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Piracy Paradox: Intellectual Property Right's Grey Space in the Fashion Industry

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Abstract
This article looks into Intellectual Property Law's grey space, which is the fashion industry and delves into why, with such low protection, it is still one of the most profitable industries. It is a substantial area of creativity into which copyright and patent do not penetrate and for which trademark provides only very limited protection. The fashion houses are usually recognised by their brand names and not their designs or in some cases, unique patterns, which are again trademarked. The author looks into the general rule of balance of convenience and delves into how having a low IP equilibrium is more convenient for the fashion houses, designers and the consumers over a stronger IP regime. Piracy may be paradoxically beneficial for the designers as even when originators that suffer harm, may not be strongly incentivized to break free of the low-IP equilibrium because, often, they are also copyists. Being a copyist and an originator is relative in this industry. Since clothing is a status-conferring good, with most forms of apparel being "positional goods, induced obsolescence and anchoring is used to turn rapid profits and keep the fashion fast moving. Fashion Industry, being a purely consumer-based industry is regulated by the Fashion Magazines whose opinion means everything for a brand. Therefore, though copying is done, as is necessary in a market with limited attributes and also helps in rapid turnovers and increasing creative capacity; recognition is given to the deserving and rampant duplication is avoided.

Keywords: *Intellectual Property, Trademarks, Copyrights, Design, Piracy, Fashion Design, Fashion Industry, Low IP Regime, Induced obsolescence, Anchoring, Consumer Goods, Positional Goods, Limited Attributes, Paradoxically beneficial*

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INTRODUCTION
The fashion industry is interesting because it is part of IP's "negative space." It is a substantial area of creativity into which copyright and patent do not penetrate and for which trademark provides only very limited protection. Piracy is "the unauthorized and illegal reproduction or distribution of materials protected by copyright, patent, or trademark law" [1]. In the context of fashion industry, piracy includes: (1) piracy in fashion design and (2) piracy in logo or label of fashion brand. Fashion design piracy occurs when the designs of a particular designer or brand have been copied and incorporated by other designers in their lines. This article shall look into the design piracy and gauge why this industry is a growing success even with a low IP regime.

"Being copied is the ransom of success", Coco Chanel once said [2]. Copying has been rampant since the earliest of times. It dates back to the 18th century, when seamstresses at the Court of Versailles tried to bribe Marie Antoinette's dress maker to find out what she would wear next. In 1978, the J.P. Tod firm marketed a shoe called the "Gommino," a leather moccasin with a sole made of rubber "pebbles." In the mid-2000s, when dozens of shoe designers began marketing their own versions of shoes with rubber "pebbles" as the design did not have protection [3].

India does not cater to recognizing fashion apparel as intellectual property. The designs may be registered under the Designs Act, but the registration requires an average of 12 months and the fashion industry is too progressive for such a time period, with designs changing every 6 months. If the particular design is capable of getting a design registration under the Designs Act and irrespective of that, a designer endeavors to get a copyright registration, he cannot reproduce the particular design more than 50 times which is highly improbable [4].

Piracy is considered paradoxically beneficial for the fashion industry as even when originators that suffer harm, may not be strongly incentivized to break free of the low-IP equilibrium because, often, they are also copyists. Being a copyist and an originator is relative. The house that sets the trend one season may be following it the next and in a world with more than two designers, one is more likely, over time, to be a copyist than to be copied. Original ideas are few, and more often than not, ideas are reworked and reincorporated. Often the industry calls it "referencing". There are predominantly two interrelated theories that are foundational to the continuing viability of fashion's low-IP equilibrium, relating to the economies of fashion.

INDUCED OBSOLESCENCE

Clothing is a status-conferring good. Most forms of apparel are "positional goods." These are goods whose value is closely tied to the perception that they are valued by others; what we buy is partially a function of what others buy. The desirability may rise as some possess it, but then subsequently fall as more possess it. Particular clothing styles and brands confer prestige. A particular dress or handbag from Gucci or Prada has value, in part, because fashionable people have it. It confers an elite status on the owner. For the class of fashion early-adopters, the mere fact that a design is widely diffused is typically enough to diminish its value. It can no longer signify status if it widely adopted. Some examples being of diffused trends:

- Jeans— pop stars in the 2000's popularized the ultra-low-rises in the bootcut style which was adopted by the masses. Then in the mid 2000's came the influx of skinny jeans which was seen wearing by everyone in the most versatile manner. [5].
- Boots—in 2009, thigh high boots were seen on the runways and rampantly followed; which led to a change in 2011 wherein ankle boots became the trend [6].
- Skirts—in 2005, long flare skirts were very popular amongst Indian women. This lasted for about 2 years and the trend disappeared in 2007.

The early adopters move to a new mode; those new designs become fashionable, are copied, and diffused outside the early-adopter group. Then, the process begins again. If copying were illegal, the fashion cycle would occur very slowly. In short, piracy paradoxically benefits designers by inducing more rapid turnover and additional sales [3]. It also leads to a greater platform for creative energy.

ANCHORING

If the fashion industry is to successfully maintain a cycle of induced obsolescence by introducing new styles each season, it must communicate to the consumers when the styles have changed. A low-IP regime helps the industry establish trends via a process referred to as anchoring. The industry produces a variety of designs which are somewhat related to each other and defines the season's trends. This level of design coherence and direction is gained through copying. Designers refer to each other and accelerate the season's themes so it is clearly visible to the consumers whether a particular apparel belongs to a season. Anchoring thus encourages consumption by conveying to consumers important information about the season's dominant styles, for example, stripes, Bandeaus, floral, puffy sleeves and mules were the trends of Spring 2017 [7].

Induced obsolescence and anchoring help explain why the fashion industry's low-IP regime has been politically stable and successful and how it is benefitting to the designers and the fashion houses. The World Garment Market globally values 1.7 trillion USD [8]. More fashion goods are consumed in a low-IP world than would be consumed in a world of high IP protection precisely because copying rapidly reduces the status premium conveyed by new apparel and accessory designs, leading status-seekers to renew the hunt for the next new thing.

The only problem in the low IP regime would be immediate communication. As soon as the design is showcased on the runway, photographs are sent all over and the copying process can begin almost simultaneously. This situation of copying without a lag would be problematic as early adopter consumers would like their design to remain exclusive for a little while and also it might lead to competition for the originators. In practical use, this problem doesn't persist that much because, of all the designs released, there are a few that gain popularity and a few that are dismissed. The copyists would have to wait a while to observe the fashion trends and do a market analysis to gain insight on what is being desired by the masses and accurately gauge the situation; thereafter reproduce the desired designs.

Since copying often results in the marketing of less expensive versions, thus the masses are able to get trendy clothes at a fraction of the price, examples being H&M, Forever 21 and Zara; well-known trademarked brands which bring the fashion from Milan into the hands of the common consumer at reasonable prices. The big fashion houses such as Gucci and Valentino come up with desirable apparel and market the products in such a nature that the consumers desire them. Unfortunately, there are only handful who can afford them. Had there been proper IP protection, brands such as H&M would not be able to copy the designs and hence the designs wouldn't have been available to the masses. In the present scenario, those who can afford the elite fashion houses buy their products, and everyone else turns to the common chain stores, which are selling similar designs. This has led to an increase in the economy since everyone is now spending on their wants, at a level they can afford, as well as gives a sense of self satisfaction and boosts the self confidence amongst the masses that they are up to date with the prevalent trends.

Fashion is an industry in which the consumer's outlook is the only thing that matters. Getting the fashion line photographed and showcased in the top fashion magazines or getting good reviews from renowned fashion journalists are the two ways to induce a positive response from the consumer. If a top exclusive fashion house, an example being Prada, introduces an indigo blue dress with a fancy belt; which is copied by a mass brand such as H&M, Prada will not mind. But if the same copying is done by an equally exclusive competitor such as Gucci, there would be a problem. In practical scenarios however, such a situation is highly improbable because, as discussed above, the magazines and the photographs are all that matters to the Fashion Houses and hence they will not dare such blatant copying for the fear of being shunned and getting their reputation spoilt by the journalists as an excellent, untainted goodwill is the only edge that exclusive brands have over the mass brands.

Usually there is nothing so immensely unique about a design that only one particular person can come up with. The design entails the cut of a sleeve or a floral pattern or the colour coral. There are only a limited number of cuts and prints the designers have to work with. If protection is granted on those attributes, then soon there will come a time wherein no new design can be generated as fashion flows from one pattern to the next. Older patterns are often used as references and some additional changes are made to them so they feel comfortable yet unique. It will be a deterrent in the route to creativity if the designers cannot be inspired.

CONCLUSION

It is therefore concluded that IP protection is not as widespread in the fashion industry, as in the other consumer-based industries. Such protection is not needed per say in this creative industry. The whole design creation and copying is a cycle in which the originator and the copyist are interchanging every season. Induced obsolescence and anchoring encourage the creative cycle. A strong IP regime will also be detrimental to the consumer's interests. But a designer is protected as every designer markets the apparel in their own name or in the name of the Fashion House so the rightful owners are recognized and ample credit is given to them for their work. Since the brands serve to different classes of people, there is no scope of confusion. Therefore, the copyists do not serve as a competition for the originators as it is the trademark and the brand that confers a status on a design.

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