

Manoeuvring the Convergence of NFTs and Trademark Protection: Prospects of Fashion Industry in Digital Space

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The paper delves into the impact of non-fungible tokens on trademark in the fashion industry. NFTs are digital assets that offer evidence of ownership and authenticity and are stored in blockchain technology. In the emerging scenario, fashion brands are using NFTs to offer new opportunities to attract consumer attention, thereby enhancing marketing techniques in the digital space. New techniques have been introduced by NFTs to deal with fashion brands leveraging blockchain technology and providing an effective marketplace. Nonetheless, NFTs are also posing danger to trademark infringement, counterfeiting goods, and brand identity in the digital space. The lack of specific legislation regulating NFTs throughout the world has caused challenges for trademark laws and the fashion industry to safeguard their intellectual property.

The research in this field suggests that even though there are limitations in the ever-growing sphere of NFTs, there are immense opportunities as well if regulated well. The paper analyses the prospects of the blockchain technology in securing fashion brands in the digital space. The paper also delves into ethical dilemma including artistic attribution and provides valuable insights for law students, professionals, and policymakers to explore the emerging field of digital ownership and trademark protection. Ultimately, the paper provides recommendations for better incorporation of effective legislation on NFTs in the Indian marketplace.

Keywords: Non-Fungible Tokens (NFTs), Fashion Industry, Trademarks, Blockchain Technology, Digital Ownership, Intellectual Property, Trademark Infringement

With the advent of new forms of technologies, the world of art has expanded its scope in the ways humans could not have imagined of. In contemporary times digital art has taken the world by storm including AI Art, NFTs, Integrated art, Graphic designing amongst many others. One such emerging technology in the space of digital art is Non-Fungible Tokens (NFTs). Over the years Intellectual property rights have facilitated in securing the creators creation and societies have accepted the innate significance in creation, invention, and development.¹ These rights include areas like patents, trademarks, copyrights, and trade secrets, which are significant for promoting creativity and expansion of businesses.² Traditionally, intellectual property rights did not have any provisions designed for protection from infringement in the cyberspace. This has created a threat to the creators of such intellectual property resulting in ownership issues of their work.

NFTs pose such a threat to the traditional intellectual properties and their creators.³ In the cyber world any digital asset or art which uses blockchain

technology to provide proof of ownership and transactions creating a unique token of value are termed as Non-Fungible token. They are non-transferable due to their very nature which allows them to be 'burned' rather than being 'deleted'. In digital space, they are similar to artwork or trading cards. OpenSea, Roblox, Cryptoboxes and Decentraland are some of the platforms through which NFTs discover their potential in metaverse. Currently, there is no centralized platform through which NFTs work, however, several platforms are present in the cyber world for their trading. There are prospects of them being available in the future.⁴ Cryptocurrencies like Bitcoin or Ethereum are unlike NFTs since NFTs are non-fungible and cannot be exchanged for another such token. The ownership of a particular item is signified through a token that encompasses unique identity and information.⁵

NFTs work on the blockchain technology, Blockchain is a chain of blocks that contain information. Created by Stuart Haber and W. Scott Stornetta in 1991, it was made to formulate a secure tamper-proof chain of blocks that can have information stored in it. Blockchain creates a block of

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information in the form of hash and each of the block has unique information(hash) saved inside the block. For example, Bitcoin's blockchain contains information about transactions hence data stored is dependent on the type of blockchain. Blockchain technology is being analyzed in many organizations dealing with financial services in different ways, other industries are also delving in to realize its prospects for better opportunities that it provides. Blockchain technology applied to cryptocurrency in the first instance, nevertheless it is not an isolated instance. Blockchain in the field of Intellectual property plays a crucial role as it can solidify the ownership rights of the creator by creating a blockchain after registration. It will be tamper- proof and owner can enjoy the rights of his work with full control of distribution.⁶ The owners of registered trademarks can leverage NFTs to secure goodwill of their brands and intellectual property rights. For example, a brand's trademark can be signified by the creation of NFT, which is stored in a digital format. Subsequently it can also be used to create ownership and safeguard authenticity.⁷

"Fashion is not something that exists in dresses only. Fashion is in the sky, in the street; fashion has to do with ideas, the way we live, what is happening"- Coco Chanel

The global fashion industry is witnessing an accelerated rate of growth, and by estimates, it would have a market capitalization of around \$2.25 trillion by the year 2025.⁸ This rapid growth, therefore, indicates the requirement to protect creations of designers. The law of Intellectual Property (IP) presents with a great opportunity to protect their works, innovations, and designs from duplications, counterfeiting, and piracy which, otherwise, can mislead consumers. Almost 50 years later, this has now come to mean such traditional, tangible garments and accessories as those which now appear in so-called modern fashion. Such modern fashions also lead into other realms with a whole new slew of legal quandaries relating to such issues as virtual fashion, intellectual property rights, or e-commerce.⁹

Convergence of NFTs and IPR

Legislations Governing IPR

The subject matter of IPR is the blend of idea and expression. There are several IPRs in existence namely Trademark, Patents, Copyright, Industrial Designs, Geographical Indications and Layout-Design

(Topographies) of Integrated Circuits amongst many. WIPO is the apex body which governs treaties related to IPR in Geneva, Switzerland and is backed by UN. The legislations of Patents, Trademarks, Designs and Geographical Indications in India are dealt by Department of Industrial Policy and Promotion (DIPP), Government of India. Headquartered in Mumbai, The Controller General of Patents, Designs and Trademarks supervises the functions of these IPRs in India.¹⁰

These are the legislations governing IPR in India:

- (i) The Patents Act, 1970(amended in 1999, 2002 and 2005) through the Patent Offices at Kolkata (HQ), Mumbai, Chennai and Delhi.¹¹
- (ii) The Designs Act, 2000¹² through the Patent Office at Kolkata (HQ), Mumbai, Chennai and Delhi.
- (iii) The Trademarks Act, 1999¹³ through the Trademarks Registry at Mumbai (HQ), Chennai, Delhi, Kolkata and Ahmedabad.
- (iv) The Geographical Indications of Goods (Registration and Protection)¹⁴ Act, 1999 through the Geographical Indications Registry at Chennai.
- (v) Copyright is protected through Copyright Act, 1957¹⁵, as amended in 1999- administered by the Department of Higher Education under Ministry of Human Resources Development.
- (vi) Layout of transistors and other circuitry elements is protected through the Semiconductor Integrated Circuits Layout-Designs Act, 2000.¹⁶ This is administered by the Department of Information Technology.
- (vii) New varieties of plants are protected through the Protection of Plant Varieties and Farmers' Rights Act, 2001.¹⁷ This is administered by the Department of Agriculture and Cooperation. Department of IPP set up an Inter-ministerial Committee to coordinate.

Copyright

The interplay of Copyrights with NFTs play an important role when we see them from IP perspective. Unlike Copyright, NFTs do not allow the transfer of all rights to its buyers. They may infringe copyrights and can be created without owners' consent. Also, the infringement may take sometimes even after obtaining owner's consent, however, that depends on the relationship between the owner and the artist. The problem of IPR arise in NFTs because of the contemporary trend of them dealing with creative

work and Intellectual Property. In India, Copyright is governed by The Copyright Act, 1957. S.139 of the Act deals with the works in which Copyright subsists, namely –

- (i) Original literary, dramatic, musical, and artistic works
- (ii) Cinematograph films
- (iii) Sound recording

The Act deals with protection of video clips and sound recording apparently; however, it doesn't include GIF or tweets. If we scrutinize the Act in strict sense, Tweets and Gif may not get protection under the Copyright Act. Then how could the creator of NFT claim protection under the Act? Currently, it appears that all NFTs may not claim protection under the Act. The existing legislation should extend its scope to include other works that can get protection under the Act.¹⁸

Trademark

Trademarks play an important role in protecting 'Token name' and 'logo' of NFTs. The owners of NFTs can mint the articles and record their unique names which helps in safeguarding them from prospective usage of similar goods. It allows consumer satisfaction and maintains the goodwill too. The simultaneous play of NFTs and Trademark creates issues regarding unauthorised usage of registered Trademarks thereby affecting consumers faith and brand's goodwill. Minting an NFT associated to the Trademark without the owner's consent and using it for commercial purposes may constitute infringement of registered Trademarks. Here the question arises, whether the Trademarks traded through NFTs are owned by the owners or not. If they are owned by the owners, then it directly amounts to infringement under Trademark Act, 1999.⁷ Moreover, NFTs may expose the risk of counterfeiting, tokenizing and unauthorised selling of digital assets which may further constitute infringement of registered trademarks. Therefore, NFT market continues to flourish. The owners and creators should act as a watchdog of their signs, logos and symbols in NFTs to claim protection against infringement of their registered assets. NFTs can be used by the owners of registered trademarks for protecting their brand's reputation and Intellectual Property Rights. For example, NFT can be used to represent a brand's trademark in digital form, serving as a tool to establish ownership and ensuring authenticity.¹⁰

Scope of NFTs in Fashion Law

The entire landscape of the fashion industry is changing with the onset of new technology like NFTs, fashion brands have started selling their products like wearables, clothes. These clothes and products can be used as the outfit of the buyer's avatar in the Metaverse. This suggests that there is a huge market for such fashion items being sold as NFTs. NFTs of Digital fashion are most commonly made for limited edition pieces so that the buyers are motivated to buy such limited-edition pieces because it makes them feel elated for owning something unique and one of a kind. Brands such as Nike and Adidas are selling NFTs and earning millions of dollars. The consumers can become a member of a limited edition or a unique NFT club member which improves their social status, and this is remarkable that one can have such a close nit relationship with the brand of their choice.¹⁹

This has led to brand owners around the world trying to file for a trademark application for their flagship products that are being sold digitally through NFTs. This has led to extreme demands from the brand's side to get some valid legislation to regulate the digital space and fill the gaps in trademark protection. For instance, fashion houses traditionally register trademarks for physical items like clothing, bags, and accessories. However, they now need to account for digital versions of these products, which are categorised under computer software. Retailers, in particular, must evaluate whether their trademark registrations include the retailing of virtual goods. Additionally, some are filing trademark applications for entertainment services, which is an unconventional approach for most retailers but essential to protect their offerings within the virtual metaverse, similar to gaming platforms. For instance, Digital involvement is boosted by luxury brands like Gucci are displaying features to younger generations in online games and in-game exclusive goods to grab their attention. Henceforth, technology investments may be boosted by fashion companies from c.1.6% of sales in 2021 to 3.5% by 2030 as a step towards key objective.²⁰

Limitations of NFTs

NFTs and Copyright

The NFT market pose challenges for Indian artists and copyright owners emerging from legal ambiguities, enforcement challenges, and platform accountability. Lack of awareness in the Indian artists

makes them vulnerable to exploitation by organizations and other individuals who make unauthorised use of their work, basically minting and selling without their consent. Also, the Indian Copyright Act, 1957 does not explicitly deals with any provision related to NFTs which makes it difficult to address the disputes and safeguard digital ownership.²¹ Moreover, the value of original NFTs is weakened by the intrinsic replicability, exacerbating enforcement in decentralised and cross-border systems. The expansion of NFT marketplaces increase the challenges because of platforms' inadequate verification mechanisms, oversight, and accountability. The market's credibility is also diluted because of inappropriate safeguards, unauthorized minting and unnoticed infringement. The pseudonymous nature of Blockchain users and irregular marketplace policies also creates a problem for artists to report violations and seek redress. They act as hurdles for buyers who hesitate to invest in NFTs because of originality and ownership issues. Some of the crucial steps which can be taken for protection of creators and promoting growth in India's digital art include establishment of effective legal frameworks, strengthening artist education and enforcing platform education.¹⁸

Trademark and Fashion Law

Trademark infringement occurs in the realm of NFTs when an already owned trademark is used without any authorization which creates an issue regarding authentication the source, affiliation of the goods. Just like physical goods and products NFTs which contain someone else's Trademark such as brand name, colour, logo, symbol etc. may confuse the consumer about the owner of the trademark and the original owner may not be aware of it. For example, if an NFT artist uses a well-known brand's logo or trademarked design without permission, consumers familiar with that brand may assume the NFT is officially endorsed by or connected to the brand. This unauthorized use not only misleads consumers but also dilutes the value of the trademark and tarnishes the brand's reputation. Such acts are prohibited under trademark laws like the Lanham Act and international trademark frameworks, as they prevent unfair competition, protect brand integrity, and safeguard consumers from being misled.²²

In the blockchain space, the decentralized and pseudonymous nature of NFT creation adds complexity to enforcement, making it challenging for

trademark owners to identify infringers and protect their rights. This growing issue highlights the need for greater legal clarity and stricter marketplace regulations to prevent unauthorized use of trademarks in NFTs.

In 2021, third parties (not affiliated with Gucci or Prada) filed two trademark applications for the marks "GUCCI" and "PRADA" to specifically cover "virtual goods", such as digital fashion products for use in the metaverse.

At the time, Gucci and Prada did not have official registrations of their trademarks for virtual goods, because their trademarks only covered physical goods like luxury clothing, shoes, and accessories.⁴

The USPTO Examiner's Decision

Even though there were no registrations for Gucci or Prada for "virtual goods," the USPTO rejected the third-party applications because the virtual goods were sufficiently similar to the physical goods.

The Examiner treated the virtual goods as natural extensions of the physical goods, thus the fact that Gucci and Prada had trademarks for luxury physical goods provided them sufficient protection from unauthorized use of their trademarks in the digital environment.

Importance of this Development

Legally Recognized Digital Fashion: The ruling demonstrates that virtual goods (example: digital sneakers, metaverse handbags, etc.) are legally considered equivalent to their real-world counterparts for purposes of trademark protection.

Starting a Trend against Trademark Squatting: The ruling deters bad actors seeking to make a profit off of loopholes in trademark registrations processes by naming prior well-known fashion brands in new digital categories.

The Convergence of Trademark Law with the Metaverse: This can be likened to how brands are entering the metaverse (example: Gucci selling virtual sneakers like Prada's NFT), providing support for the idea that their trademarks can operate in the digital space.

Case Laws

*Hermès v Rothschild*²³

The contention was that Hermès International has a Birkin Bag, which has been a symbol of exclusivity and they have a trademark over the name "Birkin" name and bag design.

Mason Rothschild is a digital artist and entrepreneur who created “MetaBirkins” a collection of 100 NFTs depicting Birkin bags covered in faux fur. These NFTs were sold on platforms like OpenSea generating revenue.

Then, Hermes, the owner of Birken trademarks sued Rothschild for trademark infringement in the Southern District of New York for which the defendant invoked First Amendment defence from the case of *Rogers v Grimandi* from the 1989 Second Circuit. The court found substantial evidence in Hermes facts claiming possibility of confusion amongst the users and rejected Rothchild defence to dismiss. The court took note of the consumers being confused on the Instagram page for the MetaBirkins being associated with the NFTs and the misleading claims by media outlets of Hermes association with the NFTs.

This established a clear case of confusion. The court highlighted the endurance of Birkin mark and pointed out the malign of Rothschild. Rothschild countered MetaBirkins alleging them of being cruel towards animals by extracting their furs and selling the expensive handbags and also parodying the Birkin bags by showing them as clad in furs. Nonetheless, the court observed that the MetaBirkin NFTs were a sort of tribute to the renowned Birkin bags as claimed by Rothschild in many interviews and not a parody or criticism. The court thus concluded the matter after analysing the relevant facts and rejected the motion for dismissal.

Key Points of the Court’s Reasoning

Likelihood of Confusion

The court noted that actual consumer confusion was evident. People commenting on the MetaBirkins Instagram page appeared to believe that Hermès was affiliated with the NFT project.

Additionally, media outlets had mistakenly reported that MetaBirkins were officially connected to Hermès. These facts supported Hermès’ claim that the use of the “Birkin” name in MetaBirkins could mislead consumers, fulfilling a key factor in a trademark infringement claim.

Strength of the Birkin Mark

The court recognized that “Birkin” is a strong and well-known trademark. The strength of the mark increases the likelihood that consumers would associate MetaBirkins with Hermès.

Bad Faith by Rothschild

Rothschild attempted to argue that his NFTs were a parody or commentary, specifically about animal cruelty in luxury fashion. However, the court pointed to statements Rothschild made in interviews, where he referred to the Birkin bag as “iconic” and mentioned that he wanted to see how people would react to an NFT version.

These statements suggested that MetaBirkins were more of a tribute to Birkins rather than a critique, making the parody defense weaker.

Because Hermès provided strong evidence of likelihood of confusion, the court ruled that the case should proceed and denied Rothschild’s motion to dismiss. The court determined that the factual disputes—such as whether MetaBirkins were a parody or a commercial tribute—needed to be resolved at a later stage, not at the motion-to-dismiss phase.

Nike Inc. v StockX LLC²⁴

It is a pending trademark infringement case in the Southern District of New York that raises questions at the intersection of traditional trademark law and modern digital commerce, specifically involving non-fungible tokens (NFTs).

Nike is a global fashion brand known for its unique quality and comfort. It is very protective of its intellectual property. StockX is an online resale platform that has built a reputation for authenticating and reselling limited-edition goods, including sneakers. Just now, StockX started offering a variety of NFTs related to products it manages.

Some of the NFTs sold by StockX had pictures of Nike sneakers on them as depiction. These were known as Vault NFTs. These NFTs were different from the regular digital tokens rather in this type a Nike sneaker is tied uniquely to the NFTs that was lawfully purchased and is stored in a high-security, climate-controlled vault.

The owner of a Vault NFT has two choices, either retain the keep the digital token in their portfolio while leaving the physical sneakers safely stored or exchange the NFT for physical possession of the sneakers, at which point the NFT is permanently removed from circulation.

A suit of trademark infringement has been filed by Nike as it claims that StockX’s use of its trademarks in connection with these NFTs may confuse consumers or imply an unauthorised affiliation with Nike. Selling NFTs with an image of a sneaker made

by Nike then StockX is diluting the value of its brand and potentially misleading consumers about the source. StockX emphasizes that its Vault NFTs are not merely digital products or images; rather, they function as a bridge between the digital world and the tangible, authenticated sneakers stored in its vault. According to StockX, this unique structure indicates that its use of Nike's trademarks will be protected by the first sale doctrine, preventing Nike from asserting that its trademark rights have been infringed. However, the case is still pending, and therefore the court must decide whether there is a likelihood of confusion or not.

Comparative Analysis and Recommendations

With the advent of new technologies around the world, it has become difficult for the policy makers to keep up with it. Which is why there has been a gap in regulation and pace of development. NFT being one such technology has its problems with regulation through legislation. The paper delves into the comparative analysis between India and the world.

India can draw several lessons from the United States' and United Kingdom's approach towards regulation NFTs that helps in restricting infringements and safeguarding its consumers

U.S. Approach

- (i) The United States relies heavily on its existing laws and deems them fit for regulating NFTs. U.S. Patent and Trademark Office (USPTO) and the U.S. Copyright Office that concluded that no new legislation is required at this point to govern NFTs.
- (ii) The Digital Millennium Copyright Act²⁵ addressed that NFT platforms can give rise to infringement. Hence this act helps in tackling online infringements.
- (iii) The Federal Trade Commission Act keeps a check on misleading practices, it may apply to NFT related activities which are of fraudulent nature (Mishra, Singhal, Thakur, Sharma, & Bedi, 2024).
- (iv) NFT purchases do not transfer the ownership rights of the intellectual property which is sold, there is a clear distinction between the owner and the buyer.
- (v) NFTs are being treated under the securities act present but the New Frontiers in Technology Act has been introduced in the 118th Congress on December 20th 2024, this new bill has

defined the NFTs as a unique digital asset recorded cryptographically on a public distributed ledger.

U.K. Approach

- (i) UK there is no specific legislation governing NFTs as the policymakers consider that existing laws are sufficient to regulate NFT infringement and protect consumers.
- (ii) The unauthorised minting of copyrighted work in digital form is termed as copyright infringement through NFTs, henceforth it can be challenged under existing UK Copyright Laws. Similarly, Trademark infringement happens when the protected work is sold or advertised through NFTs without owners consent. The significant consideration is whether it cause confusion in the minds of users or not and whether it leads to adverse impact on Trademark's reputation.
- (iii) The businesses dealing with NFTs must comply with the rules of the UK's Advertising Standards Authority for advertising their products. Advertisements should display a notice that FCA (Financial Conduct Authority) does not regulate Crypto-assets neither are they protected by other financial compensation schemes. Therefore, advertisements should not mislead consumers.
- (iv) NFT platforms are guided to ensure authenticity of the digital assets in which they deal and also go through a proper verification process to determine the reliable sellers. These steps help in protecting consumers' interest and reduce risk related to NFTs.

India's Approach

- (i) Since India does not have a specific legislation regulating NFTs we have to rely heavily on the existing laws which are inadequate to regulate such a technology.
- (ii) The Copyright Act, 1957 of India is applicable in protecting all the original literary, dramatic, musical and artistic works. Unauthorised publishing of someone else's work in the form of NFTs is considered an act of infringement under the act.
- (iii) Trademarks Act, 1999 protects and safeguards brand identities, logos and names. Any unauthorised publishing or selling of

registered trademarks within NFTs can lead to trademark infringement and the original owner can seek claims.

- (iv) The Consumer Protection act of 2019 protects consumer from Fraudulent practices and it could be applied to NFTs.
- (v) However because the NFTs are largely unregulated even the platforms that sell them are mostly unregulated leaving consumers unprotected. In such a landscape judiciary plays an important role in amending the already existing laws to widen their scope and application. This would help in regulating the crypto space better.

Recommendations for Dealing with NFT Related Trademark Infringement in the Fashion Industry

- (i) An essential step in protecting intellectual property in the digital space is the enactment of clear regulatory structure. Under Intellectual Property Law, Government should include specific legal provisions related with NFTs to define ownership rights, licensing and liabilities. In the absence of clear legal framework, it becomes difficult to address the issues relate thereto. Therefore, it is necessary for the legislative bodies to have a resilient legislation on NFTs.
- (ii) To reduce risks, fashion brands should opt trademark safeguarding strategies for protection of virtual assets. This involves registration of trademarks for digital assets and NFTs to get thorough protection in the virtual space and metaverse. Moreover, utilizing blockchain-based smart contracts can help the brands to keep an eye on their digital products thereby reducing possible risks of unauthorized duplication or infringement. By acting vigilantly, companies can protect their digital assets, brand identity and economic interest in the fast-moving digital economy.
- (iii) A common challenge hanging over in the NFT space is the counterfeiting and consumer deception, thereby making it imperative for the robust consumer awareness and anti-counterfeiting strategies. Fashion brands must take initiatives to help consumers identify the difference between legitimate NFT linked products and counterfeited products along with the potential risks associated with counterfeited NFT-linked products. Moreover, opting watermarking and verification tools can help to a great extent in identifying legitimate NFTs from counterfeited ones, thereby strengthening consumer trust and brand legitimacy.
- (iv) Looking at NFT transactions from a worldly angle requires international cooperation for standardization of digital assets .Organizations like World Intellectual Property Organization (WIPO) should come up with optimal policies that explains trademark protection mechanism for NFTs. Empowering inter-state enforcement mechanism can further help in mitigating trademark disputes which arise due to jurisdictional issues in digital space. A centralized framework would help in strengthening enforcement mechanism and mitigate the disputes between national intellectual property regimes.
- (v) Additionally, judicial intervention and case law development is essential for providing a proper landscape for NFT-linked trademark disputes. Courts should set the cogent precedents for the future cases related with trademark infringement in the NFT world, safeguarding consistency in legal decisions. Furthermore, legal scholars and policymakers could work on establishing appropriate guidelines for interpreting NFT-linked disputes, offering more clarity on issues including ownership, fair use, and infringement in the digital space.

Conclusion

The convergence of NFTs and trademark protection within the fashion industry represents a unique and dynamic challenge for intellectual property law. As the influence of digital assets becomes more mainstream, it is important to establish appropriate legal channels to protect trademarks as well as to foster creativity and innovation in the virtual economy. This paper examines how NFTs, as non-fungible, blockchain-supported digital tokens, have delivered marketplaces for new branding and consumer engagement in the fashion industry. Fashion brands increasingly utilize NFTs in a number of ways: as collectibles and as digital representations of their physical products. While NFTs have opened new avenues for revenue and consumers, they have also created pressing issues relating to trademark

infringement, counterfeiting, and consumer confusion and dilution. Through cases like *Hermès v Rothschild* and *Nike v Stock X*, we can see how unauthorized use of trademarks in NFTs can create consumer confusion, resulting in litigation regarding ownership and legitimacy.

A principal obstacle in trademark disputes involving NFTs is the lack of uniformity in global laws. While some jurisdictions (including the United States) have started to consider digital products in existing trademark laws, others, including India, have yet to determine firm rules. In India, the absence of specific provisions in the Trademark Act, 1999, leads to the inevitable question of whether there would be infringement when a brand logo or product design is tokenized without a license or authority. The usefulness, or non-applicability, of the USPTO's recent determinations on trademarks involving Gucci and Prada suggests that trademark protection may exist in relation to NFTs, as long as there is a close association between the digital asset and the original physical article. Without particular amendments to statutes or court decisions within India, the precise legal stance of NFT related-trademark challenges is not clear. To complicate matters further, NFTs introduce the intricacies of the pseudonymous and decentralized nature of blockchain technology. Unlike traditional trademark infringement situations where one can typically see who violates a trademark and take action, NFTs and other blockchain-based goods can be created and sold via anonymous platforms that do not easily allow someone to seek recourse against such infringement.

The situation requires both digital rights management solutions and stricter regulations in the marketplace to help prevent branded NFTs from being minted and sold without authorization. Smart contracts may offer solutions to the problem of authorized minting and sale because they can embed trademark protections into the actual NFT itself. This protection could ensure that only authorized parties are able to mint and sell brand-associated NFTs as smart contracts are inherently registered on the blockchain through unique identification. The paper mentions that there are limitations based on the current copyright law framework with respect to NFTs. Buyers of NFTs don't automatically acquire any intellectual property rights in buying the NFT. This deficiency leads to erroneous assumptions about ownership of underlying artwork or representation of

the brand. This gap further calls for specific legal reform in addition to statutory creativity about the rights of NFT creators, buyers, and trademark owners. The incorporation of blockchain-based registries for trademarks and NFTs can be a potential remedy for misappropriation, while verifying and protecting the rights of digital brand assets. In terms of policy, lawmakers in India should give consideration to amending the Trademark Act and Copyright Act specifically for NFTs. These amendments are aligned with international developments. Thus, discussions may occur about developing licensing frameworks, establishing dispute resolution channels for trademark claims related to NFTs, or implementing stricter verification standards on NFT marketplaces to reduce risk while maintaining and fostering innovation in the digital economy.

In summary, NFTs do present important potential for the fashion industry in the digital space, but they also present exceptional challenges for trademark law. The legal framework must continue to develop alongside technological change to ensure that intellectual property protections can be enforced in virtual space. As brands implement and test the possibilities of NFTs, relying on a balanced approach consisting of innovation and legal considerations will be essential for building a sustainable, legally compliant digital marketplace.

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