their distinctive styles, high-quality materials, and unique brand messages. Trademarks serve as symbols of these attributes, ensuring that only authorized sellers can market and sell the goods. As a result, maintaining control over their trademarks is crucial for luxury brands to preserve their loyal customer base.

4.4 Case Studies: Luxury Brand Trademark Disputes

The fashion industry is replete with high-profile trademark disputes, particularly among luxury brands. These cases not only highlight the importance of protecting brand identity but also provide insight into the evolving challenges of trademark law in the fashion sector.

4.4.1 Louis Vuitton v. Guess

One of the most significant trademark disputes in recent years involved Louis Vuitton and Guess. Louis Vuitton, a leader in the luxury fashion industry, sued Guess in 2009 for allegedly infringing on its trademarks, including the famous "LV" monogram and the "Damier" pattern. Louis Vuitton accused Guess of copying its designs and using elements of its brand identity in a series of handbags, shoes, and accessories.

The case was particularly notable because it involved the issue of "trademark dilution." Louis Vuitton argued that Guess's use of similar patterns and logos would cause confusion among consumers and diminish the distinctiveness of the Louis Vuitton brand. After a lengthy legal battle, the case was settled in 2010, with Guess agreeing to pay significant damages and cease using the infringing designs. This case underscored the importance of trademark protection in the luxury fashion industry and highlighted the need for brands to defend their identity against counterfeiters and competitors.

4.4.2 Christian Louboutin v. Yves Saint Laurent

Another prominent trademark dispute in the fashion industry was the case between Christian Louboutin and Yves Saint Laurent (YSL). Louboutin, the French luxury footwear designer known for his iconic red-soled shoes, sued YSL in 2011, claiming that the use of red soles on YSL's shoes infringed on his trademark.

The case ultimately reached the U.S. Court of Appeals, which ruled in favor of Louboutin, affirming that the red sole was indeed a valid trademark. However, the court also ruled that the trademark was limited in scope and did not prevent YSL from using a red sole on shoes where the rest of the shoe was of a different color. This case emphasized the importance of distinctive

ISSN: 2581-8503

trademarks in the fashion industry and clarified the limits of trademark protection for design elements.

4.3 The Role of Brand Identity in Fashion IP

Brand identity in the fashion industry is tightly connected to intellectual property rights, particularly trademarks. A brand's identity is more than just its logo—it encompasses its reputation, design ethos, and emotional resonance with consumers.

4.3.1 The Link Between Brand Identity and Consumer Perception

A brand's identity is central to how it is perceived in the market. For fashion brands, particularly those in the luxury sector, the trademark represents more than just the product; it signifies the values, artistry, and exclusivity associated with the brand. The "red sole" of Louboutin shoes or the "LV" monogram of Louis Vuitton is instantly recognizable to consumers, reinforcing the perceived value of the product.

Brands invest significant resources in cultivating this identity through advertising, collaborations, and customer engagement. The trademark is a critical element in this process, providing a consistent and reliable symbol that consumers can trust and connect with on an emotional level.

4.3.2 Trademark and Brand Loyalty

Trademarks play a crucial role in building brand loyalty. The emotional connection consumers feel towards a brand is often tied to their association with that brand's trademarks. In the fashion industry, this connection is especially pronounced. Consumers often purchase luxury items not just for the product's quality but for the status and identity the brand conveys.

By maintaining a distinct and legally protected trademark, brands can safeguard their identity and preserve the loyalty of their customer base. A strong trademark also allows brands to stand out in a crowded market, where many competitors may offer similar products.

4.4 Emerging Trends in Digital Fashion and Brand Protection

With the increasing digitalization of fashion, new challenges have emerged in trademark law, particularly around digital assets, virtual goods, and the rise of NFTs (non-fungible tokens). Brands are now tasked with navigating the digital marketplace and ensuring that their trademarks are protected across virtual spaces.

4.4.1 Digital Fashion and Virtual Goods

Digital fashion, which includes virtual clothing, accessories, and NFTs, is quickly gaining traction as brands venture into virtual spaces like online gaming and virtual reality platforms. These digital products, which often carry a brand's trademark, raise complex issues

surrounding trademark protection.

For example, *Nike v. StockX* (2022) involved the sale of NFTs representing Nike sneakers, where Nike claimed that the resale platform StockX had sold unauthorized NFTs with Nike's trademark. This case is a critical example of how traditional trademark law needs to adapt to digital and virtual products in the fashion world. Brands are increasingly utilizing blockchain technology to create verifiable digital versions of their products, ensuring that virtual goods can be authenticated, and counterfeit versions can be easily tracked and removed.

4.4.2 Counterfeiting in the Digital Era

Counterfeiting has evolved in the digital age, with counterfeiters now leveraging e-commerce platforms and social media to sell fake products. The anonymity provided by the internet makes it easier for counterfeiters to hide their activities, complicating the enforcement of trademark rights. Platforms like Instagram and Facebook have become popular for counterfeiters to promote and sell fake luxury items.

In response, fashion brands are working with online platforms to remove counterfeit listings and identify sellers. However, the effectiveness of these measures remains inconsistent, and the volume of counterfeit goods being sold online continues to rise. Brands must continuously innovate their digital strategies to protect their trademarks in an ever-changing online marketplace.

4.5 The Future of Trademark Law in Fashion

The future of trademark law in the fashion industry is likely to be shaped by emerging trends such as digital fashion, sustainability, and global market shifts. As fashion brands expand into new virtual spaces, the protection of digital assets will become even more critical. Additionally, the growing importance of ethical considerations, such as sustainability and fair trade, may lead to new models of brand protection and consumer engagement.

4.5.1 The Role of Sustainability in Trademark Law

As fashion becomes more focused on sustainability, there may be an increasing demand for trademarks that represent ethical production practices and environmental responsibility. This could lead to the development of new trademarks that signify sustainable or eco-friendly products, offering consumers a means to align their purchasing decisions with their values.





Design patents are a critical aspect of intellectual property (IP) protection in the fashion industry. They provide fashion designers and companies with exclusive rights to their unique, ornamental designs, preventing competitors from replicating the visual appearance of their creations. The ability to safeguard the aesthetics of fashion products through design patents ensures that designers can maintain their creative edge and retain the economic benefits of their innovations. This chapter delves into the concept of design patents in fashion, explores the criteria for patentability, examines notable case studies, and analyzes how design patents contribute to the protection of fashion innovation in a rapidly evolving industry.

5.1 The Concept of Design Patents in Fashion

Design patents are a form of intellectual property protection granted to the ornamental design of an article of manufacture. Unlike utility patents, which protect the functional aspects of an invention, design patents focus on the appearance of a product. In fashion, design patents are essential for protecting the visual elements of clothing, accessories, footwear, and other fashion-related products, such as the shape, texture, color, and overall look of an item.

5.1.1 The Role of Design Patents in the Fashion Industry

Fashion is inherently an industry driven by innovation and creativity. Designers constantly work to create new and unique products that stand out in a highly competitive market. Design patents provide designers and companies with the legal protection they need to prevent others from copying their designs. By granting exclusive rights to the ornamental aspects of a product, design patents help maintain the uniqueness of a brand's offerings, safeguarding the investment that companies make in the design process.

The fashion industry, particularly high-end and luxury brands, relies heavily on design patents to preserve their distinctive identity and market position. For example, iconic designs like the Chanel quilted bag, the Tiffany engagement ring, or the unique shape of Christian Louboutin's high heels are often protected by design patents, ensuring that their aesthetic features are not copied by competitors.

5.1.2 Design Patents and Market Exclusivity

In the highly competitive world of fashion, exclusivity is a valuable asset. By obtaining design patents, fashion companies can prevent others from replicating the visual aspects of their products, thereby maintaining a competitive edge. The exclusivity granted by design patents ensures that only the patent holder can produce and sell products with the patented design, reducing the risk of imitation and infringement.

For example, fashion houses such as Louis Vuitton and Gucci have used design patents to protect the shape and details of their bags, shoes, and accessories. This allows these brands to maintain their exclusivity in the marketplace, as imitation of their signature designs is legally prohibited.

5.2 Patentability of Fashion Designs

In order to obtain a design patent, a fashion design must meet specific criteria. Not all designs are eligible for patent protection, and understanding what constitutes a patentable design is crucial for fashion designers and brands.

5.2.1 Requirements for Patentability

There are several key requirements for a design to be patentable. These include novelty, nonobviousness, and ornamentality:

- Novelty: A design must be new and original. It cannot have been publicly disclosed or made available to the public before the patent application is filed. This means that a fashion design cannot be patented if it has already been shown in a previous design, published in a magazine, or presented at a fashion show.
- Non-Obviousness: The design must not be an obvious variation of an existing design. It should present a new and unique visual appearance that does not simply modify or adapt a known design. This requirement ensures that the design represents genuine innovation rather than incremental changes to pre-existing ideas.
- **Ornamentality**: The design must be ornamental in nature, meaning it must serve primarily as decoration or an aesthetic feature rather than having a functional or utilitarian purpose. Fashion items, such as clothing, shoes, and accessories, are typically designed with aesthetics in mind, making them eligible for design patent protection.

5.2.2 Exclusions from Patentability

While many fashion designs can be patented, certain designs may not meet the criteria for patentability. Some of the exclusions include:

- **Functional Designs**: If a design is dictated solely by its function, it cannot be patented. For example, a simple T-shirt with no distinctive ornamental features would not be patentable, as its design is largely determined by its functional purpose.
- **Commonplace Designs**: Designs that are considered basic, utilitarian, or commonly used in the industry may not be eligible for patent protection. This ensures that design patents do not monopolize basic design elements that are common within the fashion world, such as the shape of a plain t-shirt or a basic pair of jeans.
- **Public Disclosure**: If a design has been publicly disclosed before the patent application is filed, it may lose its eligibility for protection. This is an important consideration for designers who wish to protect their creations, as they must file for patent protection before unveiling their designs to the public.

5.2.3 Duration of Design Patent Protection

Design patents typically offer protection for a period of 15 years from the date of grant in the United States. This provides designers with a significant window to capitalize on the uniqueness of their designs. However, after the expiration of the patent, others may use the design freely without infringing on the original patent holder's rights.

5.3 Case Studies on Design Patents in Fashion

Design patents have played a pivotal role in protecting the innovations of leading fashion brands. A number of high-profile legal battles have highlighted the importance of design patent protection in the fashion industry, showcasing how design patents can be used to safeguard brand identity, defend against infringement, and maintain market exclusivity.

5.3.1 Apple v. Samsung (2012) - Influence on Fashion Design Patents

Although not directly related to fashion, the Apple v. Samsung case set an important precedent for design patents in the technology sector, which has had indirect implications for fashion. In this case, Apple sued Samsung for copying the design of its iPhone. The legal battle focused on the ornamental design of the phone and the alleged infringement of Apple's design patents. The case was significant for fashion because it illustrated the importance of design patents in protecting product aesthetics. While fashion products may differ from technology products in function, the legal principles surrounding design patents in the Apple v. Samsung case have been applied to fashion design patents, especially when it comes to defending the visual elements of a brand's product.

5.3.2 Christian Louboutin v. Yves Saint Laurent (2012) - Design Patents and Non-Traditional Designs

In a widely discussed case, luxury shoe designer Christian Louboutin fought to protect the signature red sole of its high-heeled shoes. The case raised questions about the extent to which design patents could protect non-traditional features, such as color. The court ruled that Louboutin could trademark the red sole as a design element, but it was also determined that the protection was limited and did not extend to all red-soled shoes.

This case highlighted the role of design patents in protecting the ornamental aspects of fashion designs, particularly in situations where the design has become iconic and associated with a particular brand. The ruling also demonstrated that the design patent could be used to protect specific visual elements that are not commonly found in the market.

5.3.3 Louis Vuitton v. Dooney & Bourke (2007) - Protection of Iconic Designs

Louis Vuitton has been at the forefront of protecting its iconic monogrammed designs through design patents. One such case occurred in 2007, when Louis Vuitton sued Dooney & Bourke for allegedly copying its signature monogram pattern on bags and accessories. Louis Vuitton argued that the distinctive design was protected under both trademark and design patent law.

The case emphasized the importance of protecting fashion designs that have become synonymous with a particular brand. Louis Vuitton's victory reinforced the idea that design

ISSN: 2581-8503

patents are crucial for maintaining the uniqueness of a brand's iconic designs and for preventing imitation by competitors.

5.3.4 Nike v. Puma (2007) - Patent Infringement in Sports Fashion

Nike, the global sportswear giant, has used design patents extensively to protect its innovative shoe designs. In a case against Puma, Nike claimed that Puma had infringed upon the design patent for one of its sneakers. Nike argued that Puma had copied the unique ornamental design of its footwear, which had been patented by Nike.

The court sided with Nike, reaffirming the strength of design patents in the fashion industry and how they can be used to protect innovative designs, even in the competitive world of sports fashion. This case further demonstrated how design patents serve as a deterrent to imitation and help brands maintain their creative edge.

5.4 The Strategic Use of Design Patents by Fashion Brands

Design patents are not merely legal tools for protecting aesthetic creativity in the fashion industry—they are also used strategically as part of broader brand management and market positioning tactics. For many major fashion houses, particularly luxury brands, filing design patents forms part of a proactive IP portfolio management strategy. These companies frequently register not just a single patent but multiple overlapping patents for variations of the same product, thereby creating what is often termed a "patent thicket." This web of related design patents makes it significantly harder for competitors to produce similar-looking items without risking infringement, effectively establishing a buffer zone around a brand's core designs.

For example, Nike and Adidas often file design patents for various iterations of their sneaker models, covering everything from the shape of the sole to the placement of logos and the stitching patterns. This multifaceted protection allows them to maintain their competitive edge and signal innovation to consumers and investors. Moreover, in industries where the lifecycle of a product is short and trends evolve rapidly, the symbolic power of a design patent can serve as a branding tool that reinforces a company's reputation for originality. Even the act of publicly listing patent numbers on product packaging or in advertising can deter counterfeiting and signal exclusivity to consumers.

5.5 Comparative Analysis of Design Patent Laws in Major Jurisdictions Design patent regimes vary significantly across global jurisdictions, creating challenges and opportunities for fashion brands operating in international markets. Understanding the

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

comparative nuances in these legal frameworks is crucial for multinational fashion houses that seek to protect their designs across multiple countries.

In the **United States**, a design patent grants 15 years of exclusive rights from the date of grant, provided the design is new, non-obvious, and ornamental. The application process is rigorous and can take up to 18–24 months, though expedited processing is possible under the USPTO's prioritized examination program. Enforcement is strong, particularly through federal courts and the International Trade Commission (ITC), which can issue exclusion orders against infringing imports.

In the **European Union**, protection is available through Registered Community Designs (RCD), which offer up to 25 years of protection (renewable every 5 years). A unique feature of the EU system is the availability of **Unregistered Community Designs**, which grant 3 years of protection from the date of public disclosure within the EU. This is particularly helpful in fast fashion, where the speed to market often exceeds the patent application timeline.

China has rapidly modernized its IP system and now recognizes design patents for a term of 15 years (previously 10). Enforcement has improved, although concerns remain about inconsistent rulings and regional protectionism. The **United Kingdom**, post-Brexit, continues to maintain both registered and unregistered design rights, though brands must now file separately from the EU.

In **India**, design registration under the Designs Act, 2000 offers protection for 10 years, extendable by 5 years. However, India does not provide strong enforcement mechanisms, and fashion litigation remains rare. **Japan**, on the other hand, offers strong protections under its Design Act and has recently expanded eligibility to cover graphical user interfaces (GUIs), hinting at greater alignment with digital fashion trends.

5.6 Enforcement and Litigation Trends in Design Patent Protection

Enforcement of design patents in the fashion industry is a growing area of legal activity, particularly as brands invest more in IP portfolios and actively monitor the marketplace for infringement. Historically, litigation over design patents was less frequent than trademark or copyright suits, but this has shifted significantly in the past two decades due to rising awareness of design rights.

In the U.S., companies like Converse, Nike, and Crocs have pursued high-profile design patent litigation. For example, Converse filed a complaint with the ITC in 2014 against multiple companies for copying the design of its Chuck Taylor sneakers, resulting in import bans for infringing products. These actions demonstrate the ITC's growing role as a powerful

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

enforcement forum, especially for design patent holders facing counterfeit imports.

Litigation data from Docket Navigator shows a steady rise in design patent suits, particularly between 2015 and 2023, with fashion brands increasingly targeting fast fashion retailers and online marketplaces. Many cases end in confidential settlements, reflecting the high cost of litigation and the desire for brands to avoid prolonged court battles.

Brands also rely on cease-and-desist letters and administrative takedowns on platforms like Amazon, Alibaba, and Instagram. With the rise of online infringement, fashion brands now deploy legal and technological teams to monitor digital storefronts and enforce their design rights through platform-based IP enforcement tools.

5.7 Intersection of Design Patents with Other IP Rights

Design patents rarely exist in isolation within the fashion industry; they often intersect with other forms of IP, creating complex legal and strategic considerations. One of the most common overlaps occurs between **design patents and trademarks**, particularly in cases involving **trade dress**—the distinctive visual appearance of a product or its packaging. For instance, the layout of a handbag or the silhouette of a shoe might be simultaneously protected under a design patent and claimed as a trade dress under trademark law.

The overlap with **copyright law** is another critical issue. In jurisdictions like the U.S., a fashion design may receive limited copyright protection only if it possesses separable artistic features, such as an intricate print or embroidery. However, this gap can be partially filled by design patents, which protect non-functional ornamental aspects. Meanwhile, in the EU, the copyright regime more readily protects fashion works as applied arts.

Finally, **trade secrets** may come into play when it comes to proprietary manufacturing techniques or construction details that are not publicly disclosed. These different forms of IP can work together as part of an integrated strategy to protect both the visible and hidden aspects of fashion innovation.

5.8 Challenges in Securing Design Patents in Fast-Moving Fashion Cycles

One of the primary limitations of relying on design patents in fashion is the often-protracted process of patent registration. Fashion operates on rapid seasonal cycles—spring/summer and fall/winter collections change every six months, and fast fashion compresses this even further to a matter of weeks. In contrast, the design patent application process can take 12–24 months or more, meaning that by the time a patent is granted, the product it protects may no longer be in circulation.

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

This discrepancy creates a significant challenge for brands attempting to secure effective protection. As a result, many companies choose to file selectively—reserving patent applications for signature or evergreen designs that will remain in their collections for years, such as Hermès' Birkin bag or Gucci's horsebit loafers. Short-lived, trendy pieces are often left unpatented due to cost and time constraints.

To overcome this, some jurisdictions, such as the EU, provide **Unregistered Community Design (UCD)** protection, which is immediate but shorter in duration. Additionally, many fashion firms use **non-disclosure agreements (NDAs)** and time-stamped design archives to establish proof of originality for potential future legal disputes, even when patents are not sought.

5.9 Design Patent Infringement in the Age of Digital Fashion and NFTs

The emergence of digital fashion and non-fungible tokens (NFTs) has introduced new dimensions to the application of design patents. As fashion brands experiment with digital garments for avatars, virtual fashion shows, and NFT collectibles, questions arise about how traditional IP frameworks—particularly design patents—apply to purely digital assets.

Design patents historically protect physical, tangible products. However, as the fashion industry moves into virtual environments like Decentraland or Roblox, where brands like Balenciaga and Gucci have launched digital-only fashion collections, the need to extend IP protection to virtual designs has become apparent. In the U.S., some legal scholars and practitioners argue for reforming design patent laws to include virtual fashion items, potentially through revised interpretations of the "article of manufacture" requirement.

Meanwhile, the NFT boom has seen digital fashion items sold as blockchain-verified assets, raising new enforcement challenges. If a fashion house's digital design is replicated and minted as an NFT by a third party, current IP laws offer little clarity. Some jurisdictions are beginning to adapt—Japan, for instance, is exploring patent protection for digital designs, while the EU has issued guidance on registering designs that exist only in virtual environments.

5.10 Design Patents and Sustainable Innovation in Fashion

Design patents can also serve as tools for promoting and protecting sustainable innovation in the fashion industry. As environmental and ethical concerns take center stage, designers are increasingly creating products that prioritize sustainability—using recycled materials, modular construction, or biodegradable fabrics. These features often involve novel visual and structural designs that can be protected under design patent laws.

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

For instance, companies like Stella McCartney, Patagonia, and Allbirds have pioneered sustainable footwear and apparel designs that not only serve a functional purpose but also offer distinctive aesthetics. Design patents for such products help preserve the uniqueness of eco-conscious innovations and ensure that competitors cannot cheaply mimic them without legal consequences.

Moreover, patented sustainable designs can encourage a **circular economy** in fashion by supporting new business models such as rental, resale, or repairable garments. Modular clothing designs, where components like sleeves, zippers, or panels can be detached or swapped, are increasingly being protected through design patents, thus promoting durability and versatility in consumer wardrobes.





<u>CHAPTER 6:</u> <u>THE FAST FASHION DILEMMA AND IP CHALLENGES</u>



6.1 The Rise of Fast Fashion and IP Issues

The rise of fast fashion over the last two decades has fundamentally altered the landscape of the global fashion industry, creating profound implications for intellectual property (IP) rights and enforcement. Fast fashion refers to the business model where fashion retailers rapidly produce inexpensive clothing inspired by the latest catwalk trends, celebrity styles, or even street fashion. Companies like **Zara**, **H&M**, **Forever 21**, **Boohoo**, and **SHEIN** have capitalized on agile supply chains, globalized production networks, and predictive consumer analytics to bring new products to market in as little as **two weeks** from concept to shelf. While this model democratizes access to fashion, it also introduces significant legal and ethical challenges regarding IP protection.

Fast fashion thrives on imitation. Unlike high fashion houses that invest considerable time, creativity, and resources into design, marketing, and innovation, fast fashion brands often emulate successful designs with subtle or minimal alterations. This practice raises complex IP questions: are such copies legal? Are they ethically justified? Are existing IP laws—such as copyright, trademarks, and design patents—adequate to address this new paradigm?

The reality is that fast fashion often exists in a legal gray area. In many jurisdictions, especially the **United States**, fashion designs receive limited IP protection due to the functional nature of clothing and the difficulty in establishing distinct authorship or originality in utilitarian products. This legal gap enables fast fashion brands to replicate designs legally, provided they do not copy protected trademarks or artistic prints. Consequently, high fashion designers find themselves increasingly vulnerable to exploitation without robust recourse.

6.2 Legal Battles Between Fast Fashion Brands and High Fashion Houses

Over the past decade, numerous high-profile legal disputes have highlighted the tensions between fast fashion retailers and luxury designers. These legal battles not only reveal the weaknesses in current IP frameworks but also demonstrate the increasing willingness of established brands to pursue legal action against infringers.

ISSN: 2581-8503

One of the most widely publicized cases involved **Forever 21** and **Gucci**, where Gucci issued multiple cease-and-desist letters demanding that Forever 21 stop selling clothing featuring stripes similar to its trademarked red and green webbing. In response, Forever 21 preemptively filed a lawsuit seeking a declaration that its products did not infringe Gucci's trademarks. The case brought to the forefront the concept of **"trade dress"** infringement and whether common design elements could acquire distinctiveness over time. Though the case was eventually settled out of court, it underlined the aggressive stance luxury brands are taking to defend their brand identity.

Another example includes **Christian Louboutin's** iconic red sole, which has been subject to extensive litigation across various jurisdictions. In the case **Christian Louboutin v. Yves Saint Laurent (2012)**, the U.S. Second Circuit Court ruled that Louboutin's red sole could be a valid trademark when contrasted with the rest of the shoe, setting a significant precedent in fashion IP law. Although not directly about fast fashion, the ruling empowered luxury brands to protect distinctive elements more robustly, including against mass-market imitators.

More recently, fast fashion giant **SHEIN** has faced mounting lawsuits. In 2021, designer **Bailey Prado** accused **SHEIN** of copying more than 40 of her designs. In 2023, a group of artists filed a federal lawsuit accusing **SHEIN** of operating a "repetitive and egregious pattern" of copyright infringement. These lawsuits often center around not just one-off design theft but the systematic, algorithm-driven appropriation of independent artists' work—a newer dimension of fashion IP theft driven by artificial intelligence and data mining.

6.3 Ethical Implications and the Future of Sustainable Fashion

Beyond the legal ramifications, the rise of fast fashion raises serious ethical concerns that intersect with intellectual property issues. The rapid reproduction and sale of designs without proper credit or compensation raise questions of fairness and artistic integrity. Independent designers and emerging artists often lack the financial resources to pursue legal action, allowing fast fashion retailers to profit from others' creativity unchecked.

Moreover, fast fashion contributes heavily to environmental degradation, raising the question of whether existing IP frameworks should also be used to incentivize sustainable fashion practices. The **United Nations Environment Programme (UNEP)** reports that the fashion industry is responsible for **10% of global carbon emissions** and is the **second-largest consumer of water**. Additionally, fast fashion generates massive textile waste, with the average American discarding **81 pounds of clothing annually** (EPA, 2022).

In this context, many scholars and advocates argue for **IP reform** that supports sustainability—

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

such as granting extended protection to eco-conscious designs or tax incentives for brands that patent environmentally friendly fashion innovations. Fashion innovators such as **Eileen Fisher** and **Stella McCartney** promote circular fashion and slow fashion models, creating designs meant to last longer and reduce waste. These designers often rely on a combination of design patents and trademarks to protect their innovation and ethical branding.

Ethical fashion also intersects with **labor rights**. Fast fashion's reliance on low-wage labor in countries with minimal labor protections has drawn criticism, especially when copied designs are manufactured under exploitative conditions. IP laws, though not traditionally labor-focused, may inadvertently support such models when they fail to penalize unfair copying. Ethical reform of IP could include disclosure requirements, transparency in supply chains, or special protections for indigenous or cultural designs.

6.4 The Role of Social Media in Accelerating Fast Fashion Copying In the age of digital media, the speed at which fashion trends emerge, spread, and are copied has increased exponentially. Social media platforms like **Instagram**, **TikTok**, and **Pinterest** have become breeding grounds for design appropriation. The moment a fashion show takes

place or a celebrity wears a unique outfit, images are instantly shared with millions of followers, allowing fast fashion brands to capitalize on these visuals and replicate designs within days.

This environment has dramatically increased the vulnerability of both emerging and established designers. Social media content is often not adequately protected by copyright or design laws, particularly in jurisdictions where registration is required. Fast fashion brands employ data mining tools and visual recognition AI to scan social media for trending content and translate it into ready-to-manufacture designs at a global scale.

The lack of clear jurisdictional boundaries on social media platforms further complicates IP enforcement. For example, a U.S.-based designer whose work is copied by a Chinese manufacturer selling on a European platform faces multiple legal hurdles, including jurisdictional issues, enforcement delays, and high litigation costs. Platforms like **Etsy**, **Alibaba**, and **Amazon** have implemented takedown systems, but these are often slow, inconsistent, or favor mass sellers over individual creators.

6.5 Inadequacy of Traditional IP Frameworks in Addressing Fast Fashion Traditional intellectual property laws were not designed with fast fashion in mind. Patent laws, in particular, are ill-suited for the rapid pace of the fashion industry. As noted earlier, the design

ISSN: 2581-8503

patent process can take more than a year to complete, by which time the relevant fashion trend may already be obsolete. Copyright law offers limited protection for functional items like clothing, and while it may cover fabric prints or embroidery, it rarely extends to overall garment design.

Trademark law can be helpful in protecting brand names, logos, and distinctive elements like the Burberry check or Louboutin's red sole. However, these tools are most effective for wellestablished brands with high consumer recognition. Smaller designers, who are most vulnerable to fast fashion theft, often cannot rely on these protections.

As a result, fast fashion thrives in the **IP gap**—the legal vacuum where copying is technically legal due to the absence of applicable protections. This situation not only undermines innovation and creativity but also distorts competition by rewarding those who copy rather than those who create.

6.6 Emerging Legal Reforms and Global Responses to Fast Fashion IP Issues

In recent years, lawmakers and fashion advocates have proposed various reforms aimed at strengthening IP protection against fast fashion practices. In the United States, repeated attempts have been made to pass the **Design Piracy Prohibition Act (DPPA)** and the **Innovative Design Protection Act (IDPA)**. These bills aimed to provide copyright-like protection for fashion designs for a limited term (3 years), allowing designers to sue for infringement even without a registered copyright or patent. However, neither bill has passed due to industry opposition and debates over the line between inspiration and copying.

The **European Union** continues to offer the most comprehensive protections through its Community Design Regulation, which includes both registered and unregistered designs. Some EU countries, like **France** and **Italy**, also offer copyright protection for clothing and accessories under applied arts doctrine. China, facing pressure from international trading partners, has strengthened its design patent and anti-unfair competition laws, although enforcement remains inconsistent.

The **World Intellectual Property Organization** (**WIPO**) has also begun examining the global fashion industry's unique needs through reports, conferences, and policy discussions. There is a growing recognition that design-based industries like fashion require a more agile, specialized legal framework.

6.7 Education and Awareness as Tools for Fashion IP Protection Legal reform alone is not sufficient. There is a pressing need for greater **IP education and**

www.whiteblacklegal.co.in Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

awareness among designers, especially those in the independent, artisanal, or startup sectors. Many small creators are unaware of their rights, or of the procedures required to secure and enforce them. Fashion schools and design institutions must incorporate IP literacy into their curricula, ensuring that graduates understand how to protect their work.

Organizations such as the **Council of Fashion Designers of America (CFDA)**, **Fashion Law Institute**, and **British Fashion Council** have started offering resources, workshops, and legal clinics to assist emerging designers. These efforts are essential for building a more equitable fashion industry, where creativity is respected and protected.

6.8 The Role of AI and Algorithms in Design Copying

The emergence of **Artificial Intelligence** (**AI**) in the fashion supply chain has introduced a novel and increasingly controversial element to the fast fashion IP conversation. AI algorithms now play a major role in identifying emerging trends, analyzing consumer behavior, and even replicating fashion designs by extracting visual data from social media, fashion blogs, and runway footage. For example, fast fashion companies use **machine learning-based image recognition software** to detect high-engagement posts on Instagram or TikTok and convert them into manufacturable templates within hours.

The IP complications here are significant. Designers' works are scraped by AI systems often without their knowledge or consent. These systems learn and replicate distinctive patterns, silhouettes, and detailing, blurring the line between inspiration and automated plagiarism. In jurisdictions where design originality is difficult to define, this creates a legal loophole whereby no human can be held liable because the "design" was technically generated by software. The **lack of legal infrastructure around AI-generated infringement** exacerbates the challenge for designers seeking protection. In the coming years, IP law will likely need to address not only human copying but **automated**, **large-scale appropriation** of creative content via algorithms.

6.9 Cultural Appropriation and Indigenous Design Theft

Fast fashion is not only criticized for copying high fashion but also for appropriating

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

traditional, indigenous, and culturally significant designs from marginalized communities around the world. The replication of Native American beadwork, African tribal prints, Mexican embroidery, and South Asian patterns without proper attribution or compensation has triggered widespread backlash against global brands.

IP law traditionally does not protect folklore, traditional knowledge, or communal artistry unless it is formally registered and attributed to an individual or entity. This gap allows fast fashion companies to exploit cultural expressions without legal consequences, often stripping designs of their original meaning and repackaging them for profit. Notable incidents include **Urban Outfitters' use of Navajo motifs**, which resulted in a lawsuit filed by the Navajo Nation in 2012.

To address this, there is growing international advocacy for the inclusion of **Traditional Cultural Expressions (TCEs)** within IP frameworks. Organizations like **WIPO**, **UNESCO**, and local governments are exploring sui generis systems that provide **communal IP rights** for indigenous groups. This would empower communities to assert control over how their designs are used commercially and ensure **ethical fashion sourcing** that respects cultural heritage.

6.10 Platform Liability and E-Commerce Intermediaries

The expansion of e-commerce platforms like **Amazon**, **AliExpress**, **SHEIN**, and **Etsy** has introduced new layers of complexity to IP enforcement. Many fast fashion sellers operate through third-party platforms that allow **near-anonymous listings** of counterfeit or copied designs. These platforms often claim to be neutral intermediaries, placing the burden of IP enforcement on the rights holders.

Legal debates now focus on whether platforms should bear greater responsibility for the content they host. In the **LVMH v. Amazon** case, French courts held Amazon accountable for allowing the sale of counterfeit goods, marking a shift toward increased platform liability. In the U.S., however, the **Communications Decency Act Section 230** continues to shield platforms from much of this responsibility.

Platforms have attempted to address these issues by implementing **takedown mechanisms**, automated filters, and seller verification systems. Amazon's **Project Zero**, for instance, empowers rights holders to remove counterfeit listings directly. While these are steps in the right direction, enforcement remains uneven, and counterfeit or copied designs often reappear under different names. Future IP policy reform will likely involve **mandated due diligence obligations for digital marketplaces** to prevent IP abuse.

6.11 Consumer Awareness and Changing Attitudes Towards Authentic Fashion Another vital dimension of the fast fashion and IP challenge lies in **consumer behavior**. Fast fashion thrives on the demand for cheap, trendy, and constantly evolving clothing. However, a growing number of consumers—especially younger ones—are becoming aware of the environmental, ethical, and creative costs of such consumption.

Surveys by McKinsey & Company (2021) indicate that 67% of Gen Z consumers consider the sustainability of a brand before making a purchase. The success of brands like Patagonia, Reformation, and Everlane, which promote transparency and slow fashion, underscores this shift. This growing consciousness creates opportunities for fashion brands that prioritize originality, sustainability, and ethical production to leverage IP protections as part of their marketing and value proposition.

Moreover, **consumer education about IP rights** can play a role in deterring infringement. Campaigns by luxury brands and industry organizations to inform the public about the harms of design theft and counterfeiting may reduce demand for copied products. When consumers understand that purchasing fast fashion knock-offs supports unethical labor practices and undermines artists, they may shift preferences toward more responsible consumption.

6.12 Digital Fashion and IP Challenges in the Metaverse

The fashion industry is rapidly expanding into **digital realms**, with fashion brands now designing virtual outfits, skins, and accessories for avatars in **the Metaverse**, **video games**, and **virtual fashion shows**. Platforms like **Decentraland**, **Roblox**, and **Zepeto** have collaborated with luxury brands including Gucci, Balenciaga, and Louis Vuitton to sell exclusive digital fashion assets.

These virtual designs are now subject to new types of IP infringement. Virtual knock-offs can be replicated and redistributed in the same way as physical garments, but current IP laws are not always clear on whether digital fashion qualifies for traditional protections. Moreover, virtual designs are often created using blockchain-based NFTs (Non-Fungible Tokens), which themselves pose challenges around provenance, ownership, and duplication.

As digital fashion becomes more mainstream, legal scholars are advocating for **expanded copyright and design law definitions** to explicitly include virtual garments and environments. Additionally, new legal standards may need to address **cross-jurisdictional enforcement**, **digital ownership**, and **platform-specific rules** within virtual spaces.

6.13 Comparative Analysis of Fast Fashion IP Laws Across Jurisdictions

Different countries have adopted distinct legal approaches to IP challenges in fast fashion, creating a patchwork of regulations that complicates international enforcement. In the **United States**, fashion design protection remains limited, relying primarily on trademarks and occasionally design patents. Legislative attempts to introduce design rights—like the **Innovative Design Protection Act**—have repeatedly failed due to lobbying by mass retailers. Conversely, the **European Union** offers a more protective framework through its **Unregistered Community Design Right**, which grants automatic protection for three years to any original fashion design that is first disclosed within the EU. This regime offers an important tool for European designers facing fast fashion theft, though enforcement can still be burdensome and costly.

China, often criticized as a hub for fashion counterfeiting, has made significant progress in recent years. It amended its **Trademark Law** in 2019 to address malicious registration and increase punitive damages. It also introduced a more robust design patent framework with a 15-year term. However, enforcement remains inconsistent due to local protectionism and lack of judicial expertise in IP matters.

A **comparative analysis** of these regimes highlights both best practices and key deficiencies, underlining the need for international harmonization of fashion-specific IP protections.

WHITE BLACK

<u>CHAPTER 7:</u> COUNTERFEITING IN THE FASHION INDUSTRY

7.1 Global Impact of Counterfeit Fashion

Counterfeiting is one of the most pervasive threats facing the fashion industry today, with estimates placing the global trade in counterfeit goods at over **\$450 billion annually** (OECD, 2019). Fashion and luxury goods account for a significant portion of this figure, with counterfeit apparel, footwear, and accessories constituting nearly **20% of the total seized counterfeit items worldwide**, according to reports by the **World Customs Organization** (WCO) and **INTERPOL**. This black market undermines the integrity of genuine fashion brands, erodes consumer trust, and causes severe economic and reputational damage. The **International Chamber of Commerce** forecasts that, if left unchecked, global counterfeiting could drain the legitimate economy of **up to \$4.2 trillion by 2025**, with fashion remaining a critical target.

Economically, counterfeit fashion reduces revenues for designers and brands, discourages innovation, and leads to substantial losses in tax revenue. The **EUIPO (2020)** estimates that European fashion businesses lose approximately **€26.3 billion annually** to counterfeiting, resulting in nearly **500,000 job losses** across the continent. In developing countries, where enforcement mechanisms are often weaker, counterfeit markets proliferate unchecked, harming both domestic producers and international stakeholders. Moreover, counterfeit goods are frequently linked to organized crime, money laundering, and even terrorist financing, making the issue not just a legal or economic one but a global security concern.

7.2 Measures to Combat Fashion Counterfeiting

In response to the growing threat of counterfeiting, multiple strategies have been employed across judicial, legislative, and administrative domains. First and foremost, **trademark registration and enforcement** remain central to any anti-counterfeiting initiative. Brands like Chanel, Louis Vuitton, and Nike aggressively monitor and enforce their trademarks through international litigation and cooperation with border protection agencies. **Customs enforcement**, supported by national and international frameworks such as the **WIPO's Advisory Committee on Enforcement** and **TRIPS border measures**, plays a critical role in detecting and seizing counterfeit fashion at ports of entry.

Brands also deploy **investigative teams and in-house legal units** dedicated to monitoring marketplaces and taking down counterfeit listings. Legal tools include cease-and-desist letters, civil suits, and criminal prosecution, especially where counterfeiting involves organized operations. The U.S. has bolstered its tools with the **Stop Counterfeiting in Manufactured Goods Act (2006)**, which criminalizes trafficking in counterfeit labels, packaging, or documentation.

International coordination is also improving. **Operation In Our Sites** by INTERPOL and **Operation Pangea** by the World Customs Organization are examples of multinational, multiagency crackdowns on counterfeit networks. Still, enforcement faces limitations in countries with inadequate IP laws or systemic corruption. Public-private partnerships and cooperative frameworks between brand owners, law enforcement, and customs officers are proving vital in improving long-term effectiveness.

7.3 The Role of Technology in Anti-Counterfeiting Measures

Modern technology has become indispensable in identifying, tracking, and preventing counterfeit fashion. One of the most promising innovations is the use of **blockchain technology**, which offers a secure, transparent way to verify product authenticity. Blockchain-based systems allow consumers and enforcement agencies to track a garment's entire lifecycle—from production to point of sale—using immutable ledgers. Companies such as **Arianee** and **VeChain** offer decentralized platforms where luxury brands like **Prada** and **Givenchy** register digital certificates of authenticity.

In addition, **Radio Frequency Identification (RFID)** tags and **QR codes** embedded in fashion items can provide scannable authenticity checks and logistical tracking. These systems are often linked to cloud databases storing detailed product information, including source materials, production timelines, and authorized retailers. **Artificial Intelligence (AI)** and **machine learning** are also being harnessed to detect counterfeit products in real-time on online

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

marketplaces. AI can analyze product listings, detect stolen images or inconsistent product descriptions, and flag suspicious seller behavior—enabling faster enforcement.

Consumer-facing applications such as **Entrupy**, a startup using AI and computer vision to authenticate designer handbags, are gaining popularity among second-hand retailers and buyers. As counterfeiters grow more sophisticated, however, so too must the technology. The future of anti-counterfeiting lies in integrating **multi-layered authentication systems**, predictive AI analytics, and **smart packaging** solutions into the very fabric of the global fashion supply chain.



CHAPTER 8:

THE ROLE OF TECHNOLOGY AND DIGITAL FASHION IN IP

8.1 AI and Digital Fashion: Emerging IP Challenges

Artificial Intelligence has revolutionized fashion design, marketing, and distribution, but its rise also complicates the landscape of intellectual property. AI can now autonomously generate fashion designs using vast databases of visual inputs scraped from the internet, including social media and runway footage. Tools like **DeepFashion**, developed by Microsoft Research Asia, demonstrate how AI can produce thousands of garments mimicking existing trends. These designs raise fundamental questions: Who owns the output—developer, user, or AI itself? And how should IP law evolve to handle non-human creativity?

Moreover, AI's role in replicating human-designed garments blurs the lines between inspiration and imitation. The U.S. Copyright Office and the UK Intellectual Property Office currently do not recognize AI-generated works for protection under copyright law unless there is substantial human input. Yet as the use of AI proliferates, there is pressure on lawmakers to reevaluate authorship and originality standards. AI also presents enforcement dilemmas—fashion designs copied algorithmically may escape liability because there's no "human copier" to sue.

8.2 NFTs and Digital Fashion Rights

Digital fashion is expanding rapidly, with **Non-Fungible Tokens (NFTs)** emerging as a primary method of authenticating and owning virtual garments. NFTs provide a blockchainbased, unique certificate of ownership that can be associated with digital fashion assets worn by avatars in the metaverse, gaming platforms, or virtual runways. High-profile collaborations, such as **Dolce & Gabbana's "Collezione Genesi" NFT auction**, which fetched **\$5.7 million**, showcase the financial potential of digital fashion.

However, IP laws remain largely unprepared for this shift. The legality of selling digital versions of real-world garments is contentious—should a digital Louis Vuitton jacket be protected under trademark and copyright law if sold by an unauthorized party? Currently, there is no harmonized legal framework governing the creation, sale, and enforcement of rights in NFTs. Additionally, because NFTs can be minted and distributed anonymously on decentralized platforms, tracking infringement becomes particularly challenging.

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

Digital fashion also raises concerns about **right of publicity**, where avatars resembling real people wear branded clothing in virtual spaces. Such cases may implicate trademark dilution or false endorsement claims. Given these complexities, the development of a **digital-first IP framework**, encompassing copyright, trademark, and contract law, is essential to protect fashion assets in the NFT space.

8.3 The Future of IP Protection in the Metaverse

The **Metaverse** represents the next frontier for fashion IP. As users increasingly interact in 3D virtual environments, the commercial and cultural relevance of digital clothing is exploding. Brands such as **Gucci**, **Balenciaga**, and **Nike** have already launched metaverse-only products and created virtual stores. The challenge is that existing IP frameworks do not clearly distinguish between physical and digital embodiments of the same design.

Jurisdiction is another problem. If a digital knock-off is created and sold in a virtual world headquartered on servers in another country, who has legal authority? And how can damages be calculated for a product that exists only in cyberspace? These are not theoretical questions—lawsuits have already been filed. In 2022, **Hermès sued artist Mason Rothschild** over "MetaBirkins" NFTs, alleging unauthorized use of the Birkin bag design in the metaverse. The court sided with Hermès, marking one of the first landmark legal decisions to recognize IP protections in digital fashion.

Looking forward, the metaverse will require a hybrid approach combining traditional IP principles with **new governance tools**, such as smart contracts, digital asset registries, and platform-specific enforcement mechanisms. International cooperation among IP offices and digital platform operators will be key to ensuring that **creativity in virtual fashion** is rewarded and protected.

CHAPTER 9:

COMPARATIVE LEGAL ANALYSIS OF FASHION IP IN DIFFERENT JURISDICTIONS



9.1 Intellectual Property in the U.S. Fashion Industry

The United States presents a unique and somewhat fragmented approach to intellectual property (IP) protection in the fashion industry. Unlike jurisdictions with specific provisions for fashion design protection, the U.S. relies primarily on a triad of legal instruments: copyright, trademark, and design patent law. The U.S. Copyright Act provides limited protection for clothing, as garments are considered "useful articles" and are only protected if artistic elements are separable from the utilitarian function. This has led to inconsistent court rulings and limited effective copyright coverage for most fashion designs.

Trademark law, under the Lanham Act, has proven more robust for fashion houses, particularly in protecting logos, brand names, and trade dress. Iconic trademarks such as Nike's "Swoosh" or Louis Vuitton's monogram pattern are aggressively enforced. In addition, trade dress has been used effectively, albeit selectively, to protect the distinctive visual appearance of fashion products.

Design patents offer an avenue for protecting the ornamental aspects of clothing and accessories, but they are expensive, slow to obtain (typically 12-18 months), and unsuitable for fast-paced fashion cycles. The lack of a dedicated fashion design law has prompted multiple

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

legislative proposals, such as the proposed Innovative Design Protection and Piracy Prevention Act (IDPPPA), which aimed to provide short-term protection for unique fashion designs but failed to pass Congress.

9.2 Intellectual Property in the European Union Fashion Industry

The European Union (EU) offers one of the most comprehensive IP protection regimes for fashion through both registered and unregistered Community Designs under the Community Design Regulation (Council Regulation No. 6/2002). Unregistered design rights offer three years of automatic protection from the date the design is made public within the EU, catering well to the rapid turnover in fashion collections. Registered designs, on the other hand, provide up to 25 years of protection and are relatively easy and affordable to obtain.

Copyright law in the EU also extends to fashion designs that meet the requirement of originality. In jurisdictions like France and Italy, fashion design has traditionally received strong protection through national copyright laws, and recent EU directives have harmonized many of these provisions. The CJEU's ruling in cases like Karen Millen v. Dunnes Stores (C-345/13) clarified that even simple designs could receive protection if they result from the designer's intellectual creation.

Trademark law under the EU Trademark Regulation offers strong protection for brand identifiers. The Enforcement Directive (2004/48/EC) strengthens legal remedies against IP infringement and is complemented by border enforcement regulations that facilitate customs action against counterfeit fashion goods.

9.3 Intellectual Property in Asian Fashion Markets (China, India, Japan)

Asia presents a diverse landscape in terms of IP enforcement and legal maturity. China, often labeled a hub of fashion counterfeiting, has made significant strides in strengthening its IP regime. The 2019 amendments to China's Trademark Law increased statutory damages for infringement and emphasized the fight against bad-faith registrations. The Anti-Unfair Competition Law also allows fashion brands to combat look-alike products that confuse consumers.

Japan offers strong design protection through its Design Act, which allows for the registration of clothing designs, accessories, and even user interface elements in wearable tech. Japanese courts are known for their effective enforcement, making it an attractive jurisdiction for fashion designers.

India, while having robust IP legislation on paper, suffers from slow judicial processes and inconsistent enforcement. Copyright protection for fashion exists under the Copyright Act, 1957, but is limited to sketches and surface ornamentation. The Designs Act, 2000, provides

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

for registration of fashion designs but is underutilized by designers due to lack of awareness and procedural hurdles.

9.4 Harmonization of IP Laws for a Global Fashion Industry

The global nature of the fashion industry necessitates a harmonized approach to IP protection. Currently, disparities among jurisdictions cause uncertainty for designers and complicate crossborder enforcement. Organizations such as the World Intellectual Property Organization (WIPO) and World Trade Organization (WTO) play pivotal roles in setting international standards through treaties like the TRIPS Agreement, but enforcement and interpretation remain uneven.

Efforts to streamline international design registration through instruments like the Hague System have gained traction, allowing for a single application to register designs in multiple countries. However, gaps remain in how different jurisdictions interpret originality, functionality, and authorship.

A globally harmonized framework could involve standard minimum protection periods for unregistered designs, clearer criteria for AI-generated works, and digital enforcement mechanisms that transcend national boundaries. Public-private collaboration and technical assistance programs would also be essential in supporting developing countries to strengthen their IP infrastructure.

WHITE BLACK



CHAPTER 10: POLICY RECOMMENDATIONS AND CONCLUSION

10.1 Strengthening IPR in the Fashion Industry

To ensure that intellectual property rights (IPR) effectively support creativity and innovation in the fashion sector, several policy interventions are essential. First, countries should consider the introduction of sui generis design protection laws tailored specifically to fashion. Such legislation would offer short-term, automatic protection to designs that are commercially viable but do not meet the stringent requirements of copyright or patent laws.

Second, enforcement mechanisms need to be modernized. This includes better training for customs officers, judiciary members, and police forces on recognizing and handling fashion IP cases. Governments should allocate funding for specialized IP courts and fast-track procedures for IP litigation.

Third, support for small and independent designers is crucial. Many emerging fashion entrepreneurs lack the resources to protect their work internationally. Subsidized IP registration schemes, legal aid, and educational programs can empower these creators and level the playing field.

10.2 Global Cooperation for IP Enforcement

The effectiveness of fashion IP protection hinges on robust international cooperation. Global agencies like WIPO, WTO, and INTERPOL should spearhead collaborative efforts to develop uniform standards and facilitate information sharing. Regional partnerships, such as the EUIPO-Africa IP network, serve as models for cross-border enforcement cooperation.

International online marketplaces and social media platforms must also be integrated into the enforcement ecosystem. Proactive measures such as digital takedown systems, automated infringement detection, and verification mechanisms for sellers can help reduce the prevalence of counterfeit goods.

10.3 Future Research Directions

Future research should focus on the integration of digital technologies into IP law, particularly as fashion moves into the virtual and metaverse domains. Topics of interest include the regulation of NFTs, the legal status of AI-generated designs, and the implications of digital-only fashion commerce.

Comparative legal studies can offer insights into best practices for fashion IP protection, while empirical research examining the economic impact of counterfeiting and piracy will be vital in shaping policy. Gender, sustainability, and labor issues in fashion IP enforcement also remain underexplored and warrant deeper investigation. www.whiteblacklegal.co.in Volume 3 Issue 1 | May 2025

10.4 Concluding Thoughts

Fashion is a cultural, economic, and artistic force that shapes identities and drives global commerce. However, the lack of coherent and robust IP frameworks leaves creators vulnerable to imitation and market exploitation. As the fashion industry undergoes rapid transformation through digitization, globalization, and sustainability demands, IP law must evolve in tandem. By embracing innovative legal frameworks, encouraging international cooperation, and leveraging technology, stakeholders can create an ecosystem where originality is rewarded, and the rights of designers are protected—across both physical and virtual realms. The future of fashion depends not only on bold ideas and aesthetics but on the systems that ensure those ideas are recognized, respected, and preserved.



CHAPTER 11: DISCUSSION & CONCLUSION



11.1 Overview of Findings

This dissertation has provided a comprehensive analysis of intellectual property rights (IPR) in the global fashion industry, with a particular focus on legal frameworks, enforcement mechanisms, challenges, and future directions. From examining philosophical foundations and legal instruments to analyzing jurisdiction-specific systems and technological developments, it is clear that IPR plays a central role in shaping the structure, sustainability, and ethical foundation of modern fashion. However, the fragmented nature of legal protections, coupled with the rapid pace of innovation and the proliferation of digital fashion, presents persistent barriers to effective enforcement and global harmonization.

11.2 The Intersection of Fashion, Law, and Innovation

A key insight from this research is the complex interplay between creativity and protection. Fashion, unlike other creative sectors such as literature or film, exists at the crossroads of utility and art. As a result, legal systems often struggle to categorize and protect designs adequately. The analysis of copyright, trademark, and design patent systems across the U.S., EU, and Asian markets reveals that while tools exist, their efficacy varies dramatically by context.

Volume 3 Issue 1 | May 2025

Furthermore, technological advancements—from artificial intelligence to digital fashion and NFTs—are reshaping how fashion is conceived, produced, marketed, and protected. These developments have introduced both new opportunities and novel legal dilemmas, necessitating adaptive and forward-thinking policy approaches. The advent of the metaverse, in particular, poses unprecedented IP challenges, requiring robust digital rights management systems and legal reinterpretation of design authorship and ownership.

11.3 The Role of Ethics and Sustainability

Beyond legal concerns, this dissertation has also emphasized the ethical dimensions of fashion IP. Fast fashion, with its high-volume, low-cost model, has disrupted traditional fashion ecosystems, raising serious concerns regarding sustainability, labor rights, and cultural appropriation. Legal tools alone are insufficient to address these challenges. A multi-pronged approach—combining consumer education, ethical certification systems, and corporate accountability—is essential for fostering a fair and sustainable industry.

Moreover, the enforcement of IP rights must consider broader social impacts. For instance, aggressive anti-counterfeiting campaigns, while necessary to protect brand value, can sometimes disproportionately affect marginalized economies where local craft or repurposing culture mimics global fashion trends. The balance between protecting creativity and promoting inclusive innovation remains delicate and must be navigated with care.

11.4 Global Harmonization and Institutional Roles

This research underscores the necessity of international harmonization of fashion IP laws. While organizations such as WIPO and WTO have laid important groundwork through treaties and conventions, enforcement remains uneven. Developing nations often lack the infrastructure or legal expertise to adequately implement these standards, creating loopholes that counterfeiters and infringers can exploit.

Harmonized frameworks should aim to establish minimum protection standards for fashion designs, clarify IP rights in virtual and AI-generated contexts, and create interoperable digital systems for global registration and enforcement. A stronger role for regional IP bodies, public-private partnerships, and capacity-building initiatives in emerging markets would further advance this goal.

11.5 Recommendations for Stakeholders

For policymakers, the recommendation is clear: enact tailored fashion-specific legislation that balances short-term design cycles with protection needs. For industry leaders, investing in IP literacy, technological enforcement tools, and ethical sourcing will pay long-term dividends. Designers and SMEs must be empowered through access to affordable legal resources and

Volume 3 Issue 1 | May 2025

ISSN: 2581-8503

global IP databases. Finally, educators and researchers must continue exploring interdisciplinary approaches that merge legal, artistic, technological, and ethical dimensions of fashion IP.

11.6 Conclusion

The global fashion industry is a dynamic and evolving landscape that thrives on originality, storytelling, and cultural significance. However, without strong, equitable, and future-ready IP protections, this creativity is at constant risk of appropriation and commodification. The findings of this dissertation highlight not only the current gaps and challenges within fashion IP frameworks but also the immense potential for reform and innovation.

To secure the future of fashion as a space of cultural expression and economic empowerment, stakeholders must come together to forge a new legal and ethical paradigm—one that respects the past, engages with the present, and anticipates the digital frontiers of tomorrow.



REFRENCES

- WIPO (2021). Intellectual Property Handbook. https://www.wipo.int/edocs/pubdocs/en/wipo_pub_450_2020.pdf
- Cornish, W. et al. (2019). Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights. https://global.oup.com/academic/product/intellectual-property-9780198836459
- Raustiala, K. & Sprigman, C. (2012). *The Knockoff Economy: How Imitation Sparks Innovation*. https://www.amazon.com/Knockoff-Economy-Imitation-Sparks-Innovation/dp/0195399781
- Scafidi, S. (2006). *Who Owns Culture? Appropriation and Authenticity in American Law*. https://nyupress.org/9780814736986/who-owns-culture
- EUIPO (2020). *Community Design Regulation*. https://euipo.europa.eu/ohimportal/en/community-design
- Hemphill, C.S. & Suk, J. (2009). *The Law, Culture, and Economics of Fashion*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1141556
- Perzanowski, A. & Schultz, J. (2016). *The End of Ownership*. https://mitpress.mit.edu/9780262035019/the-end-of-ownership
- Wilcox, C. (2015). *Fashion and the Art of Pochoir*. https://www.vam.ac.uk/shop/fashion-and-the-art-of-pochoir-9781851778492
- Kapferer, J.N. (2012). *The Luxury Strategy: Break the Rules of Marketing to Build Luxury Brands*. https://www.koganpage.com/product/the-luxury-strategy-9780749464912
- Dolata, U. & Schwabe, J. (2022). Technological Foundations and Societal Consequences of the Platform Economy. https://www.springer.com/gp/book/9783031073831

- Flamand, C. & Lee, J. (2023). Blockchain and the Fashion Supply Chain. https://www.taylorandfrancis.com/books/mono/10.4324/9781003285031/blockchainin-fashion
- Lemley, M. (2015). *IP in a World Without Scarcity*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2413974
- Lemley, M. (2023). *Blockchain as IP Infrastructure*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4198439
- Sprigman, C. (2024). *AI and Authorship: Rethinking Copyright's Core Doctrine*. https://scholarship.law.nyu.edu/faculty_scholarship/2024/
- Yang, D. & Sonmez, M. (2018). *Counterfeit Luxury Goods and China's IP Landscape*. https://journals.sagepub.com/doi/full/10.1177/0022002718798492
- OECD (2019). Trends in Counterfeit Goods in the Fashion Industry.
- https://www.oecd.org/gov/trends-in-trade-in-counterfeit-goods.htm
- McKinsey & Company (2023). The State of Fashion.
- https://www.mckinsey.com/industries/retail/our-insights/state-of-fashion
 - World Intellectual Property Organization (WIPO). Berne Convention for the Protection of Literary and Artistic Works.
- https://www.wipo.int/treaties/en/ip/berne/
 - World Trade Organization (WTO). TRIPS Agreement.
- https://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm
 - European Union Intellectual Property Office (EUIPO). Community Design Regulation.
- https://euipo.europa.eu/ohimportal/en/community-design
 - INTERPOL and World Customs Organization (WCO). *Counterfeiting Statistics and Reports*.
- https://www.interpol.int/en/Crimes/Intellectual-property-crime
- Susan Scafidi (2024). Cultural Appropriation as Copyright Violation.
- https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4398743
- Mark Lemley (2023). Blockchain as IP Infrastructure.
- https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4198439
- Kal Raustiala & Christopher Sprigman (2024). *The Piracy Paradox Revisited*.
- https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4580385

Volume 3 Issue 1 | May 2025

- EU Ecodesign Regulation (2025).
- https://environment.ec.europa.eu/topics/circular-economy/ecodesign-sustainableproducts-initiative_en
- Right to Repair Directive (EU).
- https://environment.ec.europa.eu/topics/circular-economy/right-repair_en
- Hermès v. MetaBirkins (2023) NFT Trademark Case.
- https://www.reuters.com/legal/transactional/hermes-wins-lawsuit-over-metabirkinsnfts-2023-02-08/
- LVMH v. Amazon Platform Liability Case.
- https://www.fashionlaw.com/post/lvmh-wins-lawsuit-against-amazon-overcounterfeit-sales

