

Intellectual Property Rights and Fashion Industry

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Abstract *IPR plays an important role in encouraging invention and economic development, especially in a competitive fashion world. Importantly, registration provides legal protection to the authors, protecting against any unauthorized reproduction or use of their work. From clothing to luxury items, different types of IP, such as trademarks, patents, designs, and copyrights, offer protection for different types of products. Copyright, in particular, protects the original expression of ideas; trademarks distinguish products, and patents protect industrial inventions. These rights are recognised worldwide through the ratification of International Conventions, e.g. TRIPS and the Berne Convention. The laws of Pakistan allow for civil actions such as obtaining injunctions and monetary damages, as well as possible criminal prosecution for offences under the Pakistan Penal Code. Strong IPR systems allow for continued innovation and protection of the authors' IP from misuse.*

Key Words:

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(IPR), Fashion
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Design
Ordinance,
2000, Legal
Remedies.

Introduction

Intellectual property rights (IPR) are creations of the human mind that are utilised in commerce, such as inventions, literary and artistic works, symbols and designs (World Intellectual Property Organisation, n.d.-b). These rights are essential for encouraging innovation, economic growth, and other creative activities, giving inventors and authors the right to benefit from their creations for a limited time. The international architecture of IPR is supported by institutions, e.g., the WTO (World Trade Organisation, n.d.), which administers the Agreement on Trade-Related Aspects of Intellectual Property Rights (1994). These frameworks have also proven timely and pertinent in history. When Alexander Graham Bell was vying with his rivals to patent the telephone, the result was decisive, with hours differentiating the eventual victor (Hart, 1978). To this day, such systems are still

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in development, with a variety of international approaches to how intellectual assets are framed and protected (Kur & Drexler, 2012).

IPR has become an important tool for safeguarding various products such as clothes, jewellery, luxury bags, etc. from duplication in the extremely competitive fashion industry. Such protection enables proprietors to ensure that no party is allowed to use a similar mark or sign, which was upheld in important cases such as Starbucks Corporation v. Sardarbuksh Coffee & Co. & Ors., 2018, and Shield Corporation Ltd. v. Dalda Foods (Pvt.) Ltd., 2015. In Pakistan, these rights are governed by the Intellectual Property Organisation of Pakistan, which has specific policies and enforcement guidelines (Intellectual Property Organisation of Pakistan, n.d.-a; Intellectual Property Organisation of Pakistan, n.d.-b). There are specialised tribunals in place for creators to pursue civil remedies, and criminal penalties for infringements can be sought under the Pakistan Penal Code (Pakistan, 1860). Finally, an effective IPR system will be vital in stimulating further creativity and safeguarding authors from IP infringement.

Objectives

The basic purpose of this paper is to elaborate the importance of intellectual property rights and their impact and effects on the fashion industry. Intellectual property rights encourage the inventor/creator to do more inventions while his invention would be protected by law. The purpose of this study is to highlight the intellectual property rights in the context of fashion industry as to how such rights can be gained, used, and enjoyed in this particular industry keeping in view its broad effects in other sectors. This study will help to enhance the use of such rights and their protection in fashion items and will answer the relevant question regarding its use in this industry. In case of any violation of their rights relating to the intellectual property, the author has both remedies such as civil as well as criminal. He can initiate proceedings against the offenders.

Recognition of Intellectual Property

Intellectual property means the creation of the mind which can be used in commerce such as inventions, any work done in literary form, artistic work, symbol, design, and name. (World Intellectual Property Organization, n.d.-b) Intellectual property is secured through laws such as copyright, trademark and patent which enable the people to earn from their invention. The main purpose of IP law is to encourage authors or inventors for their work. The protection of intellectual property for a limited period becomes the source of the creator's income. The First treaty relating to intellectual property rights was held in PARIS which is known as The PARIS Convention for the protection of industrial property (1883). (World Intellectual Property Organization, n.d.-b) The second treaty

relating to the protection of literary and artistic work was held in Switzerland, Berne in 1886.(World Intellectual Property Organization, n.d.-b) The PARIS convention comprised of 178 member states and 179 members of The BERNE convention. Pakistan is also a subscriber to both conventions. After both conventions World Intellectual Property Organization (WIPO) was established on 14th July 1967 and it came into force in 1970. Instead of World Intellectual Property Organization various institutions moving their aims toward the intellectual property rights such as The General Agreement on Trade and Tariffs (GATT), the Conference of the Parties to the Convention on Biological Diversity (CBD), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), United Nations Conference on Trade and Development (UNCTAD).(Kur & Drexler, 2012)

Pakistan has joined the World Trade Organization (WTO) on 1st January 1995 and has been member of GATT since 30th July 1948.(World Trade Organization, n.d.) Pakistan has also subscribed to the Trade-Related Aspect of Intellectual property Rights (TRIPS) and Universal Copyright Convention 1952. Trade-Related Aspect of Intellectual property Rights is the complete international agreement on intellectual property rights which was administered by the WTO.(Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994) The main object of WTO is to increase international trade. There are total 164 members of the world trade organization and all of them are bound to admit intellectual property rights. It deals with copyrights and related rights such as rights of performers, recording, broadcasting, patent, trade dress, and designs, etc (Intellectual Property Organization of Pakistan, n.d.-a). It is a very easy and less-cost system to register a trademark internationally. International Bureau of WIPO has controlled the MADRID protocol system. MADRID protocol system protected the trademark in more than 123 countries.(World Intellectual Property Organization, n.d.-a)

Intellectual Property Rights

Intellectual property rights are the special and absolute rights that prevent the people from using the invention or creation without the permission of the originator. Protection to intellectual property is granted in certain forms such as trademark, patent, design, copyright, etc. The patent is the exclusive right which is granted for the invention. To understand the importance of patent right registration of telephone is a clear-cut example. "Alexander Graham Bell" invented the telephone in 1876. He filed an application for the registration of his invention in 1876 which was granted to him. It is pertinent to mention here that there was another personality namely "Elisha Gray" also working on the same device. The most important fact is that Elisha Gray had also filed a patent claim for the same device on the same day, a few small hours later when Alexander Graham Bell filed a patent claim.(Hart, 1978) If Alexander Graham Bell was late for a few hours, his

invention would have been the name of Elisha Gray and nobody knew Alexander Graham Bell in the world. Patent granted to the author right to make, sell and use the invention. In KHAWAJA TAHIR JAMAL VS A-R REHMAN GLASS case plaintiff claimed to be the patentee of a novel process of manufacturing sheet glass through float glass technology. Defendant argued that it is not a new process and the Khawaja had not invented this process. Due to the lack of novelty Khawaja had no right of the patent. In this case, it was held that patent was granted to the Khawaja in 1933 and Pakistan was not a member of any patent convention at that time and since 1933 Khawaja's patent remained unchallenged. It was also held that the patent was correctly granted and conferred on Khawaja the exclusive rights to use, make and sell, and in case of any contravention right to sue for injunctions was also granted to the patent holder. (Khawaja Tahir Jamal v. A.R. Rehman Glass, 2005)

Trademark means any sign, logo, name, or word which differentiates the product or service from others while the term copyright is used to define the right of the author with regard to literary and artistic work. A Trade secret is also form of intellectual property and it comprises confidential information. Such information can be sold or licensed. There are certain conditions with regard to the protection of trade secrets i.e information must be commercially useable and have valuable, information must be known by limited persons and certain steps should be taken to keep secret the information. (World Intellectual Property Organization, n.d.-b) Intellectual property rights are internationally recognized by the states under PARIS CONVENTION, BERNE CONVENTION, WIPO, and WTO. There are certain rights are attached to the creation or invention such as legal rights as well as moral rights. Legal rights include the right to reproduce, the right to offer for rent, the right to sale, the right to assign and the right to perform in public, etc while moral rights include the right of honor and authorship. As per law, the author of the intellectual property can assign his work to the other person which means that the legal rights attached to the intellectual work are also assigned to that person to whom the intellectual work is assigned. When the author of intellectual work assigns his rights to others, it does not mean that he assign the moral rights attached to the intellectual property. It is the moral right of the author to have his/her name with regard to the work which his/her creation. (Novartis AG v. Descon Laboratories, 2009) These rights sustain the association of the author and his invention. The purpose of these kinds of rights is to motivate the authors/ creators.

Intellectual Property Rights and the Fashion Industry

The Fashion industry is the most growing industry in which the latest inventions take place day by day. Fashion trends bring changes every day. The protection of intellectual property in this sector is important because this sector plays an important role in economic development. The Fashion industry comprises not only

bags, leather footwear, clothes but also includes a suitcase, purse, jewelry, hat, cap and watch, and any other luxury items. The Fashion industry plays an important role in generating revenue which is used for the development of a country such as for the welfare of people etc. Protection of Intellectual property rights in this sector is most important so to encourage the inventors or creators to do more invention and play their vital role in the economic development. Trademark, design, and copyright are also include in the field of the fashion industry. Trademark in itself is an earmark that makes prominent the products and services from others. The Proprietor of the registered trademark has the exclusive right to use the same with regard to goods specified therein and has got the right to prevent all persons from using the registered trade mark. (Shield Corporation Ltd. v. Dalda Foods (Pvt.) Ltd., 2015) For example, in the case of trademark infringement, High Court of Dehli on 1st August 2018 passed an interim injunction against the SARDARBUKSH and in favour of Starbucks. In this case, High Court of Dehli restrained the SARDARBUKH to use his name for their upcoming 20 new outlets till the final decision of the suit and also directed the SARDARBUKSH to use the name of SARDARJI-BAKHASH. On 27 September 2018, SARDARBUKSH agreed to change the name all of its outlets and would use the name of Sardarji-Bakhash Coffee & CO." (Starbucks Corporation v. Sardarbuksh Coffee & Co. & Ors., 2018) Similarly, the jury passed an order of damages US\$305 million in favour of Adidas America incorporation as damages against the Payless Shoesource incorporation in case of trademark infringement. (Trade, Intellectual Property, and Labor Policy Review, n.d.)

The Fashion industry invests a huge sum of money every year and the protection is important to prevent the other from copying. Once the trademark was registered, it restricted the other parties from using such trademark and registration certificate for the trademark was prima facie evidence in all legal proceedings relating to the trademark infringement. In the case of "MEHNAZ MIRZA MALIK THROUGH ATTORNEY VS BILAL EMBROIDERY THROUGH OWNER/PARTNER AND 2 OTHERS" the plaintiff has filed a suit for the infringement of her trademark "Baroque", declaration, injunctions, passing off and damages against the defendants. In this case, it was held that the plaintiff had a good prima facie case due to similarity between two marks, defendant's intention to infringe was obvious and therefore the balance of convenience fell to the plaintiff and the High Court also restrained the defendant from using the trademark of the plaintiff.

Trademark's impact and effects in the fashion industry are obvious to everyone. No one can deny the importance of a trademark. The Fashion industry is not a restricted industry. There is very strict competition between brands and it is very difficult to make difference with regard to the quality of the product. It is a trademark that differentiates the product from other brands. Samsonite is an international brand which is known as the world's largest and most recognizable

brand of luggage, bags, and other related items. It was established more than 100 years ago. This company has also suffered from a trademark infringement case in Pakistan. In “SAMSONITE IP HOLDINGS s.a.r.l VS FAMOUS BRANDS (PVT) LTD” defendant was the authorized distributor for the products of Samsonite. Samsonite appointed a new distributor in august 2016 due to disputes and unhappy and poor performance. Defendant used the trademark and latter pad with a complete display of sign of Samsonite as authorized distributor of Samsonite. The plaintiff filed the suit for declaration, permanent injunctions, and damages as well as passing off. The Court restrained the defendant from infringing the trademark in question and other marks of the plaintiff and also directed to immediately remove signage being used by them in their outlet. There are many other cases that make it clear that intellectual property rights are vested to promote inventions or creations.

Design ordinance, 2000 is the main source for protection of design and its relation with fashion. To understand the role of intellectual property rights in Pakistan Yehsir Waheed case is the most important example. Brimful is a design studio which launched a design made by the Yehsir Waheed. Yehsir Waheed designs were copied by the local manufacturers and sold by them which create a negative impact on the Brimful studio. Brimful's financial crises led the owner to understand the protection of their designs is necessary to survive in this field. Brimful took part in a seminar which was conducted by the Small and Medium Enterprise Development Authority (SMEDA). In this seminar, brimful met an intellectual property expert who advised him to register its designs under design ordinance, 2000. After the discourse with the IP expert, Brimful decided to register its design under design Ordinance, 2000, and decided to take strict action against infringers. Since 2004 all designs of Yehsir Waheed are registered. Protection with regard to intellectual property rights is necessary and since 2004 Yehsir Waheed brimful makes progress day by day.

This paper also makes it clear that you don't need to get fame only when you invent something, sometimes it took a while. Sometimes many items become a classical piece. An example of it is Hermes “Kelly” bags. Kelly's bag grew to fame in 1956 after Princess Grace Kelly of Monaco appeared to carry the same bag on the cover of Life Magazine. (Catawiki, n.d.) There was a one-year waiting period. Now the Hermes mini Kelly bag's price is \$8150 in the United State and in the United Kingdom \$6159.

Remedies in case of violation

Copyrights law provides protection to intellectual property work for life and 50 years after the death of the creator. Trademark provides protection for the period of 10 years while Registered Design Ordinance also provide protection for the period of 10 years. Patent law provides protection for the period of 20 years. In

case of any violation, the author may claim damages, injunctions, and accounts. In case of criminal remedy Pakistan Penal Code, 1860 provides provisions (Under Sections, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, and 489) for criminal proceedings against the offenders. (Pakistan, 1860) All suits and other civil proceedings regarding intellectual property rights initiated and tried by the IP tribunal. (Intellectual Property Organization of Pakistan, n.d.-b) Tribunal while exercising civil matter has all powers of civil court as vested under Code of Civil Procedure, 1908 while exercising the criminal power shall have all powers in criminal proceeding as vested by the Code of Criminal Procedure, 1898.

Conclusion

In the light of the above-mentioned paragraphs, the point is clear that the protection to the Intellectual property rights is most important because the author of the IP may be disappointed in case of non-protection by dint of which he may prevent himself from making any invention and restrained himself from participating his crucial role in the economic development. For claiming intellectual property rights registration is a compulsory requirement. There is very strict competition in the field of the fashion industry and any single mistake regarding intellectual property rights may cause irreparable loss to the inventors and creators. It is a challenge for the developing countries to what extent they protect intellectual property rights in the field of the fashion industry. On the other hand, there are a lot of treaties and conventions were conducted regarding the protection of intellectual property rights as above mentioned in this paper. Similarly, for the protection of intellectual property rights in Pakistan certain Ordinance were passed as above mentioned in this paper and The Intellectual Property Organization of Pakistan was also established in 2012.

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