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MONETARY IMPACT OF DESIGN PIRACY IN THE FASHION INDUSTRY; THE INTERSECTION OF SECTION 15 OF THE COPYRIGHT ACT, 1957 AND SECTION 2(C) OF THE DESIGNS ACT, 2000

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ABSTRACT

Design piracy in the fashion industry, a prevalent and growing concern, poses significant monetary challenges to both designers and the broader economy. This paper delves into the intricate relationship between intellectual property laws and the fashion market, particularly focusing on the convergence of section 15 of the Copyright Act, 1957, and Section 2 (c) of the Designs Act, 2000, in the context of design piracy. The study examines the legal framework surrounding fashion designs, exploring the ambiguities and overlaps between copyright and design rights, and their implications on piracy related monetary losses.

By analysing case laws, this research sheds light on the challenges faced by designers due to the inadequacy of existing legal provisions. It investigates how the lack of clear demarcation between artistic expression and functional aspects of fashion designs hampers the effective protection. Consequently, this ambiguity not only hinders innovation but also leads to economic repercussions, impacting designer's revenues, investments, and overall market competition. Additionally, this paper proposes potential solutions and recommendations for addressing design piracy. These recommendations aim to foster a more conducive environment for innovation, creativity, and economic growth within the fashion industry.

In summary, this research provides valuable insights into the monetary impact of design piracy in the fashion industry, offering a comprehensive analysis of the legal challenges posed by the intersection of section 15 of the Copyright Act, 1957, and Section 2 (c) of the Designs Act, 2000. By bridging the gap between legal theory and practical implications, this study contributes to the ongoing discourse on intellectual property rights in the context of fashion, ultimately fostering a more secure and thriving environment for designers and stakeholders in the industry.

Keyword- fashion industry, section 15, section 2 (c), design piracy, recommendations

I. INTRODUCTION

Design piracy, also known as design infringement or design counterfeiting, refers to the unauthorized reproduction or imitation of original designs, typically in the context of fashion, industrial products, graphics, and other creative fields. This practice involves copying or closely imitating the unique and distinctive aspects of a design without the permission of the original designer or copyright holder.

The methodology that I have adopted for this paper is Qualitative in nature with a secondary approach. The rationale for choosing this method is that with the help of existing data I can understand the design piracy that happens in the fashion industry. The method of data analysis is Doctrinal method of data collection where I have analysed the existing data available in public domain by checking the validity of the existing laws.

Design piracy can take various forms, including copying the visual appearance, patterns, shapes, and ornamentation of a product. In the fashion industry, for example, it often involves replicating clothing designs, accessories, or textiles without proper authorization. In industrial design, it might entail copying the aesthetic elements of products like furniture, electronics, or automobiles.

The rise of digital technologies and global supply chains has made it easier for counterfeiters to quickly reproduce and distribute pirated designs, leading to significant economic and creative challenges for designers and businesses. Design piracy not only undermines the intellectual property rights of creators but also affects their ability to earn a fair income from their work. It can also harm consumers who may unknowingly purchase counterfeit products of inferior quality.

Under legal terms, the infringement of the copyright in a design is commonly referred to as 'Design Piracy.' In simpler terms, when designs are used without authorization or duplicated and subsequently used for commercial purposes, without obtaining consent or a license from the registered owner of the design, it constitutes an unlawful act (design piracy). The individual responsible for such actions is also liable for any resulting damages.

To establish piracy of a registered design, there must be intentional and deceptive imitation or an apparent imitation for copyright infringement. In fraudulent imitation, the intention is to knowingly deceive the individual and violate their rights by imitating their registered design. In contrast, obvious imitation involves copying a registered design with slight modifications. It is crucial to note that piracy occurs only when there is an exact duplication of the registered design.

Knockoffs are direct imitations of high-end designer products. These copies are often of lower quality but are designed to look nearly identical to the original, capitalizing on the popularity of the designer's work. Design piracy also includes the production of counterfeit fashion items, where fake logos and branding are used to deceive consumers into believing they are purchasing genuine products. The rise of online marketplaces has made it easier for counterfeiters to sell pirated fashion items to a global audience, contributing to the prevalence of design piracy.

II. LEGAL FRAMEWORK AND AMBIGUITIES

Being a collection of rights, intellectual property rights may entail overlaps between the rights granted to their owner with regard to the same subject. This overlap is notable in cases where both Copyright Law and Designs Law are applicable. In India, the respective laws governing designs and copyright, namely the Designs Act, 2000 (hereinafter Design Act), and the Copyright Act, 1957 (hereinafter Copyright Act), make an effort to differentiate between the works protected under each law and the corresponding rights granted.

The issue of dual protection and overlap between design and copyright has been specifically addressed in section 15 of the Copyright Act. This section focuses on the protection of artistic works, including fashion designs. According to this section, copyright will not subsist in a design that has been registered under the Designs Act. Therefore, when a design is registered under the Designs Act, the individual must relinquish their rights under the Copyright Act and for a design to enjoy copyright protection, it must fall within one of the categories specified in section 13 of the Copyright Act¹. The only possible category for designs is “artistic works.” However, if a design falls within this category, its registrability under the definition of a design itself is negated.²

To be eligible for registration under the Designs Act, a design must meet several criteria. Firstly, it has to be applied to an article of manufacture. Secondly, the design must be new or original. The term ‘original’ in the context of the Designs Act is distinct from its meaning in the Copyright Act. In the Designs Act, ‘original’ signifies that the application of the design to the article should be ‘new,’ even if the design itself is not entirely new.³ This contrasts with the Copyright Act, where ‘original’ refers to the expression of thoughts, and these expressions need to be novel. Therefore, for a design to qualify for registration under the Designs Act:

- i. It must be applied to an article of manufacture.
- ii. It must be new or original (with a different definition of ‘original’ compared to the Copyright Act).
- iii. It should not qualify as an artistic work under section 2(c) of Copyright Act⁴.
- iv. It should not be a mechanical device.
- v. It should not be a trademark or property mark.

In essence, the framework established by the Designs Act leads to a situation where something capable of being registered under the Act but left unregistered receives neither design protection nor common law copyright protection, leaving it without legal protection.⁵ The issue arises when a design is not registered under the Designs Act, and the respective article is reproduced more than 50 times through an industrial process, causing the copyright of the owner in the design to cease.

Therefore, any design that is eligible for registration under the Designs Act but has not been registered will lose its copyright protection once the related article has been reproduced more than 50 times by the owner of the copyright or with their license by any other person. This provision demonstrates an overlap between the Copyright Act and the Designs Act concerning the protection of industrial designs.⁶

The combined interpretation of section 15 of the Copyright Act and section 2 (c) of the Designs Act⁷ reveals the following scenarios:

- i. Designs that are registered as per the provisions of the Designs Act, receive protection exclusively under the Designs Act.
- ii. Designs capable of being registered under the Designs Act but have not been registered yet may find protection under the Copyright Act.

¹ Copyright Act, No. 14 of 1957, sec. 13.

² Sameer Kumar Swarup, Sachin Rastogi, ‘Fashion Design and Intellectual Property Rights: An Indian Perspective,’ Journal of Intellectual Property Rights, Vol 26, May 2021, pp 127-135.

³ Design Act, No. 14 of 2000, sec. 2 (g).

⁴ Copyright Act, No. 14 of 1957, sec. 2 (c).

⁵ Lampasona, Jacqueline, ‘Discrimination against Fashion Design in Copyright’, Journal of International Business and Law, Vol. 14, Issue 2 (2015), pp. 273-306.

⁶ Raveena. R. Nair, Dr. Anju Mohan, ‘A Critical Study on Fashion Design and its Protection under Copyright Act, 1957 and Designs Act, 2000’, A Journal of Vytautas Magnus University Vol 15, No. 4 (2022).

⁷ Design Act, No. 14 of 2000, sec. 2 (c).

- iii. Designs that do not qualify for protection under the Designs Act might be protected under the Copyright Act.

It's important to note that the Designs Act and the Copyright Act serve complementary roles in protecting various aspects of intellectual property, especially in the context of fashion designs.

One notable difference between the two forms of protection is their duration. Copyright protection can last for the lifetime of the author plus an additional 60 years. In contrast, if protection is sought under the Designs Act, it is granted for an initial period of 10 years, with the possibility of extension for another 5 years, totalling a maximum of 15 years of protection. Given the ever-changing nature of fashion design and its frequent innovations, protecting designs for an extended period, such as 60 years beyond the life of the author, might not be practical. Consequently, safeguarding fashion designs through the Designs Act, which offers protection for 15 years and is more adaptable to the dynamic nature of the industry, appears to be a more feasible approach.

Section 15(2) of the Copyright Act⁸ introduces a scenario where a design, capable of being registered under the Designs Act (as fashion designs are), but left unregistered, loses protection if the related article is reproduced more than 50 times by any industrial process, either by the copyright owner or with their license by someone else. In such a case, the design loses its novelty and falls into the public domain, making it ineligible for protection under the Designs Act. Additionally, due to the operation of Section 15(2) of the Copyright Act, the design also loses copyright protection.

Consequently, if a newly created fashion design is not registered under the Designs Act and more than 50 copies of the same article are made, the creator loses the right to protect the design under both the Designs Act and the Copyright Act. This situation leaves the author with no legal protection for their design.⁹

Prosecuting design piracy presents multifaceted legal challenges that stem from the intricate nature of intellectual property laws and the globalized fashion industry. One significant challenge lies in proving the originality of a design, especially in an industry where trends and influences frequently blend. Creative expressions often draw inspiration from various sources, making it difficult to establish a wholly unique design. Courts, therefore, demand extensive evidence, expert opinions, and meticulous documentation of the design process to ascertain the authenticity and creativity of the contested design.

Another critical challenge involves distinguishing between functional and non-functional elements within a design. Copyright law protects artistic expression, not utilitarian functionality. Thus, determining which aspects of a design are purely ornamental and non-functional can be intricate. Legal responses typically involve a meticulous analysis of whether the aesthetic elements can exist independently from the design's utilitarian purpose. This evaluation often requires expert witnesses and a comprehensive understanding of the industry's norms and practices.

The global supply chain in the fashion industry complicates matters further. Design piracy frequently occurs across international borders, involving manufacturers, distributors, and sellers from various countries. Coordinating legal actions and navigating jurisdictional complexities becomes a significant hurdle. International treaties and agreements can facilitate cooperation, but practical challenges such as differing legal standards and enforcement mechanisms persist, making it challenging to prosecute design piracy comprehensively.¹⁰

Additionally, the rapid pace of innovation in the fashion industry poses a unique challenge. Fashion designs evolve swiftly, and by the time legal proceedings are initiated, the design might have already become outdated. This temporal misalignment often hampers legal processes, as the relevance of the case diminishes

⁸ Copyright Act, No. 14 of 1957, sec. 15 (2).

⁹ Narayanan P, 'Laws of Copyright and Industrial Designs', Eastern Law House, Fourth edition, 2007, 62-64, 68-79.

¹⁰ Cornish, E., 'The impact of design on manufacturing industry', Cambridge University Press (pp. 7-22).

with time. To address this challenge, expedited legal procedures and temporary injunctions are sought to prevent further production and distribution of pirated designs.¹¹

Furthermore, the changing landscape of digital technologies introduces new complexities. Online marketplaces and social media platforms facilitate the rapid dissemination of pirated designs, making it harder to track down infringers. Design piracy cases involving digital platforms necessitate specialized expertise in digital forensics and intellectual property law to collect relevant evidence and identify infringing parties accurately.

III. CASE LAWS

3.1 Cello Plast v. Modware India and Anr.

In a legal dispute between Cello Plast and Modware India concerning design infringement related to plastic chairs, Cello Plast alleged that Modware copied its registered design. Cello Plast sought an injunction based on two grounds, i.e, Passing Off and Design Infringement.

Passing off is a common law relief where a party makes a representation that leads customers to believe a product originates from a specific manufacturer, without it actually originating from that manufacturer. This practice is prohibited to protect a trader's goodwill and prevent consumer confusion. To determine passing off, Justice Patel applied the 'classical trinity' test, assessing the existence of Reputation and Goodwill, the Fact of Misrepresentation, and the Possibility of Irreparable Injury. It is crucial to note that in passing off cases, intention (such as deceit) is irrelevant, as established by well-established legal principles.

Justice Patel's articulation on the standard for testing goodwill indicates that the breach occurs if consumers associate the product with a specific source, which happens to be the plaintiff in this case. The key factor is whether consumers recognize the product as originating from a singular source, even if they are unaware of that source's identity.

In simpler terms, passing off would have taken place if Modware sold its product as if it were produced by Cello. For this to happen, consumers must first attribute the product to a single source, in this case, Cello.

I fail to comprehend how the popularity of a specific design (based on sales) can indicate consumer's attribution of the product's design to a particular source. This line of reasoning would make sense if Cello had consistently used the contested design across all its products, but that is not the case here. Therefore, if consumers do not associate the product with Cello initially, it seems improbable that they would suddenly become confused and start purchasing

Modware's counsel initially argued that a 'Bottle is a bottle,' implying there could be no protection for Cello's bottle design. Justice Patel rightfully dismissed this argument, considering it overly simplistic and reductionist in understanding design law. In an attempt to invalidate Cello's design protection, Modware's counsel argued that Cello's design was a combination of earlier known designs, making it invalid under Section 4 (c) read with Section 22 (2) of the Designs Act. To support this claim, counsel dissected Cello's design into sub-parts and presented earlier bottle designs that incorporated each of these sub-parts as evidence.

However, Justice Patel opted not to delve into such intricate analysis. Instead, he concluded that none of the prior designs presented were similar to Modware's product as a whole, whereas Modware's product was almost identical to Cello's. Based on this assessment, Justice Patel found that, prima facie, Cello's design was sufficiently original, and Modware's product infringed upon it. Consequently, with Modware's defences deemed ineffective, it was determined that prima facie design infringement had occurred.

¹¹ West, Brittany, 'A New Look for the Fashion Industry:', Journal of Business, Entrepreneurship & the Law, Vol. 5, Issue 1 (2011), pp. 57-86.

3.2 Microfibres v. Girdhar & Co.¹²

In a legal dispute between company's 'A' and 'B,' both engaged in manufacturing and selling upholstery fabrics with artistic patterns, 'A' accused 'B' of copying their designs. 'B' argued that 'A's artistic work should be protected under the Designs Act upon registration, not the Copyrights Act.

The Delhi High Court ruled that 'A' qualified for design protection rather than copyright. The court rejected 'A's claim for several reasons:

- i. Non-Incorporation of Designs: 'B' did not incorporate 'A's designs and artistic patterns into their fabrics.
- ii. Lack of Design Registration: Without design registration, 'A' was not entitled to any relief.
- iii. Aim and Object of the Work: The court emphasized that the purpose and intent behind the work are crucial in determining the appropriate form of protection. Drawings created for application to fabric were considered designs and lacked independent existence as artistic works.

Therefore, the court's decision was based on the absence of design registration, the non-incorporation of 'A's designs by 'B,' and the commercial intent of 'A's drawings, all of which pointed towards design protection rather than copyright.

In the appeal to the apex court of India, the division bench ruled:

- i. The intention of an artist during the creation of art cannot be explained or interpreted and should not be considered. The focus should be on upholding the principle of originality in copyright, giving it significant importance.
- ii. The principle of originality in copyright should be given immense weightage, emphasizing the uniqueness and creativity of the work.
- iii. Allowing the extension of copyright protection through the moulding of derived images in this case would contradict the purpose of design legislation. The court, therefore, sought to avoid such overlap.
- iv. The judgment applied the doctrine of Harmonious Construction to prevent inconsistency and conflicts between the two statutes. This principle serves as a guiding rule in interpreting statutes, ensuring coherence and harmony in the legal framework for the benefit of Indian citizens

In the legal analysis conducted by the Court, several key provisions from the Copyright Act (specifically, s.2 (c) and s.15) and the Designs Act were examined. The initial question addressed by the Court was whether the plaintiff's work was eligible for copyright protection. The plaintiff argued that their work, protected under the Berne Convention as an artistic work, should be recognized. The Court clarified that registration was not a prerequisite for the existence of copyright in the work. Therefore, the absence of registration for certain works of the plaintiff did not affect the eligibility for copyright protection.

Furthermore, the plaintiff contended that according to section 2 (c) of the Copyright Act¹³, the intention behind the work was not a factor to be considered for granting copyright protection. From the plaintiff's perspective, originality was the fundamental requirement, and if this criterion was met, copyright could be vested in the work. The plaintiff also argued that the rearrangement of old material could result in an original work, further supporting their claim.

The defendant's counterarguments are noteworthy because although the plaintiff's points might have been valid in the absence of the Designs Act, the existence of a separate legislation for design protection necessitates a clear distinction between an artistic work and a design. The defendant contended that the plaintiff's arguments were built on the unproven assumption that the work in question was an artistic work. According to the defendant, the crucial issue was to determine whether the work should be considered a design. The defendant argued that the impugned work should be categorized as a design because it was

¹² Microfibres v. Girdhar & Co., 2009 SCC OnLine Del 1647.

¹³ *Supra* note 4.

intended for application on upholstery fabrics using an industrial process. In simpler terms, anything created for application on an article through industrial means fell under the Designs Act, not the Copyright Act.

According to the defendant, a design, being purely ornamental and intended solely for visual appeal without contributing to the functional aspects of a product, lacks inherent identity. Consequently, the defendant asserted that the plaintiff's floral design, meeting these criteria, was not an artistic work but a design.

This line of reasoning was reinforced by the Privy Council's decision in *Interlogo AG v. Tyco Industries*¹⁴. In this case, it was ruled that design legislation aimed to safeguard works lacking independent artistic merit, gaining significance solely through application to an article. This perspective gains strength due to the inherent distinction between the rights granted to copyright owners and design right owners. While copyright owners can prevent the reproduction of the work itself, design right owners can only prevent the application of the design to articles, not its standalone reproduction. This highlights that designs derive their identity primarily when applied to specific articles, a feature not shared by copyrighted works. Furthermore, the existence of a goods classification system in the Designs Act, unlike the Copyright Act, supports this viewpoint.

I agree with the point made by the Privy Council, as there are significant differences in the rights granted to copyright owners and design right owners. A copyright owner has the authority to prevent others from reproducing the work itself. In contrast, a design right owner can prevent others from applying the design to articles but not from reproducing the design independently. This distinction highlights that designs derive their identity primarily when applied to specific articles, which is not the case with copyrighted works. Additionally, the presence of a classification system for goods in the Designs Act, unlike in the Copyright Act, further supports this argument.

Moreover, there are subtle yet critical implications related to the repeal of the 1911 Act and the introduction of the 2000 Act. Under the previous 1911 Act, copyright in the design as an artistic work was established upon its creation and lasted until it was registered or manufactured by an industrial process for less than 50 times. These changes underscore the evolving nature of design legislation and its implications on copyright protection. Under the current 2000 Act, a design (if it meets the definition) does not have any form of copyright or monopoly until it is registered. It remains unprotected until registration, making it essentially an orphan in terms of legal protection.

This perspective was endorsed by the court in the case of *Samsonite Corp. v. Vijay Sales*¹⁵. In this case, it was observed that if the works in question were designs and had not been registered under the Designs Act, they were not eligible for copyright protection. This principle was reaffirmed in *AGA Medical Corporation v. Faisal Kapadi*, emphasizing the importance of design registration for legal protection.

Applying this rationale to the current case, the Court determined that in situations like these, the purpose behind the work was a crucial factor in distinguishing between an artistic work and a design. Additionally, the work's ability to stand independently was another significant consideration. The Court asserted that, in the case of the floral designs, their intended application to upholstery fabric for industrial use fulfilled the primary condition. Subsequently, the Court concluded, albeit without extensive elaboration, that the design lacked the capability to exist independently.¹⁶

3.3 Dabur India Limited v Rajesh Kumar & Others¹⁷

The plaintiff introduced Dabur Amla Hair Oil in bottles featuring a distinctive design characterized by a semicircular shoulder with curved back and front panels. This unique configuration was registered under the Designs Act. The green cap of the bottle, also distinctively designed, was similarly registered under the Designs Act. Additionally, the plaintiff's trademark 'Dabur' was imprinted on the bottom of the bottles. The plaintiff alleged that the defendant produced plastic bottles that closely resembled the plaintiff's design and also replicated the 'Dabur' mark on the bottom. These counterfeit bottles were then sold to imitators of Dabur

¹⁴*Interlogo AG v. Tyco Industries*, [1989] AC 217.

¹⁵ *Samsonite Corp. v. Vijay Sales*, FSR (2000) 463.

¹⁶ Chaudhary, Poorvi Singh; Chhikara, Udiksha, 'Role of Intellectual Property Law in the Fashion Industry', *Indian Journal of Law and Legal Research*, Vol. 3, Issue 2 (December 2021 - January 2022), pp. 1-24.

¹⁷ *Dabur India Limited v Rajesh Kumar & Others*, 2008 (37) PTC 227 (Del.).

Amla Hair Oil. Consequently, the plaintiff claimed that both the defendant’s designs and bottle caps constituted infringement. The case underwent a comprehensive hearing, during which bottles from both the plaintiff and the defendant were presented before the court for comparison after extensive arguments from both sides.

A brief examination of the plaintiff’s bottles revealed that the bottles used by the plaintiff were generic and commonly employed by numerous other companies for the packaging of their hair oil, fixers, and liquid products. The plaintiff’s bottle design did not possess any distinctive features, as the registered design encompassed the entire bottle, which was a standard and unremarkable plastic bottle commonly found in the market.

The Court also noted that the plaintiff did not assert any particular originality in the bottle design, neither in their claims nor in the registration certificate. Similar designs had been utilized by several prominent companies long before the plaintiff registered this particular design. Consequently, the court found no evidence of unique or proprietary features in the plaintiff’s bottle design.

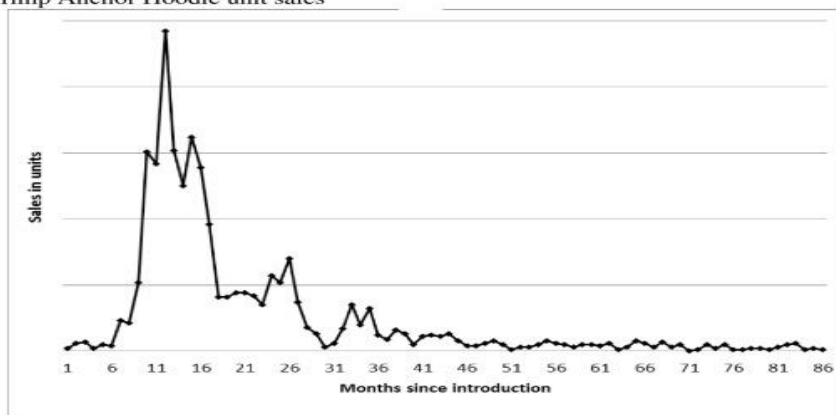
IV. PERCEPTION OF UNIQUENESS AND ECONOMIC IMPACT OF DESIGN PIRACY

The example provided showcases Primp’s Anchor hoodie and its imitation produced by Forever 21, a low-cost retailer. Websites curate collections of high-end apparel and accessories. These sites often feature celebrities wearing the original fashion item, alongside a comparable lower-priced knockoff. They provide links to the websites where the imitation items can be purchased.¹⁸

a: Primp Anchor Hoodie and Forever 21 knockoff



b: Primp Anchor Hoodie unit sales



The figure illustrates the sales trend of this fashion item, depicting a swift rise followed by a subsequent decline in popularity. Despite maintaining decent sales even after four years, approximately 75% of the total sales took place within the initial two years.

¹⁸ Gil Appel. Barak Libai. Eitan Muller, ‘On the Monetary Impact of Fashion Design piracy’, International Journal of Research in Marketing, Volume 35, Issue 4, p.p 591-610

4.1 Acceleration

Considering the growth of the Anchor Hoodie within the framework of classical diffusion theory, where word-of-mouth communication, imitation, and other contagion effects play a significant role, the adoption of Forever 21's knockoff could hasten the spread of the original design.¹⁹ In this context, if a knockoff closely resembles the original Primp design, its adoption could accelerate the diffusion process of the original design. The degree of similarity between the knockoff and the original design impacts the magnitude of this acceleration effect.²⁰ It is important, however, that potential adopters are influenced by the prevalence of knockoffs, even if they can discern that the knockoff is not an original item, for this argument to hold true.

4.2 Overexposure

Determining the extent to which the Anchor Hoodie contributes to the wearer's sense of uniqueness is a complex task.²¹ However, if the hoodie does indeed contribute to a sense of uniqueness, excessive exposure to hoodies featuring the anchor design, whether original or knockoff, might diminish this feeling of uniqueness. Consequently, this overexposure could lead some potential adopters to refrain from adopting the anchor design, and prompt existing adopters to stop wearing the hoodie. The consumer need for uniqueness is evident in our desire to distinguish ourselves from others through the products we acquire, thereby shaping and enhancing our social image. This need for uniqueness plays a significant role in guiding consumer behaviour within the fashion industry and other markets.²²

Excessive exposure to fashion items that attain widespread popularity can indeed diminish the user's sense of uniqueness. This, in turn, can lead to a decrease in the number of adopters and potential adopters. Some legal scholars have also acknowledged that the prevalence of knockoffs can harm the sales of original designs due to some consumers perceiving a reduction in the uniqueness or utility of the original has illustrated how these dynamics prompt certain fashion companies to limit information about the brand's ubiquity, while others make such information highly accessible. However, there is a lack of empirical evidence regarding the extent of this effect.

While overexposure can result from the continued presence of the original in the market (internal overexposure), the examination of overexposure focuses on the consequences of external overexposure, where an increase in the number of users of a knockoff influences the adoption of the original.

The desire for uniqueness does not contradict the human need for a sense of belonging, a recognized aspect of human behaviour in general and brand consumption in particular. Consumers choose to adopt a fashion brand partly because they want to be a part of the group associated with it, even if that group is relatively small.²³ However, once the number of adopters surpasses a certain threshold and becomes too large, the need for uniqueness becomes more prominent. Any comprehensive examination of fashion markets should consider this tension between the desire for belongingness and the need for uniqueness.

V. RECOMMENDATIONS

Design piracy significantly impacts the fashion industry's economic ecosystem by reducing sales of authentic products and undermining the revenue of original designers and brands. It also discourages innovation and creativity in the fashion industry, as designers may hesitate to invest in new ideas if they can be easily copied without legal consequences. Consumer's may unknowingly purchase counterfeit or pirated products, believing them to be genuine. This can lead to dissatisfaction and loss of trust in the fashion industry.²⁴

Addressing the ambiguities in the existing problem of design piracy necessitates a multifaceted strategy encompassing legal reforms, industry cooperation, public awareness initiatives, and technological

¹⁹ *Supra* note 16.

²⁰ Vendela Dente, 'Fashion Design Piracy: An Issue of Intellectual Property or Economic Impact?', *Fordham University Law Review*, Volume 2, Issue 1 (2020).

²¹ Cotropia, Gibson, 'The Upside of Intellectual Property's Downside', *UCLA Law Review*, Vol. 57, Issue 4 (April 2010), pp. 921-982.

²² Thomas, Kedron (ed.), 'The Ethics of Piracy', *Regulating Style: Intellectual Property Law and the Business of Fashion in Guatemala*, California Scholarship Online, 18 May 2017.

²³ *Supra* note 10.

²⁴ *Supra* note 2.

advancements. First and foremost, legal frameworks must be refined to offer clearer and more precise definitions of design piracy, reducing ambiguity and ensuring a common understanding of what constitutes infringement. Specialized intellectual property courts staffed with judges well-versed in design related disputes are crucial. Their expertise can lead to informed judgments, bringing consistency and clarity to legal proceedings. Fashion organizations and industry groups work to raise awareness about design piracy and promote ethical fashion practices would help reduced design piracy in the market. Educating consumers about the risks of counterfeit products and the importance of supporting authentic brands can also help combat design piracy at the demand end of the market thereby supporting original designers and discouraging the demand for pirated goods.

Internationally, collaboration and harmonization of intellectual property laws are essential. Encouraging cooperation between nations can facilitate consistent enforcement, particularly in global industries like fashion where design piracy frequently occurs across borders. Establishing and enforcing codes of conduct within sectors can promote ethical practices, discourage piracy, and foster fair competition among businesses. Simultaneously, offering support to small designers and artisans through legal assistance and resources ensures that they can protect their designs against piracy, promoting a more level playing field.²⁵

Incorporating technology is another key avenue. Blockchain technology and digital watermarking, for instance, can create transparent supply chains, making it easier to trace the origins of products and verify their authenticity. Additionally, capacity-building programs and educational initiatives are necessary. Workshops and training programs can educate designers, businesses, and the public about intellectual property laws, fostering a culture of respect for copyrights and patents.

Lastly, strengthening enforcement mechanisms and ensuring penalties for design piracy are sufficiently deterrent. Effective enforcement, combined with stringent penalties, sends a clear message that design piracy will not be tolerated, acting as a deterrent to potential infringers. By combining these efforts, it is possible to create a more robust framework that safeguards the creative innovations of designers and promotes a culture of respect for intellectual property rights.

VI. CONCLUSION

Fashion designers have the choice between the Copyright Act and the Design Act, depending on the type and duration of protection they seek. Under the Copyright Act, they can opt for a longer protection period, which lasts for the 'life of the author + 60 years.' On the other hand, under the Designs Act designers can obtain protection for 15 years, but they have the flexibility to use the design for multiple productions. However, available data indicates that there is little inclination among manufacturers and designers to protect their products under either the Copyright Act or the Designs Act. This phenomenon, known as the piracy paradox, is evident in fashion piracy compared to fashion protection.²⁶

Despite these options, there is a lack of interest among manufacturers and designers in seeking protection under either the Copyright Act or the Designs Act. To encourage more registrations in these categories, it is crucial to address the inadequacies in the present law otherwise design piracy will be very frequent in the fashion industry.

²⁵ Raustiala, Kal; Sprigman, Christopher, 'The Piracy and Paradox: Innovation and Intellectual Property in Fashion Design', Indian Journal of Law and Legal Research, Vol. 2, Issue 2 (August-September 2021), pp. 1-22.

²⁶ Lo, Keyon, 'Stop Glorifying Fashion Piracy: It Is Time to Enact the Innovative Design Protection Act', Chicago-Kent Journal of Intellectual Property, Vol. 21, Issue 1 (2022), pp. 159.