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SIGNIFICANCE OF IP CLAUSES IN A FASHION AGREEMENT: AN ANALYSIS

~ *Hiya Saxena*

1. Introduction

The fashion industry is one of the most significant sectors, both economically and creatively.¹ At the same time the fashion industry is vulnerable to intellectual property (IP) violations like counterfeiting, design piracy, trademark infringement and unauthorized use of creative assets. The IP clauses work against these violations and provide contractual safeguards beyond registration and statutory rights, acting as indispensable legal instruments.²

A fashion agreement (licensing deal, design service contract, brand collaboration, manufacturing agreement, franchising agreement) administers the contractual relationship between parties that bring quality intellectual assets to the table. These assets include trademarks and logos, original designs and patterns, trade secrets, patents in technical textiles and copyrighted artistic works.³ Correctly drafted IP clauses protect the assets from misuse, misappropriation, and costly litigation.

This paper analyses the significance of IP clauses in fashion agreements by scrutinizing the types of IP pertinent to the fashion industry, the important contractual clauses used to protect and exploit those rights, landmark case studies that illustrate the consequences of their absence or misuse and the new challenges being posed by the digital economy, collaborations and cross-border

¹ World Intellectual Property Organization, *Intell. Prop. in Fashion* (2024), <https://www.wipo.int/en/web/fashion>

² Julie Zerbo, *The Role of IP Rights in the Fashion Business: A U.S. Perspective*, WIPO Mag. (2019), <https://www.wipo.int/en/web/wipo-magazine>.

³ DLA Piper, *Intell. Prop. Rights in Fashion* (Mar. 2023), <https://www.dlapiper.com/en/insights/publications/2023/03/intellectual-property-rights-in-fashion>.

transactions. The analysis discloses the key tools that explain the value, ownership, and commercial route of creative assets.

2. Intellectual Property Rights in the Fashion Industry

The fashion industry is unique because a single product may require protection under multiple IP regimes at the same time, with each regime protecting a different aspect of the product. Therefore, understanding each type of protection is important before examining how the IP clauses govern them.

2.1 Trademarks

Trademarks are one of the most commercially valuable IP assets in fashion. A trademark includes a word, name, colour, symbol or design that distinguishes a party's goods from those of another.⁴ In the fashion industry, the trademarks protect brand names, logos, taglines and other unique features. The iconic red sole of Christian Louboutin shoes and the "Calcutta Tiger" logo of Sabyasachi Mukherjee have been defended vigorously in courts.⁵

Trademark protection allows fashion houses to build consumer recognition and distinguish their products in the already crowded shelves, and take legal action against counterfeiting and brand dilution. The Madrid System administered by WIPO allows brands to file a single trademark application seeking protection in upto 131 countries, which is an essential tool for fashion brands operating across global markets.⁶

2.2 Copyrights

A copyright protects original artistic and literary work. In the fashion industry, copyright is particularly important for 2-D artistic works like fabric prints, textile patterns and advertisement campaigns. One of the major jurisprudential challenges is the 'useful articles' doctrine, which explains that clothing, being functional, does not necessarily attract copyright protection unless the artistic elements are separable from the utilitarian aspects of the garment.⁷

⁴ Lanham Act, 15 U.S.C. §§ 1051–1141n (2018).

⁵ *Christian Louboutin S.A. v. Yves Saint Laurent America Holding, Inc.*, 696 F.3d 206 (2d Cir. 2012).

⁶ World Intellectual Property Organization, *The Madrid Sys. for the Int'l Registration of Marks*, <https://www.wipo.int/madrid/en/>.

⁷ 17 U.S.C. § 101 (2018).

In the landmark judgment of *Star Athletica v. Varsity Brands (2017)*, the Supreme Court of the United States held that the surface designs on cheerleading uniforms were copyrightable.⁸

Copyright also extends beyond products to advertisements, websites and photographs, creating multiple layers of protection within the same business.

2.3 Design Rights and Patents

Industrial design rights protect the aesthetic appearance of a product, its shape, configuration, ornamentation or pattern. These are significant in fashion for footwear, accessories and apparel with distinctive silhouettes.⁹ In the fashion industry, utility patents are less common, but are valuable for technical innovations, wearable technology, performance fabrics and novel fastening systems. The patent protection on any invention in design, technical aspect or fabric, grants the owner exclusive rights that third parties may only exploit through a licensed agreement.¹⁰

2.4 Trade secrets and Confidential Information

The trade secrets include confidential business information like supply chain processes, production formulas, proprietary software and future collection details, that provide a competitive advantage.¹¹ The fashion industry invests majorly in seasonal fashion and a single leak of unreleased designs can negatively impact commercial returns. Trade secret protection depends on the existence of non-disclosure agreements (NDAs) and confidentiality clauses instead of formal registration, making them inherently contractual.¹²

3. Key IP Clauses in Fashion Agreements

⁸ *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405 (2017).

⁹ ARC IP Law, *IP in Fashion* (July 2023), <https://arciplaw.com/ip-in-fashion/>.

¹⁰ Altacit Global, *IPR in the Fashion Industry*, <https://www.altacit.com/resources/ip-management/ipr-in-fashion-industry/>. Restatement (Third) of Unfair Competition § 39 (Am. L. Inst. 1995).

¹¹ Restatement (Third) of Unfair Competition § 39 (Am. L. Inst. 1995).

¹² DLA Piper, *supra* note 3.

IP clauses in the fashion agreements serve many critical functions: they define ownership, govern authorized use, allocate risk and establish enforcement mechanisms. The following are the most important categories of IP clauses encountered in fashion contracts.

3.1 Ownership and Assignment Clauses

The ownership clause is the base of any IP-related agreement. It specifies which party has the title to IP created in connection with the agreement. In fashion design agreements, it explains whether the designer or the brand owns the final design, including sketches, drafts and derivatives.

A key difference is between background IP (pre-existing assets like a designer's style or a brand's trademarks) and foreground IP (new creations from the collaboration).¹³ Clearly drafted clauses ensure that each party retains their background IP while clearly assigning ownership of foreground IP, mainly to the commissioning brand.¹⁴

Under the Copyright Act of 1957 and common law principles, the IP created by the freelancers belongs to the creator unless expressly assigned. Therefore, clear assignment language is important, without it, the brand risks not legally owning commissioned designs.

3.2 Licensing Clauses

A licensing clause authorizes the licensee to use the IP owned by the licensor within specified parameters, while the licensor retains ownership.¹⁵ Licensing is a primary used commercial tool used in fashion industry. Luxury brands license their trademarks on a routine basis. Key elements of a fashion licensing clause include the scope of permitted use, the territory, exclusivity, quality control obligations and royalty structures including minimum guarantees and audit rights.

¹³ Gerrish Legal, *Brand Collaborations in Fashion and What This Means for IPR Collaboration Agreements* (Sept. 2022), <https://www.gerrishlegal.com/blog/>.

¹⁴ Gouchev Law, *Conquering Pre-Existing Intell. Prop. Rights in Contracts* (June 2025), <https://gouchevlaw.com/pre-existing-intellectual-property-rights/>.

¹⁵ RunSensible, *What Is a Licensing Agreement in the Fashion Industry?* (Jan. 2025), <https://www.runsensible.com/blog/licensing-agreement-fashion-industry/>.

Exclusivity is essentially important in fashion licensing. An exclusive license prevents even the licensor from granting similar rights to competitors within the term and territory, making it extremely valuable to the licensee.

3.3 Confidentiality and Non-Disclosure Clauses

During performance of a fashion agreement, confidentiality clauses protect sensitive information. Fashion industry includes unreleased designs or collections, supplier=relationships, pricing strategies, and therefore, these provisions are indispensable.¹⁶ An NDA in a fashion context must clearly define what constitutes confidential information, a broad definition is generally preferred, and establishes obligations for the receiving party to keep such information confidential, use it only for authorized purposes and return or destroy it upon termination of the agreement.¹⁷

3.4 Indemnification Clauses

For third-party IP infringement claims, IP indemnification clauses allocate liability. In a licensing fashion agreement, the licensor represents and warrants that the licensed IP does not infringe any third-party rights and indemnifies the licensee against claims arising from a breach of that warranty.¹⁸ The licensee in turn, indemnifies the licensor against claims arising out of use of IP outside the authorized scope.

3.5 Quality Control Clauses

Quality control clauses are directly linked to trademark protection. A trademark owner who licenses its mark without quality control risks ‘naked licensing’, a legal doctrine under which a trademark may be invalidated for failure to supervise the licensee’s use of the mark.¹⁹ Any failure in ensuring quality control may damage the brand’s commercial reputation and trademark’s legal validity.

¹⁶ Fashion Law Journal, *Protecting Original Fashion Designs: The Role of Non-Disclosure and Non-Compete Clauses (Nov. 2024)*, <https://fashionlawjournal.com>.

¹⁷ Fashion Law Journal, *supra* note 13.

¹⁸ Fynk, *Intell. Prop. Indemnification: Key Contract Clause*, <https://fynk.com/en/clauses/intellectual-property-indemnification/>.

¹⁹ DLA Piper, *supra* note 3 (explaining the “naked licensing” risk and its effect on trademark validity).

3.6 Termination and Post- Termination IP Provisions.

Termination clause prevents uncertainty and disputes about continuing use of IP rights after the contractual relationship ends.²⁰ The licensee must dispose the inventory bearing the licensor's IP, return or destroy confidential information and mentions about the ownership, confidentiality and indemnification beyond the term of the agreement.²¹

4. **Significance Demonstrated Through Case Studies**

4.1 Christian Louboutin v. Yves Saint Laurent

The prolonged legal dispute between the above-mentioned parties over the 'red sole trademark' explains the critical significance of clear IP ownership and enforcement clauses. After the petitioner acquired US trademark rights over its bright-red lacquered sole in 2008, YSL's release of monochrome red footwear in 2011 triggered litigation. The court upheld the petitioner's trademark but limited its scope to red soles that contrasted with the upper portion of the shoe.²²

4.2 The Fendi-Versace 'Fendance' Collaboration

This high-profile collaboration between Fendi and Versace, resulting in 'Fendance' collection required sophisticated IP collaboration agreement. WIPO approved a joint trademark application indicating joint ownership of this new IP asset.²³ This illustrates that the parties must also ensure that their respective background IP is protected and cannot be exploited by the other party beyond the authorized scope.²⁴

5. **Emerging Issues and Challenges**

5.1 Digital Fashion, NFTs and the Metaverse

The traditional clauses were not designed to address the new challenges posed by technology in the fashion industry. When Hermes filed a suit against Mason Rothschild for creating 'MetaBirkins' NFTs inspired by its Birkin bag, the case raised questions about

²⁰ Sirion AI, *Intell. Prop. (IP) Clauses: Ownership, Licensing, and Protection (Mar. 2026)*, <https://www.sirion.ai/library/contract-clauses/intellectual-property-clause/>.

²¹ Sirion AI, *supra* note 7 (noting that survival clauses typically extend to ownership, confidentiality, and indemnification provisions).

²² *Christian Louboutin S.A. v. Yves Saint Laurent America Holding, Inc.*, 696 F.3d 206, 228 (2d Cir. 2012).

²³ Gerrish Legal, (discussing the Fendace collaboration and WIPO joint trademark filing).

²⁴ World Intellectual Property Organization, *supra* note 5 (describing joint trademark application process under the Madrid System).

whether trademark rights extend to digital commercial spaces and whether brand elements used in NFTs require a separate licensing agreement from physical product licenses.²⁵ IP clauses in fashion agreements must cater to technological advances rather than, limiting the license to physical goods.

5.2 Cross-Border and Multi-Jurisdictional Issues

Although fashion is a global industry, IP rights, however, are territorial. A trademark registered in India does not necessarily provide protection in France or the United States. Fashion agreements with cross-border operations must include governing law clauses and address the territorial scope of each IP right being licensed or assigned.²⁶

5.3 AI-Generated Designs and Ownership Ambiguity

The increasing use of artificial intelligence in the fashion industry to create designs creates an ambiguity as to the ownership of the IP asset. Most jurisdictions do not recognize AI as an author or inventor and specify that only humans can hold IP rights. Fashion agreements must specify which human party will be deemed the owner of the AI-assisted outputs.²⁷

5.4 Sustainable Fashion and Geographical Indications

The growing sustainable fashion movement has elevated the importance of geographical indications (GIs). GIs such as ‘Banarasi Silk’ or ‘Pashmina’ protect traditional craftsmanship and cultural heritage. Fashion agreements involving such products must include specific clauses that respect GI rights, correctly attribute origins and avoid misinterpretation that could constitute passing off or GI infringement.

6. Conclusion

The significance of IP clauses in fashion agreements extends far beyond legal formality. In such an industry where creative assets define commercial value, where reputations are built over decades, but can damage over night, and where counterfeiting and copying are pervasive risks, the IP clauses are the contractual architecture that protects investment, defines commercial relationships and enables sustainable growth.

²⁵ *Hermès International v. Rothschild*, No. 22-cv-384 (S.D.N.Y. 2023).

²⁶ ContractKen, (noting that IP clauses must address jurisdictional variations in intellectual property law).

²⁷ WIPO, *supra* note 5.

In conclusion, for fashion industry participants, whether luxury houses or emerging designers, the quality of IP clause in any agreement is not merely a matter of legal compliance, but it is a measure of how seriously they take the protection of their valuable assets and how effectively they intend to build lasting commercial value from their creativity.