

Satin, Sequin and Sustainability: An uncloak approach to define IPR

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Abstract: “Vasudhaiva Kutumbukam” means the world is one family. Indian history is enriched with principles that support sustainability and social welfare. In a world filled with maximizing the profitability mindset, the concept of sustainability is an ongoing debate that needs new and innovative ideas for a better and sustainable world. The conflicting philosophies have directed us towards reasonable exhaustion of resources while at the same time there is a need to protect the environment.¹ According to the Fair Fashion Center back in 2016, 150 million lives are touched by the global apparel industry daily. This is where it becomes essential to regulate fashion in terms of sustainability in a broader, more attentive and sensitive approach. Sustainability is as subjective as ethics. It has a different meaning for each individual based on the cost they pay towards it. This is where the disparity arises between the contributions of a buyer and seller. The need for legislative protection emerges out of this need to protect the creative intent of an artist against the need for sustainable fashion. Without a specific definition or a legal meaning, sustainability is spreading through the globe in a scattered grass approach. It is thus the time and need to systematize sustainability and bring reformative laws in the fashion industry.²

Though individual effort counts, a larger step towards sustainability is necessary to regulate the industry because it is unrealistic to expect consumer awareness and private social response to lead the movement. In a situation of low intellectual right protection, piracy increases and further reduces the market value of the original design. There is a surplus of the design in the market which makes it common and people start demanding new and quick fashion. As a result, the designers lose the value to their creativity in fast fashion. European Union has limited its fast fashion by creating a strong protection base for designers. It protects registered as well as unregistered designs as a whole. This has resulted in a cut back of piracy and in turn, reduced the exploitive unsustainable production. The biggest fashion market in the world, the United States, lacks in this area and fails to provide such protection to its designers. In an environment of legal prohibition and imposition of fines for infringement of Intellectual property rights, the decline in the excessive unsustainable fashion can be predicted. The indicated domino effect of Intellectual property rights is directed upon the global sustainability of fashion industry.

Sustainable fashion can be achieved through various modes like trade-in, zero waste collection, science-based targets, second-hand market, vintage clothing and upcycling. Upcycling is gaining popularity amongst the masses due to its environment and fashion-friendly approach. Since consumers are attracted to fast fashion, upcycling delivers the same in a sustainable manner. The designers and consumers are starting to realize that everything can be creatively updated. Before COVID-19, upcycling was limited to small fashion brands that were ethically conscious. Due to

supply chain difficulties during the pandemic, large fashion houses also turned to upcycle while using the material that was already available to them. The transformation of traditional vintage designs into updated fashion pieces cuts back on the wastage of material along with curtailing the

¹ <http://www.swamiagnivesh.com/images/publicationpdf/1475922448.pdf> visited on 4th Nov, 2022

² <https://hbr.org/2022/01/the-myth-of-sustainable-fashion> visited on 4th Nov, 2022

need to buy new fashion pieces.³

One loophole that the legal intervention in fashion sustainability brings out is the infringement of rights of designers who creatively produce new designs. The selling of upcycled version of IPR protected designs creates a legal hassle for infringement. The designers having trademark protection sue for meddling with their original designs and selling under their trademark. This is where the doctrine of first sale protects the sellers. Since the designers lose their ownership and IP rights once the first sale is made, they cannot interfere in the further right of the consumer. However, selling upcycled fashion items hurdles with trademark rights and this has led to various legal actions taken by big fashion houses to protect their brand. Even though the first sale doctrine does not apply to pirated fashion pieces, it is upon the interpretation of the courts to consider original upcycled fashion pieces as an infringement of IP owners' rights.

Thus, the legal regulation of Intellectual property rights is necessary in order to regulate such issues arising from transformation towards sustainability. The legislation should provide strong protection to the designer while striking a balance with the much-needed environment-friendly fashion. With the courts also broadening their interpretations, the key is to encourage creativity while maintaining sustainability.

Keywords: Fashion, First Sale Doctrine, Intellectual Property, Sustainability, Upcycling

Introduction

When it comes to the industry of fashion, it has been considered as a source of wastage since 215BC. The Fashion industry is directly associated with innovation and creativity that is protected under law however the need for sustainability is now at an ever growing high. There is a need to balance and protect the creativity and innovative vision of an artist or a designer and at the same time there is a need for sustainable development in the fashion industry. The establishment of Lex Oppia as first in the series of sumptuary laws in ancient Rome proves that the fashion industry always needed regulation. The 18th Century law sumptuary laws aimed at regulating consumption, restraining extravagance and luxury. Today, the scope of regulation has broadened with the growth and development of economies across the globe.³

India has abundant resources when it comes to raw material and production labor. Being the global leader of handicrafts and handloom, India has promoted sustainable fashion through khadi, ittar, tie-dye, weaving etc. This has improved the global understanding of sustainable fashion further expanding it to usage of organic cotton and regenerative fibers. With the increasing awareness amongst consumers, the hazardous effects of unsustainable fast-fashion are on the headlines. A wave of private social change has emerged where consumers cut back on fast-fashion and unsustainable goods. The "each dollar is a vote" approach is guiding the masses to wisely select what they buy based on its environment-friendly composition. As a response, the production houses started marketing their products as carbon positive, organic and vegan. Yoga mats are marketed as mushroom-made and sneakers made from sugar cane. The products of the fashion industry are green-washed and presented to consumers as environment friendly. This is highly concerning as it blinds and betrays the aware consumers of the market. While there are few designers who have made efforts to lower their contribution to unsustainable fashion, they fall short on the outcome. 'Less unsustainable is also unsustainable' is the thinking that can make a difference.⁴

The industry of fashion is affected by various laws apart from intellectual property law including contract law, employment law, consumer protection law. The kind of economic boom that the fashion industry experienced, laws were required to regulate each and every step of the production cycle. The increasing cases of design piracy and copying are common to this industry. The legal regulation also governs and controls this aspect. In order to protect the interests of designers and IP owners. Circulation of counterfeit pirated designs harms the reputation of designers along with monetary losses. The designers, being aware of their rights, are cautious and vigilant about pirated designs to avoid its circulation. There is a fine line between piracy and inspiration. It has been a topic for debate for a long time to define what comes under the purview of inspiration and what amounts to piracy of an IP protected design.

The fashion brands, keeping pace with the ever-changing trends and styles, come up with different ideas which bring

³ Article: The Core Value of Sustainable Fashion: A Case Study on "Market Gredit" by Young Kim 1 and Sungeun Suh

⁴ Sethi, Ritu, Handmade for the 21st century: safeguarding traditional Indian textiles, 2022.

uniqueness to their brand. The struggle of creating as much difference as possible up to the likings of the public at large pushes the brands to brainstorm and evolve their collections. In such a highly pressurized race of experimenting and producing better collections, the designers expect their work to be adequately protected by the laws of the state. The protection of innovative designs encourages further development in the field of fashion. The apparel industry is India's second largest revenue generating industry, coming just after agriculture. Being a highly strong factor affecting India's GDP, the laws protecting innovative designs must be strong and cater to minimizing loopholes. Intellectual property which is the result of creativity of mind and originality requires protection in order to promote application of mind in creation. The industry of fashion suffers a huge loss in terms of Intellectual Property created by designers due to piracy. The term coined PIRACY PARADOX correctly describes the scenario where the IP creators face monetary as well as mental distress due to increasing cases of piracy. It violates the two fundamental rights of an IP creator. Firstly, it is the right of IP creators to commercially exploit the original design to the exclusion of others. In addition to this, the recognition which comes along with creative and original work is immeasurably valuable.⁵

Intellectual Property laws deal with the rights of Intellectual Property creators who invest their time and resources to create inventions, artistic works and designs. All the creations which involve a creative step and original touch are protected under the ambit of Intellectual Property laws. Apart from protection, the Intellectual Property rights also give recognition to the creator. Fashion and apparels is one such industry where any creative and original design appealing to the public is copied and sold in bulk at local markets. This takes away the due credit from the IP creators and causes monetary loss as well. With the expansion of fashion industry at a global pace, fast moving fashion trends attract the youth of society. Thus, the IP creators feel the need to protect their innovative and original designs. IP laws guarantee the rights of such IP creators and ensure that their ideas are not maliciously copied and exploited by others. The laws to prevent fashion piracy are extremely important for the growth of fashion and apparel industry of India. The IP laws in India dealing with protection of artistic works or inventions of fashion industries are broadly covered under three heads, namely, Copyrights, Patents and Trademarks. Different types of works are granted protection under the above-mentioned categories based on the nature of originality and creativity.

The rights of IP creators can be violated by two types of Piracy- Knockoff and Counterfeit. Knockoff is the kind of piracy where design is copied or duplicated in such a sense as to create a resemblance and is generally sold at a lower price. It deceives the customers by stealing the original and creative ideas of fashion industry and merely copying it on cheaper products and low quality manufacturing. The idea of knockoff does not entail selling exact replica of the original brand with the trademark but revolves around capturing the essence of design and mindlessly replicating it as a product of the seller's own creation. As per the laws of IPR, knockoff does not directly create an offense. If any IP creator wishes to avail the legal remedies, the same can be done by proving the deceptive similarity of copied designs. On the other hand, counterfeit of a design is an exact replication of the product along with the trademark sold at a lower price. The practice of counterfeiting, which basically categorizes as stealing, is unlawful and punishable. Various brands have won multimillion-dollar cases in order to protect their IP creations and commercially exploit them to its full potential.⁶

First Sale Doctrine

The first sale doctrine belongs to the American legal system which intends to limit the rights of Intellectual Property creators to control the resale of products which contain the owner's intellectual property. The rental market of copyrighted products is affected by this doctrine as it legally enables the sale and purchase of books, CDs, etc. The same doctrine extends to trademarked products, where the trademark owner sells the product once and the rights over it are extinguished. Thus the trademark owner cannot control the afterlife of trademarked products once the first sale is made. In the case of patented products, the patent owner cannot control the further sale of its work once it is sold. However, the patent process is an exception to this doctrine as it is governed by the patent exhaustion doctrine.⁷

The first sale doctrine permits the resale of goods bearing a trademark, such as a logo or brand name, following the sale of those goods by the trademark holder, unless doing so is likely to confuse or deceive consumers. In *Prestonettes, Inc. v. Coty*⁸, the U.S. Supreme Court interpreted trademark law in accordance with the first sale theory. In

⁵ Kal Raustiala and Christopher Sprigman - The Piracy Paradox: Innovation and Intellectual Property in Fashion Design Vol. 92, No. 8 (Dec., 2006)

⁶ Naseri, Hedi, Addressing Global Scope of Intellectual Property Law: November 2004

⁷ <https://theipcenter.com/2010/01/the-first-sale-doctrine-under-copyright-law/> accessed on 6th Nov, 2022

⁸ 264 U.S. 359 (1924)

Prestonettes, the defendant purchased a product from the plaintiff, packed it with additional substances, and then marketed it to customers. The trademarked name of the plaintiff was used on the packaging of the defendant's product to denote that the plaintiff's product was contained therein. The court determined that the plaintiff's trademark rights were not violated.

Goods That Differ Materially

If the unlawful seller's goods differ "materially" from the product of the trademark holder, the first sale doctrine might not be applicable. That case involved the resale of products without the warranty protections offered by the trademark owner, which damaged its reputation among consumers. The Tenth Circuit described this as a product that "is not genuine and may generate consumer confusion about the source and the quality of the trademarked product" in a ruling from 2009.

Absence of Similar Quality Controls

If a trademark owner can prove that the unauthorized reseller is using the trademark on goods that don't meet its quality control standards, they can defeat the first sale doctrine argument. A trademark owner must pass a four-part test that has been established by courts: the reseller is not adhering to these standards, and the sale of goods that do not adhere to the standards of the trademark owner is likely to cause consumer confusion and reduce the value of the trademark. It maintains a sizable set of quality control standards and procedures for its products. It consistently applies these standards and procedures. A trademark infringement defense is the first sale theory. The Lanham Act in the US governs federal trademarks. By using a registered trademark "in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive," unauthorized individuals or organizations are prohibited under the Lanham Act.⁹

After some time, the owner of a trademark gains the presumptions that the trademark is valid and that they have the sole right to use the mark throughout the country as a result of the registration with the Trademark Office. The holder or owner of the trademark may file a lawsuit for trademark infringement if someone or something uses it without their consent. The trademark owner/holder must demonstrate two legal factors in order to succeed:

- An approved trademark
- the use of the same or similar trade mark by the infringement is likely to confuse consumers

However, an alleged infringer may assert a number of defenses, including the "first sale doctrine," depending on the specifics of the case. The Lanham Act typically only shields the initial sale of produced goods. This means that if someone RESELLS goods that are protected by a trademark, there can be no legal action for trademark infringement (as long as the goods are genuine and bear a true mark). Even if the original manufacturer does not consent to the RESELLING of its products, this is still true. According to court rulings, the Lanham Act's text and the public policy idea that a producer only has the right to control the initial distribution of its products flow together to support the first sale concept. Allowing otherwise would put the free movement of goods in the market in peril. When a defendant claims trademark infringement and raises the first sale theory as a defence, the defendant must first demonstrate that the trademark owner allowed the initial sale of the goods. Usually, but not always, the evidence for that is obvious.

Global Context

When it comes to global fashion, Paris leads the industry, followed by Milan and New York. They have various legislative enactments that protect their IP creations from being misappropriated. To the French, fashion has always been an important aspect of their lives. The standards of design and creativity in fashion set by France in early 17th century gave this reputation to it. The policy of their fashion industry depends on promoting cultural fashion and encouraging authenticity in the designs. The famous designer Vionnet protected his beading technique through the patent laws even though the patent laws are not appropriate for protection of designs. The designers needed a full-fledged system to avoid loopholes of piracy.⁹

Intellectual property created at the international level has a global impact on the fashion industry. The skill and creativity is coupled along with extensive marketing of products adds tremendous value to it. Big-sized enterprises focus their resources on protection of their intellectual property whereas small and medium sized enterprises tend to ignore this factor. The strategic use of IP rights reduces the risk in business and creates a solid platform for further

⁹ <https://www.bonalaw.com/insights/legal-resources/first-sale-doctrine-in-trademark-and-copyright-law> accessed on 7th November, 2022.

innovative ideas. Since design is the heart and soul of every fashion industry, the new and fresh designs are protected with care and caution. The designs are duly registered which helps the owner of intellectual property to commercially exploit the same to exclusion of others. It is inclusive of 2-D as well as 3-D models of design or any differentiating feature capable of being called a creative step.

A fast moving industry like fashion creates a platform involving huge investments for coming up with new designs each season. The fast fashion trends motivate IP creators to push their creative limits every season in order to sustain in the industry. Some countries offer copyright protection to designs as works of art. However, most designs are left unregistered due to high cost and time consuming nature of the process. The designers feel that it outweighs the short life of a design in fast fashion. Some countries provide unregistered protection to designs which is extremely useful to the designers. Such short term protection allows them to test the product and respective market before investing in registered protection. European Union offers unregistered protection of 3 years commencing from the date on which design is made available in the domain. The IP creators are able to judge if the piece of creation is belonging to fast fashion and most likely to phase out within a season or belonging to the ever-lived classic pieces. The classic Chanel suit which was designed in 1930s by Coco Chanel is a timeless classic and continues to be sold till date. When a fashion house creates a classic piece, investment in its protection becomes extremely essential. Such designs have a long life in the fashion industry and the protection prevents others from commercially exploiting the design.

Big fashion houses have a high value for their brand equity. Since the brand name and reputation attached with the name has high value, it influences the decision of the customers. In the world of today, people associate their status with brand names. This encourages people to buy brands with higher face value to establish a well-off status in the society. Trademark or the brand logo differentiates the brand with others in the same market. Thus, the marketing in fashion industry is highly related to the visibility of the brand logo and its reputation. In such a scenario, if the trademark is misused or if the design is pirated, huge loss is incurred by the IP creators.

In the United States, protection of designs is covered under copyright law. The fashion houses with established brands mostly seek protection of the trademark rather than the design. The face Zarocostas, John,¹⁰ the role of IP rights in the fashion business: A US perspective, 4/2018

value and reputation of the brand is the major concern of most fashion houses. In the landmark case of *Star Athletica, LLC v Varsity Brands, Inc.*¹¹, the US Supreme Court discussed the concept of separability and stated that the useful items cannot be restricted by copyright laws. They are required to stay in the public domain and as such, items like clothes, shoes and bags etc, are useful items which, as a whole cannot be protected by copyright laws. On the other hand, if a brand innovatively creates a design which separates it from other items of the same market, that particular design can be protected under copyright laws. Due to this, Fashion houses in the United States are looking for creative paths to protect their IP creations. As a result, growth of design patent protection is seen where the established fashion houses rely on more time consuming and expensive design patents to protect their creations. The protection of design patent is preferred for those designs which will stay in the market for a long time. The staple and classics that never go out of style are covered under this category.

In year 1998, European Council adopted the directive of Legal Protection of Design which frames rules and regulations with respect to eligibility of fashion houses and designers for protection. The owner of Intellectual Property is guarantees exclusive protection for 25 years. Under this, the registered as well as unregistered designs are protected. The designs in European Union are protected as a whole and the concept of separability does not exist. The main difference between IP protection of United States and European Union is that the European Union has immense advantage from unregistered protection. This is the reason why fashion market of European Union is much more vast and expansive. The laws governing both, United States and European Union are different in their core principles and that majorly relates to their respective history.

France being the first to bring out original designs, the protection laws have been in place since the 15th century. Fabrication of textiles was granted protection in France before any other nation. In 1793, the design protection in France was confirmed by French law through the Decree of National Convention of July 19, 1793 further rectified in year 1806 and 1909. French designers are extremely advantaged through pre-cautious and well placed laws on design

¹⁰ Zarocostas, John, The role of IP rights in the fashion business: A US perspective, 4/2018

¹¹ 137 S. Ct. 1002 (2017)

protection.

In one the most popular case of *Chanel Inc. V. The Real Real, Inc.*¹² which dealt with violation of the Lanham Act, 1946 which the US Federal statute covering laws related to trademarks. Chanel filed a case against TRR alleging that TRR is selling counterfeit products and misleading customers. TRR, being an online and brick and mortar marketplace dealing with resale of luxury goods. The case revolves around first sale doctrine of America which questions the trademark rights over products that have already been sold. As per the general principles of law, ownership of the product once transferred from seller to buyer, the buyer cannot claim such rights. In a situation if court finds TRR selling counterfeit products, a heavy penalty can be expected.

Trends in Italy

10% of all carbon emissions produced by humans are attributed to the fashion business, which is the second biggest polluter in the world after the oil industry. Utilizing antique and used items can considerably lower these depressing numbers. In fact, efforts to increase the usefulness of clothing and accessories that have already hit the market are making progress. Upcycling is the practise of turning used clothing, accessories, bags, and fabrics into new things; it encourages creativity while reducing waste, and Vogue has named it the top fashion trend of 2021.

Upcycling is increasingly widely used in the fashion industry. For instance, in 2019, Arc'teryx introduced a re-commerce initiative called Rock Solid Used Gear that involved the brand purchasing used equipment, cleaning and repairing pieces that still had plenty of life left in them, and retailing such items for less money. In order to keep their previously owned branded products in circulation for longer and to take advantage of the expanding resale portion of the market, several additional companies, including Levi's, North Face, Eileen Fisher, and Patagonia, are now implementing upcycling. In 2021, Farfetch, the largest online retailer of luxury fashion, announced a partnership with The Restory, a business that offers modern aftercare for luxury fashion, to create Farfetch Fix. Farfetch Fix offers consumers "bespoke repairs to return your design shoes, handbags, and small leather goods to their former glory."

In light of the aforementioned examples, it would seem that the majority of circularity-centric efforts are either coming from brands that buy back, renovate, and resell products bearing their names or from outside parties that repair designer clothing and accessories without the underlying brands' involvement, like Farfetch or The RealReal through an internal "suite of repair services." Although all initiatives have the same objective—extending the lifespan of products—it is important to recognise the distinction between brand-authorized repair/resale scenarios and those conducted independently by third parties. In fact, several court cases have demonstrated that the practise of modifying or refurbishing branded goods and selling them without the consent of the original brand owner or without adequately informing consumers of the modifications can have serious legal repercussions. This recently occurred in the case that Chanel brought against What Goes Around Comes Around.

This poses a challenging dilemma for brands: how can you support environmentally responsible upcycling while preserving your brand? The owner of the trademark acquires exclusive rights to it by registering it, i.e. the right to use his sign exclusively and to prevent its use by unauthorized third parties. However, once the trademark owner releases a product onto the market, some countries permit the resale of that product. In the U.S. legal system, this is known as the "first-sale doctrine," whereas in the European system it is known as the "principle of exhaustion."

However, it must be emphasised that the first sale theory does not apply when the product's material condition has changed since its initial sale (see Article 5 of the Italian Code of Industrial Property) and customers may have mistakenly assumed that this change was approved by the mark owner. Therefore, the first sale concept is unlikely to find application if the process of refurbishing or repairing the product results in a material change to that product.

Given the foregoing, it is possible that some services, such as reheeling shoes, cleaning leather bags, or mending torn stitches on clothing or accessories, will not conflict with the proper application of the first sale doctrine, allowing a third party to offer them without obtaining the trademark owner's consent. The first sale theory does not, however, apply when a third party intervenes on trademarked goods, permanently alters them, and then resells them.¹³

However, platforms that offer repair and refurbishing services for goods that have trademarks on them are able to

¹² 18 Civ. 10626 (VSB) (GWG) (S.D.N.Y. Feb. 11, 2022)

¹³ <https://www.unep.org/news-and-stories/press-release/un-alliance-sustainable-fashion-addresses-damage-fast-fashion> visited on Nov, 2022

advertise their services without fear of violating the businesses' trademark rights thanks to article 21 of the Italian Code of Industrial Property.¹⁴

Some brands have complained that their trademarked products are refurbished and then sold without their approval, preventing them from checking and ensuring an excellent level of quality of those goods. This is because the first sale doctrine is applied differently depending on whether the change is material or non-material, and because of the continuous expansion of the resale market, which is able to make pre-owned luxury products more accessible and affordable.

Therefore, it is possible to anticipate potential problems when unauthorised third parties materially alter genuine products that are introduced to the market in a resale capacity, leading to confusion among consumers regarding the origin of the products - especially when the reseller is unaware of the changes made to the goods, thereby failing to prevent the issue from occurring.

The lifespan of fashion products is reportedly being shortened as pre-owned, refurbished, repaired, and rental business models continue to develop, and this is especially true as consumers demonstrate an appetite to shift away from traditional ownership to newer ways in which to access product," according to a 2019 McKinsey report on the fashion industry. As a result, the adoption of resale models and the shift to circularity will necessitate a careful balancing of the competing interests, including those of trademark owners, present or potential competitors in secondary markets, consumers, and society. A brand still has options for dealing with appropriation when it is committed by an upcycler without going to court. To resolve the infringement, for example, "informal enforcement" through demands letters, business-to-business conversations, or take down requests may be helpful. To create an enforcement strategy based on the details of the current violation, trademark owners should enlist the help of a reliable IP attorney. On the other hand, by proactively creating their own upcycled products, firms can safeguard themselves against unauthorised use by other parties. IP advisors might also assist firms with licensing agreements, merchandising agreements, co-branding agreements, and other legal contracts to develop upcycling partnerships and product streams. Fashion companies may support sustainability by participating in the circular economy and properly managing their trademarks.

Intellectual property owners only have control over the initial distribution of the goods they sell according to the first sale doctrine. Because of this, IP owners often are unable to stop the resale of their items on online marketplaces like Amazon and eBay that cater to both consumers and small-business owners. However, due to restrictions Amazon has put in place for third-party sellers, brand owners are now able to forbid distribution of their goods by anybody other than approved distributors. Only third-party sellers who can show that the manufacturer or distributor has given them permission may sell these products as new under its brand gating program. Unauthorized vendors may still offer the item for sale as "used - like new," but they might not achieve the same level of sales.

The Delhi High Court in the case of *Patanjali Ayurved Limited v Masala King Exports Trading Pvt. Ltd. & Ors.*¹⁵ ruled that the first sale theory, which limits a trade mark owner's right after the initial sale of one of its items, would only apply to reselling a product in its original state. Masala King Exports Trading Private Limited and 11 other businesses were given an ex-parte ad-interim injunction prohibiting them from selling goods made by *Patanjali Ayurved Limited* on the foreign market until the next hearing date. They were nevertheless able to offer Plaintiff's product for sale in local markets.

On the other hand, US Court in the case of *Bluetooth SIG Inc. v. FCA US LLC*¹⁶, the question was whether the seller provided sufficient disclosures on the way a trademarked product was incorporated into the new product. The US Court affirmed that when adequate disclosure is made with respect to trademarked component, the first sale doctrine defense can be used against suit for trademark infringement.

Different courts have provided different set of opinions when it comes to trademark infringement arising out of upcycled designs. Thus, in the absence of a settled law, regulation of Intellectual property rights is necessary in order to deal with such issues arising from transformation towards sustainability. The legislation should provide strong protection to the designer while striking a balance with the much-needed environment friendly fashion. With the courts also broadening their interpretations, the key is to encourage creativity while maintaining sustainability.

¹⁴ https://les-italy.org/wp-content/uploads/2018/03/LES-ITALIA_OK.pdf visited on Nov, 2022

¹⁵ 2012 SCC Online Del 5172

¹⁶ 30 F.4th 870 (9th Cir. 2022)

Conclusion

It is evident that there are still certain gaps in intellectual property law after examining the several facets of this topic. The international regime could be changed in a variety of ways to achieve mutual relationship between sustainability and intellectual property in the fashion industry. The following are some significant actions that can be taken to improve the situation:

Unfortunately, the TRIPS-established regime is insufficient to address the current issues surrounding intellectual property. The TRIPS Agreement's lack of a robust international enforcement mechanism is one of its biggest flaws. Members are free to choose how to best apply the Agreement's provisions to their particular local system and practice. As a result, the TRIPS is reduced to a kind of toothless mechanism that imposes little duties on its participants.

Because of a confluence of these elements, national laws put in place by individual nations have mostly served as the primary means of enforcing intellectual property rights standards and norms when trade is concerned, as opposed to international law. The global impact of the expanding domino effect of intellectual property rights on fashion sustainability grows significantly. Consequently, the most pressing requirement of the hour is the creation of an effective international system for the enforcement of the rights and obligations of the parties. The TRIPS Agreement is a beginning point, but further agreement and open discussion are required in order to identify the issues more clearly and maybe come up with practical remedies. Therefore, with a few modifications, the legislation governing intellectual property and fashion sustainability may result in a better defence of innovators' rights.