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VIRTUAL FASHION AND INTELLECTUAL PROPERTY RIGHTS IN INDIA: AN ANALYSIS

ABSTRACT

The fashion industry has always been dynamic in its sphere. The fashion industry is now divided into real-life fashion and digital fashion. The use of technology in the fashion industry rapidly increased over the past decade. The use of technology has influenced the creators and the consumers, in fact, has also raised a set of new legal challenges. Though the use of technology is rising, the concept of virtual fashion is new. As the name suggests a fashion through a virtual medium and trade of those necessarily means the virtual fashion. Virtual reality and technology have enabled virtual experiences, such as virtual try-on shopping, and virtual fashion shows. The big fashion labels such as Louis Vuitton, Addidas, and Gucci have already started creating digital clothes for the metaverse and many have started creating NFTs into fashion products. Virtual fashion in a way helps sustainability and enables the creator to market to the targeted audiences. With the rise in virtual fashion, stakeholders are sceptical about the enforcement and protection of IP rights and legal concerns. The real-life product has been created and is protected through various laws such as the Trademark Act, Designs Act, and Copyright Act in India, whereas the Virtual dresses are prone to infringement as the creators aren't aware of the digital protection for their creation. This paper discusses virtual fashion, and the need for legal protection in India, to pass effective and efficient laws and therefore

ensure that the rights of creators are protected and promote innovation in Virtual Fashion.

BACKGROUND

Although the world fashion has always been centre of attention, the Indian fashion has always been the root of all inspired designs. The world fashion in particular has legal backing to the designs which was built. The production of designs, creativity and style is always accompanied by duplications and in a way infringing the original work. As the designs grow of daily basis the risk of duplication also rises. A brand which focuses on future growth must utterly consider melding intellectual property rights in order to build an engrained brand. The Indian legislation talks about protection of the same under the Trademark Act, 1999 Copyright Act, 1957 and Designs Act, 2000. The object of Trademark Act, 1999 is to enable the consumers distinguish one product from another and thus, prevents the confusion among the consumers. The Copyright Act mentions under the Section 2(c)(i) includes the prints, embroidery etc, which also means artistic work under the Act as the court ruled in the year 2008 in the case of Rajesh Masrani v. Tahiliani Design Pvt. Ltd. Whereas, the Designs Act, 2000 it helps protecting the designs which are non-functional in nature like shape, pattern, colour, stripes etc, which are created to offer an aesthetic guise. India still being new to the protection of fashion industry through IP rights, a new form of fashion is evolved called virtual fashion. The wake of virtual fashion was when the gaming industry started introducing specific avatars. Eventually, the gamers started looking for customizing which paved way to purchasing of digital fashion. The top brands saw this an opportunity to market their products in embracing the metaverse with digital or virtual fashion.

KEYWORDS

Virtual fashion, NFTs, Metaverse, Designs Act, digital fashion, IPR.

INTRODUCTION

The advent in virtual fashion was because of video games and also other applications such as snapchat, where the users started buying virtual merchandised products for their avatars. The major fashion labels such as Gucci, Louis Vuitton, Adidas, Nike have already developed virtual clothes and accessories for the metaverse. The pandemic is definitely one reason for the rise of fashion in metaverse. The people started gaming more and since they were not able to physically purchase any products, the virtual fashion emerged.

The big brands grasped this opportunity. This virtual fashion is only encouraged through the emergence of NFTs, where the brands have created a money-making tool rather than just as a marketing strategy. A platform named Dress-X was created in 2020 which enabled the consumers to try-on and purchase the 3D products from its producer or designers. The inherent nature of the metaverse facilitates the ease of copying and replicating designs, making it difficult to protect original creations of the creators.

Now coming to the legal consequences of these virtual fashion, it is necessary for the brands to protect their legal interest while being in the digital sphere. The protection of the brands from infringing the products under Copyright Act, Trademark Act and Designs Act do not perse give rights to the usage of marks in the Virtual or Augmented reality. The legal implication is that the right is not extended to the digital counterpart. The digital version is created by a separate

designer, therefore the brand do not possess any of the rights, but the creator. Thus, the brand has to enter into a contract with the digital creator in order to get the ownership and cannot argue that the original design was created by the former. Whereas, the brand engages into production of 3D design, then a licensing agreement shall be entered clearly mentioning all the relationship and rights of the parties.

What Is Metaverse?

The metaverse is a set of digital spaces to socialize, learn, play, and more . Where we will be able to access the metaverse on different devices like your phone or computer, as well as virtual reality devices where you're fully immersed .

Jurisdiction

Jurisdiction of the metaverse cases. On the creation of metaverse certain creators provide the governing laws, wherein the users agree on before using and there are also certain rules in case of dispute arising out of metaverse. In India, the courts try to resolve the disputes through arbitration where the subject matter is related to jus in rem of the parties. The Indian courts still rely on the traditional concepts of Trademark for the disputes which arise in metaverse. But these laws are not sufficient to curb the digital infringement. For instance, the Trademark law does not mention on the concept of licensing. As already discussed, a license agreement shall be entered into by the brand owner and the 3D design creator, as a digital product cannot be created with a real-life license of a product.

Emergence of IPR infringement

Another problem which arises out is the Collaborative virtual fashion projects represent a dynamic fusion of creativity, technology, and design, bringing together diverse talents to create innovative and immersive fashion experiences. In such collaborative endeavours, understanding and navigating the Intellectual Property Rights (IPR) landscape is crucial to ensure fair attribution, protection of creative contributions, and fostering a conducive environment for continued innovation. Collaborative virtual fashion projects represent a dynamic fusion of creativity, technology, and design, bringing together diverse talents to create innovative and immersive fashion experiences. In such collaborative endeavours, understanding and navigating the Intellectual Property Rights (IPR) landscape is crucial to ensure fair attribution, protection of creative contributions, and fostering a conducive environment for continued innovation. Clarity in attributing authorship ensures that contributors receive due credit for their creative inputs. Some collaborative virtual fashion projects embrace open-source models or Creative Commons licensing to encourage sharing and modification of the created content. Understanding the implications of such licensing models is crucial. Collaborators should be aware of the terms under which their contributions are shared and how these terms may impact downstream usage. Collaborative virtual fashion projects represent an exciting frontier where technology, design, and creativity converge. Navigating the intellectual property landscape in these endeavours requires a proactive approach. Clear agreements, well-defined ownership structures, and an awareness of the evolving legal frameworks are essential for fostering a collaborative environment that stimulates innovation while safeguarding the rights of all contributors. As the collaborative virtual fashion landscape continues to evolve, so too must the understanding and application of intellectual property rights to ensure a harmonious and supportive collaborative ecosystem.

Rise in Virtual fashion

Virtual fashion is a new trend that has emerged in the fashion industry. It involves creating digital clothing and accessories that can be worn by avatars in video games, virtual reality, and augmented reality. The metaverse has opened up endless possibilities for the fashion industry, including virtual fashion shows, virtual try-ons, and uploading designs for real and digital clothing onto the blockchain.¹

The entry of luxury brands in the virtual world has raised concerns regarding the protection of Intellectual Property rights in the metaverse.

Under Indian IPR laws, fashion design/apparel design can either be protected under the copyright or industrial design laws. Section 13, Section 14, Section 15, and Section 22 are some of the important provisions that may deal with the protection of fashion designs/apparels in India. However, IP protection to fashion design is in a transition phase due to the uncertainties as to the protection and the awareness of the same among fashion designers.

The following are some examples where the virtual fashion which happened last few years,

- Moschino: Jeremy Scott created a full collection of doll-size garments which were showcased on a runway by marionette dolls .
- J.W. Anderson: The designer presented his menswear collection for Spring 2021 on a line-up of paper dolls .

¹ [How Real Is Virtual Fashion? – An IP Perspective - Trademark - India \(mondag.com\)](https://mondag.com)

- Prada: The brand delivered one of the best virtual runway presentations to date. Tight, lingering shots revealed key details on clothing and greater detail on accessories, resulting in a collection reveal that – although digital – felt incredibly personal to the viewer .
- Balenciaga: The brand presented its collection in a nocturnal promenade of Paris .
- Burberry: The brand took the audience on a video journey through the mountains with models on the back of a moving vehicle .
- Louis Vuitton: The brand blended the digital and physical by utilizing a green screen for images on the walls alongside the physical runway .²

How to protect virtual fashion rights in India

The Indian market is prone to use infringed products due to the lack of proper research by the consumer. A daily example to this situation is where the crocs brand shoes are being easily infringed and being used improperly due to consumers lack of awareness. This affects the brand value of the companies as well the rights of the consumer to use correct products. If this is the case in physical fashion world, the metaverse product infringement can be easily made.

Though it being claimed that India has not stepped into virtual fashion, the designer such as Manish Malhotra started launched India's first fashion NFT in the year 2021 which was sold out in few seconds. This product included sketches and GIFs of counter pieces worn by models, which got bided for Rs. 2.8 lakhs. So, it is evident that the Indian fashion industry has already joined the race. Therefore, it is pertinent for the brand owners to start protecting their virtual rights and license for their product when acquiring the physical products.

² [The New Era Of Digital Fashion Shows \(theinterline.com\)](https://theinterline.com)

Therefore, in order to protect virtual fashion designs in India, the creator can consider registering them under the Design Act, 2000.

Alternatively, you can also consider protecting your virtual fashion designs under the Copyright Act, 1957. Fashion designs can be copyrighted under two laws in India, the Copyright Act, 1957 as 'creative works' and the Design Act, 2000 as designs.³ Primarily, there are two aspects of clothes designs, which can be protected through these laws. Firstly, the drawings/colour combinations on the garment can be protected as 'artwork' under the Copyright Act .

Flaws In Designs Act in India

The Design Act, 2000 provides extensive protection to designs that are registered under its provisions. However, there are some shortcomings in the Act that may affect the protection of virtual fashion designs.

One of the major flaws is that the registration process can take several months to complete, which is detrimental to an industry that produces new designs at a breakneck speed²³. Another issue is that the Act does not provide protection to designs that are not new or original.⁴

Moreover, copyright protection under the Copyright Act and registration of the design under the Designs Act cannot co-exist, i.e., the design must either be protected as an artistic work under the Copyright Act or registered under the Designs Act .

While Fashion Laws in India are not without their shortcomings, they have by no means reached a state of completeness. As the industry continues to grow,

³ [Limitation of Copyright Law to protect fashion designs - iPleaders](#)

⁴ [Fashion Law : Fashion Design Council of India \(FDCI\). \(khuranaandkhurana.com\)](#)

new laws will be introduced, and older ones will be revised with input from the stakeholders of the fashion business .

How To Register Virtual Fashion Rights Outside India?

The protection of virtual fashion designs outside India is a complex issue. The metaverse has opened up endless possibilities for the fashion industry, including virtual fashion shows, virtual try-ons, and uploading designs for real and digital clothing onto the blockchain (so these files can be sold as NFTs) .

To protect your virtual fashion designs outside India, you can consider registering them under the laws of the country where you want to protect them. For example, in the United States, you can register your designs with the United States Patent and Trademark Office.⁵ Similarly, in Europe, you can register your designs with the European Union Intellectual Property Office (EUIPO) .⁶

Alternatively, you can also consider protecting your virtual fashion designs under the copyright laws of the country where you want to protect them. In the United States, fashion designs are not protected under copyright law, but they may be protected under the Design Patent Act . In Europe, fashion designs are protected under copyright law .

It is important to note that the laws regarding the protection of virtual fashion designs vary from country to country. Therefore, it is advisable to consult with an intellectual property lawyer who is familiar with the laws of the country where you want to protect your designs.

⁵ [How Real Is Virtual Fashion? – An IP Perspective - Trademark - India \(mondaq.com\)](#)

⁶ [How Real Is Virtual Fashion? – An IP Perspective - Trademark - India \(mondaq.com\)](#)

REVIEW OF LITERATURE

1. Virtual Couture: Fashion Brands and the Complexities of IP in the Metaverse- Gauri Vikram and Yoshita Sood.

This research paper deals with the infringement, originality and raise of legal implications. The research paper does not render any solution to the legal solutions for the question which is being raised.

2. Stop Glorifying Fashion Piracy: It is Time to Enact the Design Protection Act. - Keyon Lo

The research paper deals with the need to enact new designs law in the US. The research paper scope is mainly on the US law and the practical applicability in the US and do not talk about global legal frameworks.

3. A quest towards Fashion Design Protection Model for the Intellectual Property Rights Global Regime- Padhi Prafulla Kumar.

The above research paper deals with the digital technologies in virtual fashion. But the paper does not deal with the legal implications and the legal framework mechanisms.

4. IPR and Indian Fashion Industry: Challenges and Possibility- Neha Sah and Ezhilanban JJ.

The research paper revolves on the IPR infringement among fashion firms and a lack of stringent reprimands from policymakers. The article is segmented into three major parts to

shed light on the challenges encountered by small fashion firms, designers, fashion start-ups, and rural textile artisans with respect to protecting intellectual property and restricts on the metaverse, virtual reality concept.

RESEARCH PROBLEM

The primary research problem of the research paper on the legal implications and the need for new enactment of laws in the virtual fashion and protection of its IPR in its forum. The difficulty that arises is that, the virtual fashion is yet to bloom in the Indian market, so the need for advanced IP laws is not well appreciated. Keeping in the mind of the dynamic arena of the fashion industry and rapid growth in the digital platform in India, the need for proper designated legal framework ascends. The secondary question that this paper focus is on the ways the products are infringed. The IP rights enactment arise because the cases of infringement arise slowly in the virtual fashion forum. This paper will deal with the above-mentioned research questions while using the secondary techniques referring to the literature reviews. The research questions will be addressed in the present paper.

RESEARCH METHODOLOGY

This present article is researched based on the doctrinal approach such as referring articles, blogs. The academic databases, libraries, and digital repositories were utilized to gather the information. This involves searching for scholarly articles, books, conference papers, and other relevant sources that contribute to the theoretical framework of the study. Academic databases, such as SCC, Manupatra, Legal services, JSTOR, and others, are valuable resources.

RESEARCH QUESTIONS

1. Whether the virtual fashion is legally backed up in India?
2. Whether the current legal frameworks help in regulating the virtual fashion platform?

SCOPE AND LIMITATION

The present article revolves around the metaverse and do not entirely on the virtual reality aspect. There is a significant difference between the metaverse and virtual reality. the former is a technology that provides immersive, computer-generated experiences on an individual level, the Metaverse is a broader concept that envisions a shared, interconnected virtual space where people can engage in a variety of activities across different virtual environments. Virtual Reality can be a component of the Metaverse, but the Metaverse extends beyond individual VR experiences to create a more comprehensive and interconnected digital universe. The scope of the present paper is limited to only the metaverse concept of virtual fashion. The paper only focuses on the branded products and their problem infringement in the metaverse and not the local artisans or local brands.

CONCLUSION

The intersection of virtual fashion and intellectual property rights (IPR) in India presents a dynamic landscape with both challenges and opportunities. As virtual fashion grows, it is necessary to address intellectual property protection and regulation in this evolving digital world.

Challenges:

- **Digital piracy:** The ease with which virtual fashion products can be copied raises concerns about digital piracy, making it critical to strengthen copyright enforcement mechanisms in the virtual space.
- **Definition of Design Rights:** India's current intellectual property rights framework may need refinement to cover and protect distinctly virtual fashion models and ensure that creators are given adequate rights to their innovative digital creations.
- **Technological Advances:** As virtual fashion evolves alongside technologies such as augmented reality (AR) and virtual reality (VR), it is imperative that intellectual property laws adapt to include protection for these new forms of creative expression.
- **Potential Digital Authentication:** Blockchain technology and other digital authentication methods offer the ability to protect and authenticate virtual fashion products, ensuring the integrity of the creator and work, and providing a means to track and protect digital assets.
- **Collaboration with industry stakeholders:** Collaboration between the fashion industry, legal experts and technological innovators can lead to the development of industry-specific standards and guidelines, fostering an ecosystem of virtual fashion designers while respecting intellectual property rights.
- **Awareness and education:** Creating awareness among creators, consumers and legal professionals about the complexities of virtual fashion and intellectual property rights will help create a more informed and responsible digital fashion community.

In conclusion, the emergence of virtual fashion in India requires a proactive approach to intellectual property rights. By meeting the challenges through legislative changes, technological innovation and collaboration, India can create an enabling environment for the growth of virtual fashion and secure the rights

of content creators in this digital age. A balance of innovation and effective protection of intellectual property will play a key role in shaping the future of virtual fashion in the Indian market. It is also apropos to know that India do not regulate NFTs in the market. So a legislative enactment to ponder on this area of transaction is also crucial.

The metaverse presently a big opportunity for the brands if it turns out to be an advanced version of internet. It is pertinent for the brands to know how and when to participate in the metaverse. The brand owners and the creators should be aware of their IP portfolio in check before introducing the products in the market, especially in case of metaverse transactions through NFTs and other commercial components.

In order to ensure due protection of the brand from infringement there is a need to enact an advanced law in the IP regime. There shall be a strong brand protection, which ensures that the current trademark and copyright registrations shall include copyright applications that shall expressly protect the products in metaverse simultaneously.

The advance legislation being enacted alone would not solve the infringement issue in metaverse. The owners must enhance their monitoring tools to find the potential unauthorized use of their brand value. It shall invoke tactics such as demand letters, business- to-business conversations, which ensure first hand IP issues resolvent. Thus, the brand owners, designers, legal professionals, creators shall remain vigilant and adaptable to the evolving legal and technological landscapes in order protect their respective brands.

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