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The Fashion Industry and the Rise of Artificial Intelligence

Suhani Singh^a

^aSymbiosis Law School, Noida, India

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“Fashion is not something that exists in dresses only. Fashion is in the sky, in the street. Fashion has to do with ideas, the way we live, what is happening.”

- Coco Chanel

Coco Chanel was not wrong when she said this. Fashion reflects our mindset, lifestyle and the society that we live in. Elegant fashion represents the elite, whereas fast fashion represents the fast world we live in. This is a challenge to the fashion industry as the world’s fast fashion has resulted in trends dying out quickly and starting a whole new vogue in little time. “Exclusivity is a tool of all brands and companies operating in this market, approaching the people all over the world who are creating beautiful and innovative ways to dress.”¹ It was during the Industrial Revolution when modern textiles started to gain components of innovation, uniqueness, patenting, trademarks, etc.² This gave birth to Fashion Law as we know it today. The Intellectual Property, Trade, Labour, Cyber, and Consumer Protection Laws govern the fashion law in India.³ This includes the Copyright

¹ Vedanti Wanjari, ‘Need and Scope of Fashion Law in India and Role of Intellectual Property in Fashion Industry’ (2021) 3(1) Indian Journal of Law and Legal Research <<https://www.ijlr.com/post/need-and-scope-of-fashion-law-in-india-and-role-of-intellectual-property-in-fashion-industry>> accessed 05 January 2024

² Virali Joisher, ‘Artificial Intelligence in the Fashion Industry’ (*Fashion and Law Journal*, 07 September 2021) <<https://fashionlawjournal.com/artificial-intelligence-in-the-fashion-industry/>> accessed 05 January 2024

³ Pria Makanda, ‘An Overview of Fashion Law in India & around the Globe’ (2021) 2(1) Indian Journal of Law and Legal Research

<<https://heinonline.org/HOL/LandingPage?handle=hein.journals/injlolw2&div=225&id=&page=>> accessed 05 January 2024

Act 1957⁴, Trademarks Act 1999⁵, and Patent Act 1970⁶. However, many designers complain about their designs being used without authorisation; no law exists for fashion products. Ever since the pandemic, the fashion industry has risen in novel and innovative ways with remote photo shoots, self-shot editorials, what has come to be popularly known as 'FaceTime Shoots' and fashion shows through Virtual Reality and Artificial Intelligence.⁷ Artificial Intelligence seems to be slowly taking over the business and marketing fields of the fashion industry. Designers and big fashion houses use AI to predict their competitors' work in the market, formalise marketing strategies and predict consumers' behaviour. However, what is the scope for AI in making designs, i.e. becoming the designer itself? Furthermore, how would it involve the IPR laws? I have attempted to answer these questions based on an analysis of the current trends in the fashion industry and AI taking over intelligent jobs in the near or far future.

Keywords: *artificial intelligence, intellectual property, copyrights, trademarks, designs.*

FASHION INDUSTRY: A LEGAL OUTLOOK

Fashion design is different from other properties protected under the Intellectual Property Rights. Since IP is a creation of a designer's creativity, labour and skills, it is an intangible form of property. Therefore, it must be protected. Indian laws provide legal protection to fashion designers through:

- Copyrights Act
- Trademarks Act
- Designs Act

There are various rights that are offered to a person, including the right of reproduction, adaptation, publication, translations and communication to the public and various other rights.⁸ The copyright act provides protection to designs on apparel that have been reproduced not more

⁴ Copyright Act 1957

⁵ Trademarks Act 1999

⁶ Patent Act 1970

⁷ Makanda (n 3)

⁸ Reya Dutta, 'Fashion Law: Piracy, IPR and Other Legal Aspects' (2022) 4(4) Indian Journal of Law and Legal Research <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/injlolw7&div=152&id=&page=>>> accessed 05 January 2024

than 50 times and are registered under the Copyrights Act.⁹ If even the copyright holders themselves have reproduced it over 50 times, they are liable to lose the protection/ rights provided by the statute. However, unregistered designs are also offered protection by the Copyright Act. A Trademark helps us identify the product's brand i.e. it distinguishes the product from others by telling us its origin. The Trade Marks Act protects the 'designs' that provide an identity to a product to be of a particular proprietor.¹⁰

Design only refers to the physical attributes such as shape, pattern, colour composition, line composition, etc., on any two-dimensional or three-dimensional made in any mechanical, manual or chemical manner.¹¹ It must be noted that a design must not be a trademark or property mark¹² or registered as a copyright in any form, as it would not be an original design in such cases. However, there are various problems with the Designs Act:

- Only the registered designs are protected under this act. So, any unregistered design is rendered without protection, unlike the Copyrights Act. Moreover, the registration process for the design is very time-consuming, which is why many designers refrain from it. This created a vicious cycle of designs not being registered and, hence, being unprotected.
- Another issue is that most people manipulate and make similar designs, mimicking the original design. Hence, piracy still occurs.

Apart from the acts mentioned above, there are various other legislations, such as the Geographical Indication of Goods (Registration and Protection) Act¹³, which protects goods by the distinction of their origin. For example, Pashmina of Kashmir is one of the finest quality wools; hence, the apparel made by Pashmina is protected by the IPR Laws because its authenticity lies in its origin.

⁹ *Microfibres Inc. v Girdhar & Co* (2009) SCC OnLine Del 1647

¹⁰ Trademarks Act 1999, s 2 (1) (zb)

¹¹ Designs Act 2000, s 2(d)

¹² Indian Penal Code 1872, s 479

¹³ Geographical Indication of Goods Act 1999

DESIGN THEFT, COUNTERFEITING AND KNOCKOFFS

The fashion industry is very vulnerable to piracy and design theft. The reason is that people tend to buy cheaper copies due to the non-availability of a reasonable budget. Various pages on social media platforms like Instagram and Facebook publicly sell altered or manipulated stolen designs from big fashion houses like Louis Vuitton, Gucci, Givenchy, Prada, etc. It is not uncommon to find a bag with an LV logo in a local market in India. Countries like India, China, Pakistan and Mexico are the biggest hubs for brands that sell such pirated products¹⁴. People tend to buy these low-quality products because of the original-looking finish.

Fashion Piracy occurs in two forms:

- Counterfeit
- Knockoffs

Counterfeit goods are a way to fool consumers into buying a cheap copy for high rates as counterfeit goods not only have copied designs, but they also have fake labels. On the other hand, knockoffs are the unauthorised copies of the original designs. However, it must be noted that these designs are merely similar-looking copies of the original design or trademark; they are not exact carbon copies. This is done in order to escape the legal consequences of copying designs. This is one of the loopholes in the existing IPR laws, which is why various small brands and designers are thriving in business by selling these copies at cheaper prices. The losses incurred by the big fashion houses because of this are two-fold, as this not only decreases the brand value of the original brand, but they also have to incur losses in the market.

AI: ADAPTATION INTO THE LEGAL SYSTEM

Ever since the inception of the internet, the issue of cybercrime has also emerged, it involves crimes like identity theft, cyber fraud, breach of privacy, etc. To deal with these issues, acts like the IT Act, Digital Personal Data Protection Act, and some other rules, such as Sensitive Personal Data or Information Rules, 2011, have been drafted. “The Minister of Electronics and

¹⁴ Dutta (n 8)

Information Technology, Mr Ashwini Vaishnaw, has stated that the government is not currently planning to formulate any policies or legislation with reference to artificial intelligence. Nevertheless, the parliament thinks that AI has a lot of ethical biases and issues attached to it. They have decided not to work on it as the country has other crises to deal with. Therefore, no law currently exists to regulate AI in India.”¹⁵

It must be noted that the European Union is the only political system to have introduced AI regulatory laws. EU Parliament has stated that AI comes with some risks, which can be categorised as Unacceptable Risk, High Risk and Limited Risk. ‘Cognitive Behavioural Manipulation of people and specific vulnerable groups’¹⁶ is one of the categories falling under the head of Unacceptable Risk. Voice-activated AI falls under this category as well. The EU has proposed to ban the category of Unacceptable Risk-inducing AI¹⁷. One loophole in the categorisation of AI risks is the risk of a rise in unemployment, and the replacement of existing jobs by AI has not been included in the list. AI will soon replace many jobs, such as research analysts, car/truck drivers, paralegals and graphic designers, etc.¹⁸ However, it must be noted that AI requires pre-existing designs, patterns, and a set of instructions to operate and form new designs, give ideas, predict consumer demand, etc.

Famous personalities like Elon Musk¹⁹ have warned humanity about the risks of AI in the future. AI is growing at a considerable pace and can take over a lot of jobs in a couple of centuries. However, it is not posing a significant threat, as a lot of breathless news anchors state. Even if it is growing, it is walking at a slow pace and can be controlled with effective measures. The first

¹⁵ Priya Singh, ‘No regulations for Artificial Intelligence in India’: IT Minister Ashwini Vaishnaw’ *Business Today* (06 April 2023) <<https://www.businesstoday.in/technology/news/story/no-regulations-for-artificial-intelligence-in-india-it-minister-ashwini-vaishnaw-376298-2023-04-06>> accessed 05 January 2024

¹⁶ ‘EU AI Act: first regulation on artificial intelligence (*European Parliament*, 08 June 2023) <<https://www.europarl.europa.eu/news/en/headlines/society/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence>> accessed 05 January 2024

¹⁷ *Ibid*

¹⁸ Rachel Pelta, ‘What Jobs can be replaced by AI and What can you do about it?’ (*Forage*, 01 December 2023) <<https://www.theforage.com/blog/careers/what-jobs-will-ai-replace#:~:text=%E2%80%9CExamples%20include%20data%20entry%2C%20basic,are%20more%20vulnerable%20to%20replacement.>> accessed 05 January 2024

¹⁹ Divyanshi Sharma, ‘Elon Musk Calls AI the Most Destructive Force in History, says it will take away all jobs’ *India Today* (03 November 2023) <<https://www.indiatoday.in/technology/news/story/elon-musk-calls-ai-the-most-destructive-force-in-history-says-it-will-take-away-all-jobs-2457564-2023-11-03>> accessed 05 January 2024

step towards formulating such measures has been taken by the EU, which is expected to be followed by other nation-states in the near future as well.

CAN A BOT BE A PROPRIETOR?

Questions like ‘Who bears the responsibility for what AI does?’ or ‘Who would be the deemed owner of the Intellectual Property created by AI?’ also loom over the legal system. If AI does take over the artistry field, then who would be the owner of the artwork created by the bot? An instruction provider, the AI platform itself, the bot itself, or maybe the designers or artists using such platforms could claim the same. To deal with such issues, AI must be accepted into the legal system as a separate and novel field.

For quite a great many years, humanoid robot performers have been engaged in numerous kinds of artistic creations. Machines have been generating primitive artistic creations ever since the late 1960s, and all these endeavours stand unabated.²⁰ However, they work only on instructions provided by the person behind the computer. Nevertheless, AI now has the capacity to create artworks such as designs inspired by existing designs. Regardless of how AI can be considered a potential human entity in the future, it could potentially attain the status of a person even if it appears to be far off and reminiscent of speculative fiction. We will be required to think about creating new forms of legal agencies so that the activities of AI cannot be linked directly to the ‘author’.²¹ To control such potential developments occurring in the future, AI regulatory laws need to be drafted after clear speculation by expert jurists on the questions mentioned earlier and more.

KNITTING THE NEXUS OF FASHION, LAW AND AI

The existing fashion laws are highly inadequate to offer a promising form of protection to the fashion industry. No design can be deemed to be safe from piracy and the biggest losers in this battle are the big fashion houses and the world-famous designers. Even though they still earn

²⁰ Anushka Dwivedi, ‘Convergence of Artificial Intelligence with IP Laws’ (2023) 3(2) Jus Corpus Law Journal <<https://www.juscorpus.com/wp-content/uploads/2023/02/168.-Anushka-Dwivedi.pdf>> accessed 05 January 2024

²¹ *Ibid*

more than any of their copies, they incur heavy losses on their business because of piracy. In the near future, AI may add to these problems because it makes designing an easier job. AI can generate unique and innovative designs based on a combined analysis of previous consumer choices, and prediction of future trends. Many designers may use AI to create designs for them. This could be seen as a way to fool the consumers into buying AI-generated designs that lack the designer's or their brand's authenticity. Why would one buy AI-generated designs from a big fashion house for a high price when a cheaper brand could provide the same designs generated by the same AI for cheaper rates?

This is not the only issue that would arise in the wake of AI-generated fashion. Another problem that would arise is the position of the laws about such designs. IPR laws would require a novel understanding tailored to the needs of AI-generated designs. The rightful ownership of the designs would be a huge question. Furthermore, does providing AI-generated design protection under IP laws defeat the whole purpose of the IPR? Protection to IP is provided because it is the 'creation of minds' and hence, providing such protection to AI-generated designs would defeat the entire rationale behind the initiation of such protection.

CONCLUSION

On one hand, the current fashion legal system is obsolete, and it is the need of the hour for it to reform its policies and procedures in order to reaffirm the rationale behind the formulation of the IPR laws. On the other hand, AI is potentially the 'next big thing' in the globalisation era, with its potential impacts looming large on our digital world. It is imperative that AI regulatory laws are drafted as the legal framework is far behind the rapid advancements of AI, especially in the field of artwork and fashion design.

In conclusion, the fusion of AI and fashion design indeed proposes unique and innovative ideas; however, the transparency of such designs can be questioned, and hence, a proper legal framework is needed to deal with such issues. Transparency with the involvement of AI in the creation of designs can be one way forward to incorporate these into the fashion and legal world in the future. Since consumer protection and producer protection are two of the main aims

behind commercial laws, adequate separate legislation must be passed that is tailored to the needs of Artificial Intelligence in general and Artificial Intelligence in the Fashion Industry, in particular. Without legislation that is strictly tailored to the impacts and potential of AI, the fashion industry cannot be saved from the aforementioned problems. However, this is not the only solution that can be offered. To make this recommendation work, the first and foremost step that must be taken by the legislation is to make the existing laws adequate. If the current law in itself is insufficient then implementing a new law will only complicate things further. Therefore, amendments must be made to the current IPR laws in order to reduce the existing piracy. For this purpose, the gap between Legal Experts, AI Developers and Fashion Marketers must be filled in order to ensure the formulation of adequate laws and policies revolving around the fashion industry and its future in the hands of advanced Artificial Intelligence.