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AN ANALYSIS OF TRADEMARK LAW CONFLICTS IN THE GLOBAL FASHION INDUSTRY

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Abstract

The global fashion industry—valued at approximately USD 1.7 trillion in 2023—is among the most innovation-driven and brand-dependent sectors of the world economy. Trademark law serves as the primary legal instrument through which fashion brands protect their identities, preserve consumer trust, and sustain competitive advantage. This paper undertakes a comprehensive doctrinal and comparative analysis of trademark law conflicts arising within the global fashion industry, examining them through the intersecting prisms of globalization, rapid digital transformation, and the fast-fashion phenomenon. The principal conflicts examined are: trademark infringement and passing off; counterfeiting and the proliferation of knock-offs; brand dilution; parallel imports and grey market trade; conflicts arising from similarity of marks and trade dress; and cross-border jurisdictional fragmentation. The paper further interrogates how e-commerce platforms, social media algorithms, and virtual goods markets have fundamentally altered the enforcement landscape, rendering traditional territorial remedies inadequate. Through a systematic comparison of trademark protection frameworks in the United States (Lanham Act), the European Union (EU Trade Mark Regulation), and India (Trade Marks Act, 1999), anchored in ten landmark judicial decisions from 2007 to 2026, the paper evaluates both the strengths and structural gaps of existing legal regimes. The roles of foundational international instruments—the TRIPS Agreement, the Paris Convention, and the Madrid System—are also assessed. The central hypothesis advanced—that more effective, harmonized trademark protection is urgently required to reduce legal conflicts in the fashion industry—is substantiated by both the comparative and jurisprudential analysis. The paper concludes with eight evidence-based policy recommendations directed at legislatures, international organisations, fashion brands, and e-commerce intermediaries.

Keywords: Trademark Law · Fashion Industry · Counterfeiting · Trade Dress · Passing Off · Brand Dilution · TRIPS Agreement · Cross-Border Disputes · Grey Markets · Fast Fashion · Non-Traditional Marks · Digital Fashion · NFTs

INTRODUCTION

Fashion has long transcended its functional origins to become a powerful and multidimensional medium of cultural expression, individual identity, and social signalling. In the contemporary marketplace, globally celebrated brands such as Chanel, Louis Vuitton, Dior, Gucci, Hermès, Nike, and India's own Sabyasachi and Tarun Tahiliani are

prized not merely for the intrinsic qualities of their products but for the elaborate networks of meaning, prestige, and aspiration that their brand identities convey. These identities are constructed and sustained, in significant part, through trademarks—legally protected signs, symbols, logos, patterns, color combinations, and trade dress that distinguish one enterprise's goods and services from all others. The global

fashion industry's scale and dynamism render trademark law indispensable yet structurally strained. According to McKinsey's State of Fashion 2024 report, the industry is estimated to have been worth approximately USD 1.7 trillion in 2023, employing over 300 million people worldwide. Between 2000 and 2014 alone, global clothing production doubled, and per capita garment purchases increased by sixty percent—a trajectory driven substantially by fast fashion. Yet this growth has been accompanied by an exponential rise in trademark conflicts: counterfeiting, infringement, dilution, and grey market activity now constitute endemic features of the global fashion landscape.

Several structural forces have amplified these conflicts. Globalization has extended fashion brands' market reach while simultaneously exposing them to infringers across dozens of jurisdictions. The rise of e-commerce—with platforms such as Amazon, Alibaba, and Shein—has democratized both the distribution of authentic goods and the propagation of counterfeits, at a speed and scale previously unimaginable. Social media has introduced 'dupe culture', in which algorithmically promoted near-identical products are explicitly marketed as alternatives to luxury goods. The emergence of digital fashion, non-fungible tokens (NFTs), and metaverse retail environments has created entirely new vectors for trademark infringement that existing legal frameworks were not designed to address.

This paper investigates these conflicts through a doctrinal and comparative legal methodology. It examines national statutes (India's Trade Marks Act, 1999; the US Lanham Act; EU Trade Mark Regulation 2017/1001), international instruments (TRIPS Agreement, Paris Convention, Madrid System), and a curated selection of ten landmark judicial decisions from India, the United States, the United Kingdom, and the European Union spanning 2007 to 2026. The central hypothesis advanced is that there is an urgent need for more effective and harmonized trademark

protection to reduce legal conflicts in the global fashion industry.

Research Objectives:

- (i) To examine the significance and functions of trademarks in the global fashion industry;
- (ii) To analyse the key trademark conflicts experienced by fashion brands internationally;
- (iii) To investigate the impact of globalization, fast fashion, and digital commerce on trademark dispute volumes and complexity;
- (iv) to comparatively assess the adequacy of trademark law in the US, EU, and India; and
- (v) to propose evidence-based recommendations for legal reform.

Scope and Methodology:

This study is doctrinal in nature, relying on primary legal sources (legislation, treaties, judicial decisions) and authoritative secondary sources (academic literature, institutional reports, policy documents). It does not conduct empirical fieldwork or consumer surveys. The geographic focus is on the US, EU, and India jurisdictions selected for their global commercial significance and the richness of their trademark jurisprudence in the fashion context. The analysis is confined to trademark law; copyright, design rights, and patent law are referenced only where they intersect materially with trademark issues.

2. Theoretical and legal framework

2.1 The Nature and Functions of Trademarks

A trademark may be defined as any sign capable of graphical representation and capable of distinguishing the goods or services of one enterprise from those of others. Section 2(1)(zb) of India's Trade Marks Act, 1999 adopts a deliberately broad definition, encompassing names, logos, symbols, shapes of goods, packaging, colors, and combinations thereof. This breadth is strategically significant for fashion, where brand identity is often communicated through non-verbal, visual, and even tactile cues.

Trademark doctrine is anchored in four inter-related theoretical functions. The *identification function* enables consumers to navigate a crowded marketplace by associating a mark with a specific origin. The *origin function* provides transparency about the source of goods, forming the foundation of consumer protection.

The *quality function* operates as an implicit warranty: consistent use of a mark signals consistent quality standards, incentivizing brand owners to maintain excellence. Finally, the *communication function* enables brands to convey complex value propositions—luxury, sustainability, heritage, innovation—through a single sign. In the fashion industry, this communicative dimension is especially powerful: the Hermès Birkin bag's H-lock communicates exclusivity and craftsmanship instantaneously.

The nature of trademarks as intellectual property is defined by several distinctive characteristics. Unlike patents (time-limited) or copyrights (author's life plus a fixed term), trademarks can endure indefinitely, provided they remain in use and continue to distinguish their owner's goods. They are territorial: rights are geographically bounded by the jurisdiction of registration.

They are commercial: trademarks can be licensed, assigned, franchised, or used as collateral—making them among the most commercially exploitable forms of intellectual property. And they are deeply relational: their value depends on consumer perception, and their protection ultimately serves to safeguard consumers from deception as much as it protects brand owners from infringement.

2.2 Types of Trademarks in the Fashion Industry

Word marks: protect brand names (e.g., 'Gucci', 'Zara', 'Sabyasachi') and are the most straightforward category, conferring protection over the word regardless of font, colour, or stylistic rendering. **Device marks (logos)** protect

visual symbols—the Swoosh (Nike), the interlocking CC (Chanel), the LV monogram (Louis Vuitton). These are particularly valuable in fashion, where logos are frequently displayed prominently on products as markers of prestige.

Trade dress: encompasses the total image and overall appearance of a product—its shape, colour combinations, design patterns, and packaging arrangement. The United States Supreme Court's landmark decision in *Two Pesos, Inc. v. Taco Cabana, Inc.* (1992) established that inherently distinctive trade dress warrants immediate legal protection without requiring proof of secondary meaning, placing it on equal footing with word marks. This principle has been widely applied in fashion disputes involving overall product aesthetics.

Non-conventional: (non-traditional) marks represent the evolving frontier of fashion trademark protection. Colour marks—such as Louboutin's red sole (Pantone 18-1663 TP) and Tiffany's robin's egg blue—have been judicially recognised as trademarks where they have acquired secondary meaning: consumers must consistently associate the colour with a single source. **Pattern marks**—the Burberry tartan, the Louis Vuitton Toile Monogram, the Missoni zigzag—protect distinctive visual motifs integral to brand identity. **Shape marks** protect product forms (the Converse Chuck Taylor sole profile). **Sound marks**, though rare in fashion, are occasionally used in brand advertising. Each category faces heightened registration hurdles—distinctiveness must be proven, often through extensive consumer recognition surveys.

2.3 International Trademark Protection Systems

The *Paris Convention for the Protection of Industrial Property (1883)*, administered by WIPO and ratified by over 180 states, establishes two foundational principles. **National treatment** requires member states to afford foreign trademark owners the same protection as domestic owners, prohibiting nationality-based discrimination. The *right of priority* allows an

applicant who files in one member state to claim that filing date when subsequently applying in other member states within six months, protecting against opportunistic appropriation of marks during international expansion.

The *TRIPS Agreement (1994)*, administered by the WTO and binding on approximately 164 member states, represents the most significant multilateral instrument for global trademark harmonisation. TRIPS requires: a broad statutory definition of trademarks; at least seven years of initial registration (renewable indefinitely); protection for well-known marks even absent registration in the local market; and criminal enforcement measures against commercial-scale counterfeiting. For the fashion industry, TRIPS' provisions on well-known marks and anti-counterfeiting are particularly critical, offering protection even in markets where a brand has not yet registered or traded.

The *Madrid System*, comprising the Madrid Agreement (1891) and Madrid Protocol (1989) and administered by WIPO, provides a single-application mechanism for obtaining trademark protection across over 120 member states. A fashion brand seeking global trademark registration—filing across Class 25 (clothing, footwear, headwear), Class 18 (leather goods, handbags), and Class 35 (retail services)—can do so through one Madrid application, dramatically reducing administrative burden and cost. According to WIPO's World Intellectual Property Indicators 2024, Madrid System filings increased by approximately 1.2% in 2024 after two years of decline, with India featuring among the top filing countries—signalling growing awareness of the importance of international trademark protection, including in the fashion and accessories sector.

Despite these systemic advances, the Madrid System presents specific challenges for fashion. The 'central attack vulnerability' means that invalidation of the home-country base registration within the first five years cascades

to destroy all international designations. Non-traditional marks face variable recognition standards across designating states. And the registration timeline is frequently insufficient to prevent fast-fashion brands from copying and abandoning a design before the application matures.

3. Trademark Protection in the Fashion Industry

3.1 Strategic Importance of Trademarks for Fashion Brands

In the fashion industry, trademarks perform simultaneously as legal shields and commercial assets. As legal shields, they enable brand owners to exclude competitors from using identical or confusingly similar marks (Sections 28–29, Trade Marks Act, 1999; Section 32, Lanham Act; Article 9, EU Trade Mark Regulation). As commercial assets, registered trademarks can be licensed generating royalty income—franchised, assigned, or pledged as collateral in financing arrangements.

Brand identification is the most immediate function: when a consumer encounters the double-G of Gucci or the red sole of Louboutin, instant origin-recognition occurs, enabling confident purchasing decisions. Over time, consistent quality performance transforms this recognition into trust and loyalty—the hallmarks of brand equity. For luxury fashion houses, brand equity constitutes their most valuable economic asset, far exceeding the value of their physical inventory or manufacturing capacity.

Trademarks also function as tools of economic exclusion: the premium pricing model of luxury fashion depends on artificial scarcity and perceived exclusivity, both of which are directly threatened by counterfeiting and grey market trade. The World Intellectual Property Organization estimates that the global trade in counterfeit goods—predominantly apparel and accessories costs rights holders hundreds of billions of dollars annually.

3.2 Brand Value, Consumer Perception, and Market Reputation

Brand value in the fashion industry is a composite construct integrating objective economic metrics (revenue, market capitalization, licensing income) with subjective consumer perceptions (trustworthiness, prestige, desirability). Research by Keller (2012) on brand extension and dilution demonstrates that consumers' perceptions of a parent brand are highly sensitive to the quality and market positioning of extensions and imitations—a finding directly applicable to fashion counterfeiting, which consistently depresses consumer valuations of authentic luxury goods when counterfeit prevalence is high.

Pullig, Simmons, and Netemeyer (2006) demonstrate empirically that brand dilution—whether caused by lookalike marks, counterfeit goods, or unauthorized extensions—measurably reduces consumer brand evaluations and purchase intentions. In the fashion context, where purchasing decisions are significantly driven by social signalling, the presence of widely available imitations or knock-offs undermines the social currency of the original brand, directly harming its market reputation and economic value.

3.3 Challenges: Fast Fashion, Counterfeiting, and Knock-offs

The fast fashion business model characterized by compressed design cycles, low-cost manufacturing, and rapid trend responsiveness presents a structural challenge to trademark law. Fast fashion operators do not, as a rule, copy logos or trademarks; they replicate design aesthetics, silhouettes, and styling cues. Since trademark law does not generally protect fashion designs per se (unlike copyright or design rights), fast fashion brands can operate in a legally permissive space that traditional trademark doctrine cannot adequately address. The *Ritika v. Biba* decision (Delhi HC, 2016) illustrates this limitation clearly: the court found that design similarity without trademark or logo copying is insufficient for either infringement or passing off.

Counterfeiting—the production and distribution

of goods bearing identical or closely similar trademarks to established brands—is the most egregious form of trademark violation in fashion. Unlike knock-offs, counterfeit goods actively misrepresent themselves as genuine products. Their economic impact on rights holders is direct (lost sales, enforcement costs) and indirect (reputational damage, quality perception degradation). E-commerce platforms have dramatically amplified counterfeit reach: a seller operating from one jurisdiction can distribute globally through a single online listing, rendering traditional enforcement remedies—border seizure, local raid—structurally inadequate without cross-border cooperation.

Knock-offs occupy an intermediate legal status. Unlike counterfeits, they bear different brand names and do not claim authenticity—they simply appropriate the visual language, silhouette, or design vocabulary of luxury goods. Their legal permissibility under trademark law (absent trade dress infringement) does not mitigate their economic impact on brand exclusivity and market reputation. Wilke and Zaichkowsky (1999) demonstrate that widespread knock-off production reduces innovation incentives for original brands, ultimately harming both the fashion ecosystem and consumers.

4. Global Trademark Law Conflicts in the Fashion Industry

4.1 Trademark Infringement and Passing Off

Trademark infringement is a statutory remedy grounded in the exclusive rights conferred by registration. Under Section 29 of India's Trade Marks Act, 1999, infringement occurs when any person uses, without the proprietor's consent, in the course of trade, a mark that is identical with or deceptively similar to a registered trademark, likely to cause confusion in the mind of the public. Courts assess four factors: (i) existence of a valid registered mark; (ii) use in the course of trade; (iii) identity or deceptive similarity; and (iv) likelihood of consumer confusion.

For well-known or famous marks, the infringement analysis is more expansive: protection extends across unrelated product categories, and dilution by blurring or tarnishment is actionable without proof of confusion. This is particularly significant in luxury fashion, where a brand's association with a specific lifestyle or prestige level can be damaged by its mark's use on inferior or unrelated goods, even without consumer confusion as to origin.

Passing off, the common law complement to statutory infringement, protects unregistered goodwill. Its classic tripartite structure—goodwill, misrepresentation, damage makes it available to established brands that have failed to register, and to emerging designers who have built market recognition before completing registration formalities. In the fashion industry, where brand identity is often established through social media presence, runway shows, and editorial coverage well before formal trademark registration, passing off provides a critical interim remedy.

The interaction between infringement and passing off is illustrated by the *Rajesh Masrani v. Tahiliani Designs* case (Delhi HC, 2008): where a claimant sought to invoke passing off based on a similar-sounding name to an established designer brand, the court required demonstrable superior goodwill—not merely phonetic similarity as the threshold for relief.

4.2 Parallel Imports and Grey Markets

Parallel imports—the cross-border movement of genuine branded goods through channels unauthorised by the trademark owner—create a persistent tension between two legitimate policy objectives: the protection of brand owners' ability to segment markets and control distribution, and the promotion of free trade and consumer access to goods at competitive prices. The legal resolution of this tension turns on the *Doctrine of Exhaustion*.

Under *national exhaustion* (the prevailing approach in India and, through the Material

Difference Doctrine, in the US), the trademark owner retains the right to restrict importation of genuine goods first sold abroad. This affords luxury fashion brands significant control over geographic pricing and distribution strategy. Under *regional exhaustion* (EU), rights are exhausted upon first authorized sale anywhere within the European Economic Area, permitting free internal movement but allowing brands to restrict imports from outside the EEA. *International exhaustion* would preclude any geographic restriction, maximizing consumer access but potentially undermining brand investment.

The US Material Difference Doctrine, established in *Lever Brothers v. United States* (D.C. Cir., 1993), provides that even modest physical differences between a parallel import and the product officially sold in the destination market may suffice to render the import non-genuine, and hence infringing. Relevant differences include packaging language, warranty terms, formulation, and after-sale service availability. For luxury fashion, this doctrine has been deployed successfully against parallel importers of perfumes, cosmetics, and accessories where labelling, regional exclusivity guarantees, or quality seals differ.

The EU's 'legitimate reasons' exception (Article 15(2), EU Trade Mark Regulation) preserves brand owners' rights where post-sale alteration impairs product condition. This is increasingly relevant in the context of 'upcycling'—where luxury goods are altered and resold under the original brand mark—raising questions about the permissible limits of product transformation and the right of brands to control their post-sale narrative.

Grey markets create downstream harms that are less legally defined but economically significant: price erosion across geographic markets, damage to carefully constructed prestige pricing, inconsistent after-sales service (damaging consumer satisfaction and attributable to the brand), and dilution of brand exclusivity through increased product

availability in unauthorised channels. The EU's Digital Product Passport initiative (Ecodesign for Sustainable Products Regulation, phases from 2026) promises to provide traceability data—country of manufacture, supply chain provenance, distribution history—that could significantly enhance brands' ability to identify and challenge grey market activities.

4.3 Similarity of Marks and Trade Dress Conflicts

Trademark disputes in the fashion industry frequently arise not from deliberate copying but from the adoption of marks or designs that are confusingly similar to existing marks. Courts apply structured multi-factor likelihood-of-confusion tests: the Polaroid factors (US), the Sabel criteria (EU), or the holistic 'global appreciation' test. These tests assess visual, phonetic, and conceptual similarity; the strength of the earlier mark; the degree of similarity between goods/services; the sophistication of the relevant consumer; and evidence of actual confusion.

For famous marks, the analysis extends beyond confusion to *dilution*. Dilution by *blurring* occurs when another's use of a similar mark weakens the distinctiveness of the famous mark (a lesser-known brand adopting 'Chanelle' for cosmetics). Dilution by *tarnishment* occurs when the similar mark associates the famous brand with inferior or unseemly products. Under both the US Federal Trademark Dilution Act and Section 29(4) of India's Trade Marks Act, rights holders of famous marks may obtain injunctive relief against diluting uses without proof of consumer confusion.

Trade dress conflicts have intensified dramatically in 2025–2026 with the proliferation of social-media-driven 'dupe culture'. Brands now litigate the overall aesthetic of a fashion collection—its colour palette, silhouette vocabulary, hardware design, and presentation format—rather than the copying of a discrete mark or logo. The threshold requirements for trade dress protection (non-functionality, distinctiveness/secondary meaning, likelihood

of confusion) remain demanding, but recent US judicial trends suggest increasing willingness to extend protection where a brand's aesthetic has achieved sufficient market recognition, particularly where 'dupe' products are explicitly marketed using the luxury brand's name as a reference point.

4.4 Cross-Border Trademark Disputes

The territorial nature of trademark rights creates systematic challenges for globally operating fashion brands. The same mark may be validly registered by different parties in different jurisdictions, generating conflicting ownership rights that cannot be resolved within a single legal framework. This multijurisdictional fragmentation is not merely theoretically interesting—it imposes direct, substantial costs on fashion brands: they must file and maintain separate registrations in each target market, defend against locally registered conflicting marks, and navigate conflicting court orders across jurisdictions.

The rise of e-commerce has dramatically compounded this challenge. A counterfeit product listed on a global marketplace from a seller in one jurisdiction is accessible to buyers in all jurisdictions simultaneously. Enforcement remains jurisdiction-specific: a takedown order obtained in one country does not automatically remove the listing from versions of the platform serving other countries. The gap between the global nature of the infringement and the territorial nature of the remedy is one of the most structurally significant unresolved problems in contemporary trademark law.

5. Comparative Analysis of Trademark Laws

5.1 United States: Use-Based System and Trade Dress Innovation

The United States trademark system, governed by the Lanham Act (1946, as amended), is distinguished by its use-based foundation: trademark rights arise from actual commercial use in commerce, not from registration alone. Federal registration on the Principal Register confers a presumption of validity and

nationwide constructive notice, but an unregistered mark with established use may still be protected under Section 43(a) of the Lanham Act, which prohibits false designations of origin—the statutory basis for trade dress infringement claims.

Key structural features of the US system include:

- (i) the intent-to-use application, allowing brands to reserve marks prior to commercial launch;
- (ii) the Principal vs. Supplemental Register distinction, with the Supplemental Register serving as a development path for descriptive marks accumulating distinctiveness;
- (iii) the incontestable status available after five years of continuous use, which shields registered marks from most attacks on validity. The Trademark Modernization Act (2020) introduced streamlined cancellation procedures for unused and fraudulent registrations, and restored the presumption of irreparable harm for trademark injunctions—significantly strengthening the enforcement toolkit for fashion brands.

The US system's treatment of trade dress—particularly through the Two Pesos principle of inherent distinctiveness and the post-sale confusion doctrine—has produced a body of fashion-specific jurisprudence that other jurisdictions are beginning to reference. Courts have also extended trademark protection into digital environments: 'initial interest confusion' (where a consumer is initially misled but discovers the truth before purchase) is actionable, directly applicable to keyword advertising practices in online fashion retail.

5.2 European Union: First-to-File Formalism and Digital Leadership

The EU's trademark system operates on a first-to-file principle, fundamentally distinguishing it from the use-based US approach. Priority goes to the applicant who files first, regardless of prior actual use, underscoring the strategic importance of early, comprehensive registration. The European

Union Trade Mark (EUTM)—a single registration effective across all EU member states, administered by the EUIPO in Alicante—provides unparalleled geographic scope for a single filing, making it an attractive mechanism for internationally expanding fashion brands. National mark systems coexist with EUTM protection, providing a two-tier architecture.

The EU has been particularly active in extending trademark protection to digital and metaverse contexts. The Nice Classification system has been updated to recognise virtual goods, downloadable fashion items, and metaverse retail services as registrable categories. Motion marks—increasingly relevant for animated brand elements in digital advertising—are now expressly recognised. The EU has also adopted stricter transit measures, allowing rights holders to seize counterfeit goods passing through EU ports even when destined for non-EU markets, closing a significant enforcement gap.

The 'legitimate reasons' exception to regional exhaustion (Article 15(2), EU TMR) provides fashion brands with a nuanced tool for controlling post-sale product transformation: where a luxury item has been materially altered after its first authorised sale, the brand may oppose its re-introduction to the market under the original mark. The forthcoming Digital Product Passport (DPP) initiative represents perhaps the most significant EU regulatory development for fashion trademark enforcement in recent years, promising product-level traceability that could make grey market detection and supply chain fraud far more tractable.

5.3 India: Hybrid System, Transborder Reputation, and Digital Enforcement

India's trademark regime combines statutory protection (Trade Marks Act, 1999) with common law passing off, providing layered protection for both registered and unregistered marks. The Act's liberal definitional framework under Section 2(1)(zb), expressly accommodating shapes, packaging, and colour combinations, has proven well-suited to

the fashion industry's broad trademark needs.

India's adoption of the *transborder reputation* principle is particularly significant: Indian courts consistently extend protection to foreign trademarks that enjoy recognition among Indian consumers through internet presence, international media coverage, and global brand awareness, even in the absence of physical market presence or local registration. This principle is especially valuable for international luxury fashion brands entering the Indian market, protecting against opportunistic local registration of foreign marks by bad-faith applicants.

Enforcement innovations under Indian trademark jurisprudence include dynamic injunctions (court orders requiring online platforms to take down infringing content and prevent re-upload, targeting evolving infringer networks), John Doe orders (injunctions against unknown infringers, enabling pre-emptive action against anticipated mass infringement), and—most recently—judicial mandates requiring social media platforms to disclose the KYC (Know Your Customer) data of sellers of counterfeit goods (*Puma v. Ramesh Saini*, Delhi HC, 2025). These developments position India as a progressive jurisdiction in digital trademark enforcement, notwithstanding continuing challenges in physical enforcement against counterfeit manufacturers and distributors.

6. Judicial Decisions: Analysis and Significance

Christian Louboutin SAS v. Pawan Kumar & Ors. (Delhi HC, 2017)

Facts: Christian Louboutin, the French luxury footwear house, registered its distinctive red sole (Pantone 18-1663 TP) as a colour trademark in multiple jurisdictions. Indian sellers began manufacturing and distributing footwear with red soles under different brand names. Louboutin sought an injunction before the Delhi High Court, arguing that the red sole had acquired secondary meaning as a source identifier for its brand.

Decision and Significance: The Delhi High Court ruled in favour of Louboutin, holding that the red sole had acquired distinctive secondary meaning among Indian consumers and could therefore be protected as a trademark even under Indian law, which does not restrict colour mark registration. The court's finding that a single colour applied to a specific part of a product constitutes a valid trademark upon acquiring secondary meaning was a landmark extension of trademark protection to non-traditional marks in India's fashion context.

Ritika Pvt. Ltd. v. Biba Apparels Pvt. Ltd. (Delhi HC, 2016)

Facts: Ritika Private Limited, owner of the 'Ritu Kumar' fashion brand, alleged that Biba Apparels had copied its clothing designs and patterns. The claim was framed primarily in copyright infringement but also invoked passing off as a trademark remedy.

Decision and Significance: The court rejected both claims, holding that similarity of design or aesthetic style—without copying of a trademark, logo, or brand identifier—is insufficient to establish either copyright infringement (in the absence of substantial reproduction of protected expression) or passing off (which requires proof of consumer confusion as to trade source, not mere design resemblance). This decision sharply delineates the boundary of trademark protection in the fashion design context, confirming that trademark law does not function as a substitute for design right protection.

Puma SE v. Ramesh Saini (Delhi HC, 2025)

Facts: Puma SE brought an action against a defendant who had been selling counterfeit Puma footwear bearing the 'Leaping Puma' logo and 'Formstrip' design through Instagram and Facebook, exploiting social media reach to target consumers at scale.

Decision and Significance: The Delhi High Court granted a permanent injunction, awarded damages for trademark infringement and counterfeiting, and—critically—issued orders

requiring the social media platforms (Instagram and Facebook) to disclose the seller's KYC (Know Your Customer) data. This judgment established important precedent holding digital intermediaries accountable as participants in the enforcement process, significantly strengthening brand owners' ability to identify and pursue anonymous online counterfeiters. **Under Armour v. Aero Armour (Delhi HC, 2026)**

Facts: A local brand used the name 'AERO ARMOUR' with a logo and brand presentation style sufficiently similar to the global sportswear brand 'Under Armour' as to raise questions about consumer confusion, even if ultimate purchasers might distinguish the two brands.

Decision and Significance: The Delhi High Court applied the doctrine of initial interest confusion, holding that even if consumers ultimately distinguish between two brands, initial confusion that causes them to engage with the defendant's products constitutes actionable trademark infringement. The court assessed the 'total visual impression' of the brand—encompassing the mark, the logo style, and the overall branding presentation—rather than limiting the analysis to the registered word mark alone. This expansive approach provides stronger protection for brand identity in its entirety.

Hermes International v. Rothschild (2d Cir., 2024)

Facts: Mason Rothschild created and sold NFTs depicting the Hermès Birkin bag under the name 'MetaBirkins', claiming artistic expression as a First Amendment defence to trademark infringement and dilution claims brought by Hermès.

Decision and Significance: The Second Circuit affirmed the jury verdict for Hermès, rejecting the artistic expression defence on the ground that the MetaBirkins NFTs functioned as commercial products rather than purely expressive works. This decision confirmed that trademark rights extend fully to digital and virtual goods, and that the NFT medium does

not provide automatic immunity from infringement liability. The decision has driven a surge in fashion brand registrations in Class 9 (digital goods) and prompted the development of digital trademark enforcement strategies across the industry.

Thom Browne v. Adidas AG (EWCA, 2025; US, 2023)

Facts: Adidas, which holds a registered three-stripe trademark in multiple jurisdictions, brought infringement and dilution claims against Thom Browne, whose luxury tailored garments feature four stripe designs (three white stripes with one red stripe), arguing likelihood of confusion with the Adidas three-stripe mark.

Decision and Significance: The outcome differed dramatically by jurisdiction. In the United States, a jury found no likelihood of confusion, based on the sophistication of Thom Browne's luxury consumer base and the distinct market positioning of luxury tailoring versus athletic sportswear. In the United Kingdom, the Court of Appeal (2025) struck down several of Adidas' registered 'position marks' (stripe configurations) for lacking the requisite clarity and precision in their registration. These diametrically opposed outcomes in two major common law jurisdictions illustrate the extent to which multijurisdictional fragmentation can produce irreconcilable legal outcomes for identical mark conflicts.

7. Structural Gaps and Emerging Challenges

7.1 The Dupe Culture Problem and Trade Dress Enforcement

The 'dupe culture' phenomenon—in which social media platforms algorithmically surface and amplify near-identical alternatives to luxury goods, often explicitly named after the originals as search-engine keywords—represents perhaps the most acute structural challenge to fashion trademark law in 2026. Trademark law protects logos and brand identifiers with relative robustness; it provides substantially weaker protection to the overall

aesthetic vocabulary of a brand, absent the demanding proof requirements of trade dress protection (non-functionality, secondary meaning, likelihood of confusion).

Recent judicial trends suggest an emerging willingness to close this gap through creative application of trade dress doctrine, particularly where 'dupe' sellers use luxury brand names as advertising keywords thus invoking initial interest confusion and potentially trademark infringement even absent mark copying. The fashion industry has also begun to supplement trademark claims with design right and unfair competition theories in jurisdictions where these are available, recognizing that no single IP right provides comprehensive protection against dupe-culture appropriation.

7.2 Multijurisdictional Fragmentation and Compliance Costs

The Adidas/Thom Browne 'Stripe Wars' have become emblematic of a deeper structural problem: the global trademark system's fundamental incoherence when identical conflicts yield opposite outcomes across jurisdictions. A use-based system that privileges market reality and consumer sophistication (US) necessarily reaches different conclusions than a formalist, first-to-file system that prioritises registration precision (EU). India's hybrid approach, emphasizing transborder reputation and expansive well-known mark protection, constitutes a third paradigm that cannot easily be reconciled with either.

This fragmentation imposes disproportionate compliance costs on all fashion brands, but particularly on SMEs and independent designers with limited legal resources. They must navigate multiple filing systems, varying standards for non-traditional mark protection, divergent exhaustion doctrines, and conflicting court orders—often simultaneously. The net effect is to advantage large, well-resourced brands with global legal teams and create arbitrage opportunities for sophisticated infringers who exploit jurisdictional differences to evade enforcement.

7.3 E-commerce Intermediary Liability

The Puma v. Ramesh Saini decision signals an important evolution in intermediary liability doctrine: courts are increasingly willing to treat e-commerce and social media platforms not merely as passive conduits but as active participants in the enforcement ecosystem, with obligations to facilitate rights holder remedies by disclosing seller identities. This aligns with the EU's Digital Services Act (2022), which imposes due diligence obligations on large online platforms regarding counterfeit and infringing goods, including proactive monitoring duties for 'very large online platforms'. However, the extraterritorial enforcement of these obligations—particularly against platforms domiciled in jurisdictions with weaker intellectual property regimes—remains a major unresolved challenge.

8. Conclusion And Recommendations

This paper has demonstrated, through doctrinal analysis and comparative jurisprudence, that trademark law in the global fashion industry faces a confluence of structural challenges that existing legal frameworks address only partially and unevenly. Trademark infringement, counterfeiting, passing off, brand dilution, grey market trade, trade dress conflicts, and cross-border jurisdictional fragmentation are not isolated phenomena but interconnected manifestations of the fundamental tension between the territorial, registration-based architecture of trademark law and the borderless, algorithmically-driven dynamics of contemporary fashion commerce.

The comparative analysis of US, EU, and Indian trademark systems reveals both shared purposes (consumer protection, fair competition, brand investment incentivisation) and significant doctrinal divergence (use-based vs. first-to-file; national vs. regional vs. international exhaustion; varying standards for non-traditional mark protection). This divergence creates both enforcement gaps and compliance burdens that a more harmonised global approach could substantially reduce.

The judicial developments examined—particularly the Puma, Under Armour, and Hermès decisions—demonstrate that courts are innovating to address new challenges, but that judicial creativity cannot substitute for legislative and institutional reform.

The central hypothesis—that harmonized, modernised trademark protection is urgently required to reduce legal conflicts in the global fashion industry—is substantiated by the evidence.

Recommendations

1. **Modernise National Trademark Legislation:** National legislatures should expressly recognise non-traditional marks (colour, shape, pattern, trade dress) and digital/virtual goods within trademark statutes, providing clear registration pathways and protection standards. Reducing reliance on judge-made law in these areas would improve legal certainty for fashion brands and infringers alike.

2. **Strengthen Digital Trademark Enforcement:** Mandatory 'notice-and-takedown-and-stay-down' obligations, with commercially realistic timelines, should be standardized across major e-commerce jurisdictions. Platform-level mandatory seller KYC verification, proactive monitoring duties for VLOP-category platforms, and automatic cross-border application of takedown orders are essential components of an adequate digital enforcement regime.

3. **Promote International Harmonisation:** WIPO and the WTO should convene a dedicated multilateral working group to develop model law provisions on: digital goods trademark registration; dupe culture and trade dress protection standards; cross-border grey market and exhaustion doctrine harmonisation; and coordinated enforcement procedures. A model treaty on fashion trademark protection, building on the TRIPS framework, would significantly reduce jurisdictional fragmentation.

4. **Deploy Anti-Counterfeiting Technology:**

Fashion brands should systematically adopt blockchain-based product authentication, RFID/QR traceability systems, and EU Digital Product Passports as both commercial tools and legally admissible evidence of provenance in counterfeit disputes. Regulatory frameworks should provide for the legal recognition of such digital authentication records in trademark enforcement proceedings.

5. **Reform Grey Market Exhaustion Standards:** Clear, legislatively enacted guidance on the permissible scope of parallel imports and the definition of 'material difference' should be developed to reduce legal uncertainty for brands, parallel importers, and consumers. Separate provision should address upcycling and product transformation in the context of luxury goods resale, balancing brand protection with sustainability policy objectives.

6. **Enhance Intermediary Accountability:** E-commerce and social media platforms should face clear statutory obligations to cooperate with trademark rights holders in counterfeit identification and takedown, including seller identity disclosure in response to prima facie infringement evidence. Safe harbour protections should be contingent on demonstrated compliance with proactive monitoring standards.

7. **Support SMEs and Emerging Designers:** Subsidized trademark registration, IP clinics co-funded by industry and government, fast-track opposition procedures, and legal aid for enforcement should be made available to SMEs and independent designers who face disproportionate infringement vulnerability and enforcement resource gaps.

8. **Invest in Consumer Education:** Public awareness campaigns on the legal, economic, and safety risks of counterfeit fashion goods—including quality and health risks from unregulated counterfeit products—should be integrated into national consumer protection programmes and industry CSR initiatives, reducing demand-side drivers of the counterfeit market.

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