



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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The Role of Trademarks in the Fashion Industry

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Received 20 November 2023; *Accepted* 16 December 2023; *Published* 20 December 2023

Trademarks become essential tools in the fashion industry, going beyond their symbolic value to shape brand identity, consumer perception, and competitiveness in the market. Serving as visual representations, whether in the form of logos, brand names, or design features, trademarks distinguish brands in the competitive market and fit in with the story of brand identity. Well-designed trademarks create enduring relationships, inspire trust, and elicit good feelings, all of which have a significant impact on consumer loyalty and their ability to influence consumer behavior. Fashion trademarks are protected from unauthorized use by trademark registration, which is a crucial safeguard in a sector susceptible to copying and counterfeiting. Trademarks contribute to brand storytelling by encapsulating principles and unwavering commitments, even outside of legal boundaries. Trademarks become powerful tools in the globalized fashion industry, reaching beyond national boundaries to express a consistent brand image. Trademarks continue to be essential tools that shape the dynamic interplay between innovation, commerce, and customer engagement and dictate the direction of the fashion industry.

Keywords: *fashion industry, trademark, brand identity, logos, brand names.*

INTRODUCTION

Intangible works of human intellect are included in the category of property known as intellectual property, or IP.¹ A body of laws known as intellectual property rights safeguard these kinds of intangible human creations. Copyright, patents, trademarks, trade dress, trade secrets, and so on are examples of IP rights. Intellectual property is becoming more and more important in the fashion business every day. The designing, producing, and retailing of clothing, purses, shoes, accessories, and other items is known as the fashion industry. Global fashion trends are growing these days, and they must be protected to prevent people from stealing other people's ideas and using them for their personal gain. Registering one's intellectual property is crucial since it stops products from being copied or reproduced.

Trademarks are essential to brand identity and customer loyalty in the fast-paced world of fashion. The purpose of this dissertation is to investigate the various aspects of trademarks' importance in the fashion business. We will look at their evolution throughout time, potential legal ramifications, effects on brands, and perception among consumers. Comprehending the function of trademarks in the fashion industry is essential not only for fashion enterprises but also for legislators and buyers. This research will clarify this intricate relationship between law, business and culture, offering insightful information to all parties involved in the fashion industry.

Moving beyond its utilitarian roots, the realm of fashion has transformed into a symbol of individuality and a medium for self-expression. Within this intricate world, trademarks play a pivotal role for fashion enterprises in setting them apart from their multitude of competitors, forging a unique identity, and nurturing enduring connections with their clientele. Within the fashion industry, trademarks encompass not only emblems and brand names but also a diverse array of hues, patterns, and design elements, contributing to the rich tapestry of fashion

¹ *Understanding Industrial Property* (WIPO 2016)

branding. These trademarks encapsulate a brand's commitment, quality, and heritage; they transcend mere symbols.

THE ROLE OF TRADEMARKS IN BRANDING

It is impossible to exaggerate the importance of trademarks in branding since they serve as the foundation for a company's identity, unique selling point, and devoted following. Trademarks, which include brand names, logos, slogans, and even particular color schemes, serve as distinctive emblems that are inextricably linked to a company's dedication to excellence and reliability.

Establishing Brand Identity: Trademarks play a central role in crafting and upholding brand identity. A thoughtfully crafted trademark, consistently used, facilitates immediate consumer recognition and connection with a specific brand. As Aaker (1996) noted, 'Brand identity is like a blueprint, guiding the development of the brand.'²

Distinguishing Products: Products can be distinguished in a crowded market by using trademarks. Consumers use trademarks as markers to determine a product's provenance. According to Keller (1993), 'Brands are important cues in distinguishing among different alternatives in the market.'³

Building Consumer Loyalty: Robust and well-managed trademarks foster Consumer loyalty and trust. According to Yoo and Donthu (2001), brands that continuously provide great experiences likely to earn repeat business.⁴

Legal Protection: In order to maintain a brand's long-term distinctiveness, trademarks provide essential legal protection against rivals who may try to employ marks that are confusingly similar. Kaplowitz and Shapiro underline this legal protection (2007).

² David A. Aaker, *Building Strong Brands* (Free Press 1996)

³ Kevin Lane Keller, 'Conceptualizing, Measuring, and Managing Customer-Based Brand Equity' (1993) 57(1) *Journal of Marketing* 1-22 <<https://doi.org/10.1177/002224299305700101>> accessed 10 November 2023

⁴ Boonghee Yoo and Naveen Donthu, 'Developing and validating a multidimensional consumer-based brand equity scale' (2001) 52(1) *Journal of Business Research* 1-14 <[https://doi.org/10.1016/S0148-2963\(99\)00098-3](https://doi.org/10.1016/S0148-2963(99)00098-3)> accessed 10 November 2023

Impact on the Mind: Trademarks have an impact on consumers' minds as well, arousing feelings and mental associations. Pappu and Quester (2010) point out that through emotional and cognitive associations; trademarks have the ability to influence customer impressions.⁵

Worldwide Recognition: Certain trademarks have the ability to cross national borders and become symbols of worldwide recognition. The 'Nike Swoosh' and the 'Apple' emblem, for example, are globally recognized, demonstrating the effectiveness of trademarks in creating global brand awareness.

LEGAL ASPECTS OF FASHION TRADEMARKS

It is crucial to understand the legal ramifications of fashion trademarks, particularly in India. The fashion industry's use of trademarks is protected and enforced by the strong legal framework in India, which has a notable impact on brand strategy and the competitive environment.

1. Indian Trademark Act 1999: The legal basis for trademark protection in India is established by the Indian Trademarks Act 1999. It has a significant influence on how trademarks are used in the fashion sector and regulates the registration, defense, and enforcement of trademarks. This law protects the uniqueness of fashion labels by guaranteeing trademark owners the sole right to use their marks.

2. Intellectual Property Appellate Board (IPAB): The IPAB is essential to India's trademark dispute settlement process. This quasi-judicial organization ensures that trademark owners can successfully defend their rights by offering a channel for appealing judgments pertaining to trademarks.

3. Trademarks and Globalization: Due to the globalization of the fashion industry, there are more cross-border trademark disputes. The World Trade Organization (WTO) Trade-Related

⁵ Ravi Pappu and Pascale Genevieve Quester, 'How does brand innovativeness affect brand loyalty?' (2010) 44(1/2) European Journal of Marketing 169-191 <<http://dx.doi.org/10.1108/EJM-01-2014-0020>> accessed 10 November 2023

Aspects of Intellectual Property Rights (TRIPS) Agreement has played a significant role in promoting international uniformity in intellectual property regulations, encompassing trademarks. India's participation in TRIPS has improved the legal foundation for global trademark protection in the apparel industry.

4. Difficulties with Counterfeiting: In the fashion sector, counterfeiting continues to pose a serious problem. The Indian judiciary has approached this problem head-on. Indian courts have established precedents that strengthen the protection of fashion trademarks and discourage counterfeiters through notable cases like *Christian Louboutin v Abubaker*⁶.

5. Geographical Indications (GI): Certain Indian locations, such as Kanchipuram for silk sarees, are well known for certain traditional styles in the context of fashion. The Geographical Indications Act 1999⁷ provides protection to fashion products intimately linked with a specific geographical location by defending the intellectual property rights of these distinctive regional products.

TRADEMARK PROTECTION AND ENFORCEMENT

Actions for infringement and passing off are available for enforcement under the Trade Marks Act 1999 (the TM Act). In India, the four high courts with original jurisdiction as well as the district courts are the venues for filing infringement or passing-off cases. According to the TM Act, trademark infringements and falsifications are crimes that carry a six-month to three-year jail sentence, a 50,000–200,000 rupee fine, or both. Furthermore, under the Code of Criminal Procedure 1973, a trademark owner may submit a criminal complaint before a magistrate, requesting an investigation, search, and seizure of products that are infringing within the infringer's premises. For trademark infringement and falsification, one may also report the offense to the police on a criminal level.

⁶ *Christian Louboutin v Abubaker* CS (COMM) No 890/2018

⁷ Geographical Indications Act 1999

A brand's integrity and customer confidence are critically dependent on trademark protection and enforcement. With the use of relevant citations, we shall examine the legal laws and procedures that control trademark enforcement and protection in this part.

1. Legal Framework and Registration: Registration marks the start of trademark protection. The Indian Trademarks Act 1999⁸ is the cornerstone of trademark protection in India. The Act defines 'trademark' in Section 2(1)(zb)⁹ and outlines the registration procedure in Section 18¹⁰. The Trademarks Act 1999 provides the legal basis for trademark protection.¹¹

2. Exclusive Possession: The owner of a trademark obtains exclusive rights to use it in connection with their goods or services upon registration. The Indian legal system protects these rights (Indian Trademarks Act, 1999).

3. Preventing Infringement: Trademark proprietors possess the authority to initiate legal actions against any unauthorized use of their mark. Section 29¹² of the Act addresses infringement and furnishes legal remedies for trademark owners.

4. Defensive Strategies: To preserve their trademarks, owners frequently implement proactive measures. This encompasses systematic market surveillance and timely legal action against potential infringers. Legal actions may encompass sending cease and desist notices, pursuing civil litigation, or resorting to criminal proceedings under the Act.

5. International Safeguards: International trademark protection is critical for worldwide brands. The World Intellectual Property Organization states that the Madrid Protocol provides a means for trademark owners to register their marks in several nations, streamlining the procedure and guaranteeing global protection.

⁸ Trademarks Act 1999

⁹ Trademarks Act 1999, s 2(1)(zb)

¹⁰ Trademarks Act 1999, s 18

¹¹ Trademarks Act 1999

¹² Trademarks Act 1999, s 29

6. Goods in the Grey Market and Counterfeiting: Owners of trademarks are quite concerned about counterfeiting. The Indian legal system has taken a proactive approach to dealing with counterfeiting. Legal precedents have been set by Indian courts to protect trademarks and deter counterfeiting, as demonstrated by landmark cases like *Christian Louboutin v Abubaker*¹³.

TRADEMARK REGISTRATION AND ITS IMPORTANCE

Trademark protection is essential to the fashion industry's overall growth. Fashion companies mostly rely on the value of their brands to make money from their activities. The use of a registered trademark prevents counterfeiters from making money off of the fashion label. Trademark registration protects small businesses and fashion start-ups against the damage resulting from brand infringement.

In the fashion sector, trademarks are essential for preserving brand value and boosting marketing campaigns. Trademark law may protect names and emblems associated with certain products, such as shoes, innerwear, nylon, and other items like diamonds. Trademarks can protect slogans used in product marketing campaigns. Trademarks that are recognized as non-traditional marks but do not fit into the broad category can also be based on moving images, outward indicators like virtual objects, or non-visual indications like fragrance and audio. Therefore, IPR can be used to protect aerosol fragrances and other such products.

Examples that Prove Trade Marking is more than just Trademarks and Emblems in the Fashion Regime.

Interestingly, a fashion designer will often use a trademark to the extent that it becomes an essential component of the brand value. The trademarks of clothing manufacturers are usually seen outside of clothing or accessories. For example, the recognizable LV symbol is a key element of the style of a Louis Vinton handbag and is shown on the bag on multiple occasions. As a result, the logo eventually becomes an essential part of the design, allowing the trademark to ensure total protection against design infringement. Fashion designers can benefit from

¹³ *Christian Louboutin v Abubaker* CS (COMM) No 890/2018

exclusive rights over the unique characteristics of the product through trademark registration, in addition to brand names and logos.

For instance, Australian fashion designer Bettina Liana's trademark has been registered for her distinctive pocket stitching. Both the word Burberry and the recognizable check-based pattern are protected trademarks owned by the well-known fashion house Burberry. Business clothes, or what's generally called product packaging, are also covered by the trademark, which can be used to determine its origin. Nonetheless, the court has often ruled that the trade dress ought to be considered an essential part of the product's design. Some courts have ruled that the product's entire look, including its size, color, texture, graphics, and even the manner it is marketed, is included in the trade dress. Trademark law therefore covers it.

Louis Vuitton Malletier v Haute Diggity Dog:¹⁴ Haute Diggity Dog, LLC (HDD), a firm that makes parody pet items, and Luis Vuitton Malletier S.A. (LVM), a luxury consumer goods manufacturer recognized for its Monogram Canvas Pattern Design mark, are involved in this action regarding numerous intellectual property infringement. Louis Vuitton launched a complaint against HDD, claiming that the latter had violated copyright and trademark rules by promoting pet toys that mocked LVM's high-end merchandise under the moniker 'Chewy Vuiton'. Louis Vuitton had to show that it had a protectable mark and that buyers would probably be confused by HDD's use of similar marks in commerce in order to establish trademark infringement. The power of the mark, the resemblance of the markings, and the degree of familiarity were all considered by the court when determining the risk of a mistake. Ultimately, the court concluded that confusion was unlikely, denying Louis Vuitton's motion for summary judgment and granting HDD's cross-motion regarding trademark violation.

Additionally, Louis Vuitton claimed that HDD's conduct had diminished the distinctive nature of its mark and filed a request for injunctive relief under the Federal Trademark Dilution Act. The court took into consideration dilution by trademark tarnishment, which occurs when a mark is negatively portrayed and dilution by blurring, which occurs when a junior mark lessens the

¹⁴ *Louis Vuitton Malletier S.A. v Haute Diggity Dog, LLC* 464 F. Supp. 2d 495 (E.D. Va. 2006)

distinctiveness of a famous mark. Since it was determined, that HDD's parody items did not dilute the product through trademark tarnishing or blurring, summary judgment was given in HDD's favour regarding the dilution issue.

The case brought up significant issues involving intellectual property infringement and striking a balance between rights to parody and trademark protection. Even though Louis Vuitton was a well-known and powerful brand, the court found that these exclusive rights on parody goods did not lessen their distinctiveness or increase the risk of confusion or damage. This decision was in favour of HDD and its mockery of pet supplies. Ultimately, the court rejected Louis Vuitton's request for summary judgment and approved HDD's cross-motion, concluding that HDD's parody of pet items did not violate any trademarks or dilute their brand. The intricacies of trademark law and the factors involved in striking a balance between trademark protection and parody are highlighted in this case.

Case: Puma v Forever 21¹⁵

Question: Should the court grant Forever 21's petition to dismiss?

Puma sued Forever 21, a fast-fashion retailer, alleging that Forever 21's shoe designs were identical to Puma's own, which included the Fur slide, Bow slide and Creeper Sneakers from the Fenty collection (which was created and marketed in partnership with Rihanna Fenty).

Among the reasons for action are:

1. Infringement of Design Patents;
2. Federal Apparel;
3. Violating Copyright;
- 4- Federal Erroneous Origin Designation;

¹⁵ *Puma v Forever 21* CV17-2523 PSG Ex, 2017 U.S. Dist. LEXIS 211140 (C.D. Cal. June 29, 2017)

5. Unfair Competition by States.

Forever 21, nevertheless, said that the designs ought to be substantially disregarded from the Puma lawsuit because they originated in the middle of the 20th century.

Holding: Forever 21 tried to have the case dismissed on grounds of design patent infringement, but the judge denied their motion. Nevertheless, the Court rejected with leave to amend the UCL complaint and the Lanham Act claims for trade dress infringement, unfair competition and false designation of origin.

CONSUMER PERCEPTION AND TRADEMARKS IN FASHION

When it comes to fashion product trademark protection, consumer impression is vital. Trade clothing must be distinctive and nonfunctional in order to be protected. The ability of trade dress to differentiate the products of one manufacturer or merchant from those of another establishes its individuality.¹⁶ The term 'non-functionality' describes the safeguarding of trade dress elements that are not necessary for the product's operation.

Determining the uniqueness of trade dress involves considering the opinions of consumers. Customers are more likely to support trade dress protection if they believe it to be distinctive and representative of a particular brand or place of origin. Consumer surveys, market research, and advertising are just a few of the methods that can be used to gauge consumer perception. Trademarks can evoke emotions and sentiments in consumers. A well-designed trademark can trigger positive emotions, which can significantly influence purchasing decisions.¹⁷ Counterfeit products in the market also affect consumer perception. Counterfeit fashion items often bear

¹⁶ 'What is a Trademark and How Can I Protect One?' (*Watts Guerra*, 30 March 2020)

<<https://wattsguerra.com/what-is-a-trademark-and-how-can-i-protect-one/>> accessed 13 November 2023

¹⁷ Henrik Hagtvedt and Vanessa M. Patrick, 'Art Infusion: The Influence of Visual Art on the Perception and Evaluation of Consumer Products' (2008) 45(3) *Journal of Marketing Research* 379-389

<<https://doi.org/10.1509/jmkr.45.3.379>> accessed 13 November 2023

imitations of well-known trademarks, which can erode consumer trust and lead to concerns regarding authenticity.¹⁸

CONCLUSION

Unquestionably, trademarks play a variety of roles in the fashion industry and are essential to the identity and success of fashion firms. Beyond just being symbols, trademarks are effective instruments that greatly enhance consumer perception, brand distinction, and competitiveness in the market.

First and foremost, trademarks are visual symbols that capture the spirit of a brand. Trademarks are the face of a fashion brand, instantly identifiable and consistent with its identity, whether they take the shape of logos, brand names, or distinctive design aspects. In addition to helping brands stand out in a competitive market, this visual distinctiveness is essential to the brand's narrative and storytelling.

Second, trademarks have a significant impact on how customers perceive and behave. Customers frequently base their purchases on their familiarity with brands and their associations with them. A well-designed trademark has the ability to arouse favorable feelings in customers, foster trust, and create long-lasting relationships. It turns into an effective tool for influencing the preferences and loyalty of customers.

Thirdly, the legal features of trademarks shield fashion brands. Ensuring exclusive rights through trademark registration guards against unlawful use and protects the brand from infringement. In a field where originality and creativity are highly prized and brand reputation is vulnerable to copying and counterfeiting, this legal protection is extremely important.

Trademarks have become invaluable assets that help fashion firms achieve global recognition and success in the highly competitive and globalized fashion industry. They serve as a common language for brands to speak with customers all across the world, fostering a cohesive and

¹⁸ Ian Phau and Min Teah, 'Devil wears (counterfeit) Prada: A study of antecedents and outcomes of attitudes towards counterfeits of luxury brands' (2009) *Journal of Consumer Marketing* 26(1) 15-27
<<http://dx.doi.org/10.1108/07363760910927019>> accessed 13 November 2023

consistent brand image. In the fashion industry, trademarks essentially transcend the legal domain and are deeply ingrained in the core of brand identification, consumer perception, and market positioning. Trademarks continue to be essential tools in the ever-changing and diverse fashion world. They help firms navigate the intricate web of innovation, commerce, and customer contact, shaping the direction of the sector for years to come.