

Copyright Protection for the Works of Applied Art: Evaluation through the Lens of Birkenstock Judgement

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This paper examines the protection of works of applied art under copyright law through the lens of the German Birkenstock decision while doing a comparative analysis of the copyright protection for the works of applied art in the jurisdictions of the United States of America and India. The main theme of the study is to explore how functional product designs ‘specifically the iconic Birkenstock sandals’ are evaluated as “works of applied art” and to analyze the divergent standards that apply in different jurisdictions. We highlighted problems arising from rigid definitions of artistic creativity that exclude designs driven primarily by functional or ergonomic considerations.

In Germany, the Bundesgerichtshof’s Birkenstock judgment rejected copyright protection because the sandals’ form reflected ergonomic and commercial imperatives rather than “artistic elevation,” demonstrating how popularity and recognizability alone cannot satisfy the threshold of personal intellectual creation. In the U.S., we discuss statutory concepts of “useful articles” and the doctrine of separability, as refined in *Star Athletica v Varsity Brands*, where courts protect surface ornamentation if those aesthetic elements can exist independently as pictorial, graphic, or sculptural works.

In India, we analyze the Copyright Act’s Section 15, which withdraws copyright from designs capable of registration once reproduced in more than fifty units, as applied in key cases like *Microfibres Inc. v Girdhar & Co.* and *Ritika Pvt. Ltd. v Biba Apparels*. We highlight how India’s bright-line rule forces designers to choose between finite design registration and limited copyright protection, constraining creative incentives. The paper suggests that, while the U.S. framework offers predictable separability tests, India’s stringent thresholds may require reform to balance creative incentives with competition policy. By contrasting qualitative thresholds with bright-line rules, the paper underscores practical implications for designers and policymakers navigating applied art protection.

Keywords: Applied Art Protection, Copyright and Functional Design, Birkenstock Judgment, Separability Doctrine, Comparative Copyright Analysis

The intersection of copyright law and industrial or functional design often raises challenging questions about what qualifies as art. Works of *applied art* with creative designs embodied in useful articles like clothing, furniture, or footwear straddle the line between artistic expression and industrial innovation. Different jurisdictions have drawn this line in varying ways, leading to divergent standards for protecting such works. A recent high-profile example is the German *Birkenstock* sandal case, in which Germany’s highest court denied copyright protection to the brand’s iconic sandal designs, ruling they were not “works of applied art” but mere industrial designs. This outcome highlights the nuanced threshold that applied art must meet to earn copyright protection.¹ This paper examines and draw a contrast in the approaches of how copyright law treats applied art in two major jurisdictions, the United States and

India. It begins by discussing the German Birkenstock case in detail, outlining the court’s reasoning and legal standards for applied art in that context. It then provides a comparative analysis of the copyright standards for applied art in the U.S. and India. In the U.S., the focus lies on the statutory concepts of “useful articles” and the doctrine of separability, as clarified by landmark cases like *Star Athletica v Varsity Brands*.² In India, the analysis centers on the Copyright Act 1957 and its interface with design law, including Section 15 which limits copyright for designs after a certain point and key Indian cases that have interpreted this provision (such as *Microfibres Inc. v Girdhar & Co.* and others). The paper also evaluates how these legal positions impact the protection of fashion and product designs in practice, and surveys current academic and policy debates in both jurisdictions on whether the balance struck by the law is appropriate. Finally, the discussion concludes by noting that the issue of protecting

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applied art appears more settled in the U.S. after *Star Athletica*, whereas in India the position continues to evolve amid ongoing uncertainties and calls for reform.

Work of Applied Art and Copyright Protection: Judicial Reasoning in Birkenstock Case

In early 2025, the German Federal Supreme Court (Bundesgerichtshof, BGH) issued a much-publicized decision concerning Birkenstock's famous sandals. Birkenstock had sought to classify the designs of its well-known cork-soled sandals ("Madrid" and "Arizona" models) as protected works of applied art under copyright law.³ In its comprehensive judgment, the Federal Court of Justice (Bundesgerichtshof) of Germany delivered a detailed analysis rejecting Birkenstock's claim that its iconic sandals deserved copyright protection as works of applied art under Section 2(1)(4) in conjunction with Section 2(2) of the German Copyright Act (UrhG). The Court affirmed the reasoning of the Higher Regional Court (OLG Düsseldorf), emphasizing that while the sandals certainly possess a distinctive and recognizable appearance, this alone does not suffice to bring them under the ambit of copyright protection.⁴

The Court began by revisiting the legal standard for applied art, which requires that a product's form must result from free and creative artistic decisions, not merely from technical, functional, or commercial constraints. In applying this standard, the Court reiterated that mere recognizability or popularity of a design does not equate to copyrightable creativity. Rather, a work must reflect the author's personal intellectual creation, meaning it must show a degree of individual artistic achievement that goes beyond craftsmanship or utilitarian design.

The Court scrutinized the design features of the "Madrid" and "Arizona" models and noted that the external form of the sandals was primarily shaped by ergonomic and functional considerations. It observed that the selection of materials, the contours of the soles, and the overall visual identity were tailored to provide orthopaedic comfort and mass-market usage, rather than to express artistic intent. Even if there were alternative design possibilities, the Court held that Birkenstock had not sufficiently demonstrated that these alternatives were consciously rejected in favour of an aesthetically creative solution. The freedom to design alone is not enough, but the designer must have actually exercised that freedom in an artistic way, which was not evident in this case.

The Court further pointed out that Karl Birkenstock's design approach was functionalist in nature, aiming to solve practical issues of foot health rather than to make an artistic statement. The minimalistic and utilitarian aesthetic, while distinct, did not exhibit the kind of originality or complexity expected of a protected applied art object. It lacked what the Court referred to as an "artistic elevation" (*künstlerische Gestaltungshöhe*), a threshold that distinguishes art from mere industrial design or craftsmanship. In addition, the Court dismissed the relevance of the sandals' commercial success, iconic cultural status, or inclusion in design museums as indicators of copyright ability. While such recognitions may reflect aesthetic or cultural appreciation, they do not establish the individual creative contribution required by copyright law. Similarly, the later-added "bone pattern" sole, although visually striking, was not part of the original models under dispute and could not retroactively imbue them with artistic character.

Applied Art under U.S. Copyright Law

In contrast to the German approach that emphasizes a qualitative threshold, the United States takes a somewhat different route in determining when elements of a useful product can receive copyright protection. U.S. copyright law explicitly includes "works of *applied art*" in the category of *pictorial, graphic, and sculptural works* (often abbreviated as PGS works). However, it also contains the important concept of the "useful article." Under Section 101 of the U.S. Copyright Act (17 U.S.C. § 101), a "useful article" is defined as an article having an intrinsic utilitarian function that is not merely to portray appearance or convey information.⁵ Examples include clothing, furniture, appliances, things with practical utility. Copyright does not protect useful articles *as such*. Instead, it protects only the artistic features that can be identified separately from the article's functional aspects and that would qualify as artistic works on their own.⁶ This is known as the separability doctrine, a central concept in U.S. law for applied art.

The Useful Article Doctrine and Separability

The rationale of the U.S. approach is to prevent granting perpetual copyright monopolies over industrial products, while still encouraging creative artistic embellishments on such products. The Copyright Act's "special rule" for useful articles states that copyright protection for a pictorial, graphic,

or sculptural work *incorporated into* a useful article extends only to those features that “can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article”.⁷ In other words, one must conceptually peel away the artistic element from the functional object. If after this separation the artistic element can stand on its own as a protectable two- or three-dimensional artwork (painting, sculpture, drawing, etc.), then it is eligible for copyright; if not, then it remains unprotectable as part of a useful item.⁸

This doctrine was famously exemplified in the U.S. Supreme Court case *Mazer v Stein* (1954).⁹ In *Mazer*, the Court upheld copyright in a statuette of a dancing figure that was used as the base of a lamp. The statuette was considered a work of sculpture that did not lose its copyright-worthy status just because it had been attached to a lamp. The key point from *Mazer* was that *it is irrelevant whether a creative design was initially made as a standalone art object or as part of a functional article* – if the design is the kind of thing that could be viewed as art independent of the product, it can be protected.¹⁰ Following *Mazer*, the U.S. Copyright Office developed regulations embedding this separability concept, and Congress later codified it in the 1976 Copyright Act’s definitions.¹¹

***Star Athletica v Varsity Brands* (2017)¹²: Clarifying the Test**

The *Star Athletica* case arose in the context of cheerleading uniforms. Varsity Brands, a leading manufacturer of cheerleading apparel, had designed uniform outfits featuring certain arrangements of colored stripes, zigzags, and chevron shapes. These designs were applied as surface decorations on the uniforms. A competitor, Star Athletica, produced similar-looking cheerleading uniforms with comparable stripe and chevron patterns, and Varsity sued for copyright infringement. Star Athletica’s defense was that the designs were part of useful articles (the uniforms) and hence uncopyrightable utilitarian features. They argued that the stripe and chevron patterns served *functional* purpose, for example, to make the outfit recognizably a cheerleader uniform and to enhance its slimming or athletic appearance rather than purely artistic purposes.¹³ The legal question put before the U.S. Supreme Court was under what circumstances the aesthetic elements of a useful article (like clothing) are eligible for copyright protection.¹⁴

In a majority 6–2 decision, the Supreme Court ruled in favor of Varsity Brands, establishing a clear test for separability.¹⁵ The Court held that a feature incorporated into the design of a useful article is eligible for copyright if, and only if, (1) the feature “can be perceived as a two- or three-dimensional work of art separate from the useful article,” and (2) the feature “would qualify as a protectable pictorial, graphic, or sculptural work on its own or in some other tangible medium if imagined separately from the useful article”.¹⁶ This two-pronged test essentially restates the statutory language: *separate identification* of the artistic feature, and *independent existence* as an art object.

Applying this test, the Court found that Varsity’s graphic designs (the colored combinations of chevrons, stripes, and shapes on the uniforms) met both prongs. First, one can identify these decorative shapes apart from the uniform itself, for instance, by mentally superimposing the stripe pattern on a blank canvas or a piece of paper, one sees a work of graphic art independent of the uniform’s shape.¹⁷ Second, those designs, once separated, are the kind of two-dimensional artworks that qualify for copyright (essentially like an artwork or a fabric print). Thus, the Court concluded that the designs were eligible for copyright protection *to the extent of those graphic features*. It’s important to note that the Court did not say the uniform *dress shape or cut* was protectable but only the surface decoration. Moreover, the Court expressly did not opine on whether Varsity’s particular stripe designs were sufficiently original to merit copyright (they remanded that, noting the threshold for originality is very low under *Feist*).¹⁸ But the general principle was settled: aesthetic features of clothing (or any useful article) can be copyrighted if they can be separated and exist as art on their own.¹⁹

‘Applied Art’ under Indian Copyright Law

India’s approach to protecting applied art is markedly different from the United States’, rooted in its own legal history and policy considerations. Indian law creates a more delineated boundary between artistic works and industrial designs through explicit statutory provisions. The Indian Copyright Act 1957 provides protection to “*artistic works*”, which are defined in Section 2(c) to include paintings, sculptures, drawings (including diagrams, maps, charts, or plans), works of architecture, and “any other work of artistic craftsmanship.” In principle, this can cover works of applied art. For example, a drawing or

a decorative sculpture intended to be used on a product can be an artistic work. However, India also has a *Designs Act, 2000* (successor to the earlier *Designs Act, 1911*) that provides a system of registration for industrial designs (new or original shapes, patterns, ornaments applied to articles by an industrial process). To prevent overlap between these two regimes, Section 15 of the Copyright Act imposes special rules for designs, effectively limiting copyright claims on works that become industrial designs.

Statutory Framework: Section 15 and the Design-Copyright Interface

Section 15 of the Indian Copyright Act embodies the policy that mass-produced designs should not enjoy the lengthy protection of copyright concurrently with or in lieu of the shorter-term design protection. Section 15(1) states that “*no copyright shall subsist in any design which is registered under the Designs Act, 2000.*” In other words, once you obtain a design registration for a particular visual design of an article, you cannot also claim copyright in that same design (the design law provides up to 15 years of protection, and that is exclusive). This prevents dual protection at the same time.

More crucially, Section 15(2) addresses the scenario of designs that are not registered under the *Designs Act*. It provides that if an artistic work “is capable of being registered as a design” under the *Designs Act* but has not been so registered, then *once that work is reproduced more than 50 times by an industrial process*, the copyright in the work ceases to exist.²⁰ In effect, the law gives the creator a choice and a threshold: one can treat the creation as an artistic work and enjoy copyright protection, but only up to the point that it remains outside mass industrial production (the statute sets 50 copies as the cut-off). If the creator wishes to commercialize it beyond 50 reproductions, they are expected to register it as an industrial design; failing that, they lose copyright protection after the 50th copy. This scheme forces a timely decision to pursue design registration (with its relatively short but definite term and requirement of novelty) or rely on copyright if the usage is limited or niche.

The underlying rationale is to encourage design innovation and disclosure via the design registry, and to prevent creators from circumventing the limited term of design rights by simply claiming copyright (which in India lasts for the life of the author plus 60

years). As commentators note, Section 15(2) ensures that industrial designs are not afforded the far longer protection available to artistic works, thereby *promoting competition in the marketplace* once the initial design has been exploited beyond a certain scale.²¹ In other words, a decorative design for a product can either be a short-term monopoly (design patent) or, if it remains a one-off or limited-run artistic creation, it can be protected as art but not both for the same creation.

Another aspect of Indian law is the definition of “design” in the *Designs Act 2000*. Section 2(d)²² of the *Designs Act* defines a “design” essentially as features of shape, configuration, pattern or ornament applied to an article by an industrial process, and it expressly *excludes* from the definition “any artistic work as defined in Section 2(c) of the Copyright Act.” This exclusion might seem to suggest that if something is an artistic work under copyright law, it is not a “design” at all. However, Indian courts have clarified that this exclusion is meant to cover artworks of purely artistic intent (like fine art paintings or sculptures not intended to be applied to a product).²³ If an artistic work is *intended for application to an article*, it can still fall under the scope of design. The Delhi High Court in one case explained that the exclusion of artistic works in the design definition was to avoid double registration and to keep fine arts out of design law, not to permit someone to avoid design law by labelling an industrial pattern as an artistic work. Thus, in practice, Indian courts look at the substance and usage: a painting meant to hang on a wall is purely an artistic work (not a design), but a decorative pattern meant to be printed on fabric is very much a candidate for design protection and hence subject to Section 15(2) if reproduced industrially.²⁴

Judicial Interpretation: Key Cases in India

Indian courts have developed a body of case law around Section 15 to demarcate when copyright protection yields to design law. Several landmark cases from the High Courts (especially the Delhi High Court) illustrate how the rules are applied:

*Microfibres Inc. v Girdhar & Co.*²⁵ (2009 Delhi High Court) was a leading case that set the tone for the design-copyright overlap. Microfibres Inc., an American company, had created a series of upholstery fabric designs, which is essentially artistic floral patterns to be woven or printed on furniture fabric. They sued an Indian company (Girdhar) for copyright

infringement, alleging the defendant copied these fabric designs on its own textiles. The defendant argued that these designs were *not eligible for copyright at all*, because they were industrial designs that should have been registered under the Designs Act.²⁶ By the time of the suit, the designs had been used on fabrics well beyond 50 reproductions (indeed, the plaintiff's business was selling those fabrics in masse). The High Court agreed with the defendant. It held that the fabric patterns, although creative, were intended from the outset for industrial application on textiles and thus fell squarely within design law. Because the designs were capable of registration under the Designs Act (textile designs are registrable, as the court noted, even classified under the Design Rules²⁷ and had been reproduced more than 50 times, Section 15(2) kicked in to terminate any copyright that might have existed.²⁸

The *Microfibres* judgment went further to discuss the nature of "artistic work." The division bench of the Delhi High Court reasoned that these fabric designs did not exist as independent artistic works divorced from their utilitarian purpose. They were created *for* the commercial purpose of being applied to upholstery fabric. The court noted that while skill and creativity had gone into them, their primary purpose was functional (to be used on furniture), and they lacked independent existence as art in the "classical sense."²⁹ In a telling passage, the court said that a design which is created to be applied industrially "does not serve any purpose [as art] unless it is framed and hung on the wall" implying that these patterns were not meant to be admired as standalone artworks, but to be utilized on products.³⁰ Once used industrially, therefore, they cease to be protected as art. The court found it important that *Microfibres* had in fact registered its designs in the UK but *not in India*.³¹ By failing to register in India, the company could not circumvent the Indian law's requirements; it could not claim the "best of both worlds" (mass use and perpetual protection) *Microfibres* thus firmly upheld Section 15(2), barring long-term copyright on industrially exploited designs and confirming that these fabric patterns must be considered under design law (where the protection had not been secured in time).

*Ritika Pvt. Ltd. v Biba Apparels Pvt. Ltd.*³² (2016 Delhi High Court) involved a discussion on fashion design piracy. Ritika Pvt. Ltd. is the company behind famous Indian designer Ritu Kumar. They alleged

that Biba (a popular apparel brand) had copied certain ensemble designs and prints from the Ritu Kumar fashion line. The plaintiff claimed these were original "artistic works" likely referring to the prints or the specific combinations of elements on the garments, which were protected by copyright.³³ Biba, the defendant, invoked Section 15(2) as a defense, arguing that the designs were applied to more than 50 garments and thus any copyright had expired.³⁴ The High Court, citing the *Microfibres* precedent, agreed that once the 50-copy threshold was crossed, the only way to protect such designs was via the Designs Act. In this instance, because the designs were not registered as designs and had been mass-produced, Ritika's copyright claim was no longer tenable. The court ruled in favor of Biba and dismissed the suit, effectively reiterating that mass-produced fashion designs fall outside copyright after Section 15(2) is triggered.³⁵ This case sent a clear signal to the fashion industry that popular designs sold in large numbers cannot be policed through copyright in India and they needed design registrations for protection, or else copycats would be free to imitate after a certain point.

*Holland Company LP v S.P. Industries*³⁶ (2017 Delhi High Court) involved this dispute, an engineering design was at issue: technical drawings for an "automatic twist lock" device (used in securing shipping containers). Holland Co. claimed these drawings were artistic works (technical drawings can be protected as "drawings" under copyright). The defendant had used the drawings to manufacture the device. The court found that these drawings depicted a design that was capable of registration under the Designs Act (as a shape or configuration of an article) and that more than 50 of the locks had been produced. Therefore, per Section 15(2), copyright protection had ceased once the industrial application exceeded 50 units.³⁷ The court dismissed the copyright claim, again reinforcing that even technical or engineering drawings can fall under this rule if they are essentially blueprints of a product.

Case of *Pranda Jewelry Pvt. Ltd. V Aarya 24KT*³⁸ (2015 Bombay High Court) dealt with jewelry designs. Jewelry often sits in a gray area: is an ornamental jewellery design a work of sculpture (and thus an artistic work) or a design for an article (jewellery being wearable, but its function is adornment)? The Bombay High Court likely followed the same principle: if a jewellery design was capable of being registered under design law and had been

reproduced beyond the threshold, copyright would not subsist. (Jewellery designs *can* be registered as designs in India, and many jewellers do so for new designs.) Thus even aesthetically creative jewellery would lose copyright after mass production, unless protected via design registration.

Through these cases, Indian courts have consistently upheld the idea that the moment an artistic design enters the industrial stream beyond a limited number of reproductions, it exits the realm of copyright.³⁹ The plaintiff's only remedy in such cases is to have secured design registration or to sue under the Designs Act (or potentially other causes like passing off if applicable). If they neglected to register, the design effectively becomes public domain (or at least free for others to use) after 50 copies. One notable exception, however, is if the design is not "capable of being registered" under the Designs Act. The language "capable of being registered" is important as some works might be so artistic or include subject matter not registrable as a design (for instance, a painting on a canvas is not a design, or a work that includes a trademark or a functional feature might not be registrable). In such cases, Section 15 wouldn't apply. But in the typical applied art scenario (fashion, textiles, product shapes), capability is usually present.

Impact on Fashion and Product Design in India

India's stringent approach means that fashion designers and product designers have a relatively narrow window to use copyright and primarily must rely on design registrations for protection. In practice, this has several implications:

For mass-market fashion brands in India, the law effectively denies copyright protection. These brands must use the Designs Act if they want to protect patterns, prints, or garment shapes. The Designs Act requires registration *before* publication or within a very limited grace period, and it only gives up to 15 years of protection. Many fast-fashion or seasonal designs may not be worth registering, or the turnaround time and cost make it impractical to register each new apparel design. As a result, fashion piracy is somewhat of an accepted reality. Popular designs often get copied by competitors or local tailors, and unless a design was registered (which is not common for apparel in India), the original designer has limited legal recourse once the copier produces at scale. This is one reason the Indian fashion industry relies more on trademark (brand

reputation) and speed to market than on IP enforcement for clothing designs.

In product design sectors (furniture, appliances, consumer products), companies frequently use design registrations to protect their designs. Those who neglect to register and try to use copyright have found the courts unsympathetic if the design was exploited commercially. The *Holland Co.* case illustrates even foreign companies must be mindful: if you bring an unregistered design into India and someone copies it, you might be out of luck under copyright once you've sold over 50 units. The law essentially nudges companies to register designs in India to secure their rights. Many do exactly that: for example, one sees numerous filings in India's design register for mobile phone designs, automobile parts, fashion accessories, etc., by companies aiming to block counterfeits.

Another effect is the short-term vs long-term trade-off. Designers might enjoy potentially perpetual (life+60) protection under copyright if they keep the work out of mass production. But the moment they want to scale up (and monetization often demands scale), they trade that for a maximum 15-year design right. After that, the design enters the public domain for all to use. This policy fosters competition, e.g., generic versions of a design can appear after 15 years without legal issues, whereas if copyright had applied, it could be 100+ years (life of author + 60) in some cases. Thus, Indian law prevents a situation where, say, a popular furniture design from the 1970s is still under copyright and unusable in 2020s; instead, unless renewed via design, it becomes free to copy much sooner.

Comparative Analysis: United States Vs. India on Applied Art Protection

When comparing the U.S. and Indian approaches to copyright protection of applied art, we find two very distinct regimes shaped by different legal philosophies:

Conceptual Test v Bright-Line Rule

The U.S. uses a *conceptual separability test* is a qualitative analysis of the design to ask whether an artistic element can be abstracted from the utilitarian aspects.⁴⁰ There is no fixed numerical threshold; even a design mass-produced in millions can have copyrightable features, and conversely even a one-off utilitarian design might fail if it's entirely functional. India uses a bright-line rulerooted in Section 15(2) which is a quantitative cut off of 50 copies for designs

capable of registration.²⁵ The Indian rule does not involve dissecting the work into art and function; rather, it looks at how the work is utilized. If it's used industrially beyond the set number, it simply cannot enjoy sustained copyright. This reflects a fundamental difference: U.S. law tries to *separate the protectable expression from the object*, while Indian law tries to *separate the domain of copyright from the domain of industrial design based on use*.

Underlying Policy Objectives

Both systems aim to prevent *undue extension of monopoly over useful articles*, but they achieve it differently. The U.S. policy is concerned with not impeding functional innovation hence it denies protection to functional aspects and only protects ornamentation or artwork.⁴¹ The Indian policy is explicitly about preventing someone from getting the *longer term of copyright for what is essentially an industrial design*, thereby encouraging registration which has a shorter term and is scrutinized for novelty.⁴² The U.S. jurisdiction allows a form of dual protection (design, patents and copyright can overlap on different aspects of the same item, as long as the copyrightable aspect meets separability), whereas India forbids dual protection (no copyright if design patent is taken, and vice versa after 50 copies). India's approach can be seen as more pro-competition in the long run, while the U.S. approach is a bit more pro-author in giving potentially lengthy protection to aesthetic elements.

Scope of Protected Subject Matter

In the U.S., any element of a design that is decorative or artistic in nature can be protected, regardless of what article it's on, provided it can be independently identified. So, for example, decorative graphic designs on apparel, artistic shapes of a lamp base, carvings on a furniture piece, or even the design of a fanciful jewellery piece (jewellery often is considered not "useful" except for adornment, so jewellery designs are generally copyrightable as sculptural works in the U.S.). In India, by contrast, once those things are applied to articles and multiply produced, they move to the design regime. For instance, a pattern on a dress in India would swiftly lose copyright and only be protectable as a registered design, whereas in the U.S. that pattern would remain protected by copyright on any number of dresses.¹² On the other hand, a purely artistic sculpture or a painting is protected in both countries by copyright

but if you make copies of that sculpture as a product (like garden replicas), the U.S. would still say the sculpture was always an art work (no issue), whereas India might say those replicas trigger the design threshold if the sculpture could be deemed a design for an article (this scenario is theoretical and would depend on interpretation).

Term of Protection

In the U.S., once something qualifies for copyright, the term is very long (life of author plus 70 years, generally). This means that a separable design element on a useful article gets a long protection timeframe. In India, the default outcome for something that becomes popular (beyond 50 copies) is a design registration (if the creator secured it) which lasts at most 15 years, or if not registered, effectively no protection after initial market entry. So practically, Indian law ensures that industrial designs enter the public domain much sooner than they might under U.S. law. For example, consider a designer chair created in 2005: in the U.S., if its artistic shape was copyrightable, it could be protected well into the 21st century (depending on author's lifespan), whereas in India, by 2020 that chair design would likely be unprotectable (design registration expired or, if never registered, lost copyright after 50 units likely produced in 2005 itself). The U.S. does have design patents with 15-year terms, but those are separate from copyright. So a U.S. designer can benefit from both: say they patented the design for 15 years and also rely on copyright to potentially sue copyists even after the patent expires (provided the copies are substantially similar to the protected artistic element). In India, that sequence is not possible once you choose design patent, no copyright; if you didn't choose patent and exploited it, copyright ends after 50 copies. Thus, U.S. creators of applied art potentially enjoy a longer span of exclusivity for the creative aspects than Indian creators do.

Ease of Enforcement

An American designer can simply rely on copyright law (which does not require registration for protection, though registration is needed to sue for damages in the U.S.) to enforce against copiers of the artistic elements of their design. The litigation will revolve around whether the copied features are the protected separable elements. In India, a designer must first ensure a design is registered to enforce after broad commercialization; enforcement would then be

under the Designs Act at specialized tribunals or IP offices. Copyright litigation in India for applied art is only feasible in the narrow scenario where copies are below 50 or the plaintiff hasn't mass-produced. In essence, the Indian route is more procedurally intensive upfront (registration) but straightforward in court (just show defendant's article uses your registered design). The U.S. route might allow spontaneous protection but can lead to complex arguments in court about separability and similarity of aesthetic features.

Real-World Outcomes for Fashion and Design Industries

In the U.S., after *Star Athletica*, we might see more designers asserting rights in fabric prints, surface ornamentation, etc., and possibly some chilling effect on blatant copying of such elements. But basic garment shapes or styles remain largely free to copy (since those are not protectable). Fast fashion companies in the U.S. adjust by avoiding exact pattern copying or by licensing patterns, but they can still mimic the overall style and cut of designer clothes without infringing copyright (they just must be wary of exact prints or artwork on the clothes). In India, fast fashion or copycats have an easier time once the design is out and popular unless the original had a design patent. Many Indian designers have indeed started using design registrations for signature prints or embroidery designs, but given the paperwork and cost, it's not universal. Thus, copying is rampant, and original designers often complain about it but have limited recourse. This arguably pushes Indian designers to focus on *brand value* and selling the aura of their brand, quality, and being first to market rather than relying on legal exclusivity. In the U.S., there's a bit more balance now that certain aspects can be legally secured.

Settled v Unsettled

The U.S. position post-*Star Athletica* is legally settled at the highest level and the criteria are established, and while each case's facts differ, the framework is uniform nationwide.⁴¹ There is no indication of legislative change to that framework; any adjustments will be incremental via case law clarifying edge scenarios. In India, the position in statute is settled (Section 15 is clear) and the High Courts uniformly follow it, but one could say it's *unsettled in a forward-looking sense* because there is active discussion and some discontent. The Indian Supreme Court has not yet had a marquee ruling on

this exact issue; if it did, it could potentially recalibrate the interpretation (for instance, it could decide that the word "design" in Section 15 should exclude certain artistic designs to allow dual protection in rare cases, though this is speculative). Moreover, policy think tanks in India's IP community sometimes advocate modernizing design law to better protect industries like fashion. Until any change happens, though, practitioners know the rule to apply. So practically, it's settled; conceptually, the debate continues if it should remain so.

Conclusion

The question of how to protect works of applied art sits at the crossroads of encouraging creativity and preventing overreach of intellectual property. The German Birkenstock case dramatically illustrated that even an internationally beloved design can fail to qualify as "art" under a strict legal standard. This outcome reaffirmed the principle that copyright is reserved for designs that manifest a genuine artistic or personal creative contribution, beyond ordinary functional or market-driven creation.⁴³ Birkenstock's sandals, while iconic, remained categorized as utilitarian designs in the eyes of the law, a result that resonated with the long-standing tension between *cult value* and *artistic value* in IP protection.

In the United States, the law regarding applied art has largely been *settled* by the Supreme Court's decision in *Star Athletica*. The U.S. now employs a clear test that, in theory, any court can apply to decide if a design element on a useful article gets copyright protection.⁴⁴ This provides a stable framework for designers and manufacturers: artistic features can be protected regardless of how widely a product is sold, but one must always be able to separate those features from the product's functional aspects. Thus, the American position balances the interests by slicing a useful article into its expressive and functional components and only protecting the former. There is little ambiguity that, going forward, a painting on a jacket, a carving on a knife handle, or a decorative shape of a lamp can be considered for copyright, whereas the jacket's cut, the knife's utilitarian shape, or the lamp's functionality remain unprotected. While debates persist about the wisdom of this approach, the legal standard itself is firmly established and widely accepted by courts and practitioners.

In India, the situation is more *evolving*. The law draws a bright line through Section 15 of the Copyright Act, effectively segregating the realm of

industrial design from that of artistic works after a certain point of commercial exploitation. This clear rule has been consistently applied in cases like *Microfibres* and *Ritu Kumar (Ritika) v Biba*⁴⁵ to deny long-term copyright to fashion and design works once they enter mass production. While this provides certainty, it also leaves a narrower scope of protection for designers. The Indian approach, inherited from older UK law, now stands in contrast to the more permissive trends elsewhere. There is an ongoing conversation in India's legal community about whether this approach best serves the country's growing creative industries. As of now, one might say the Indian position is *stable in enforcement but uncertain in future direction*. No legislative amendment has been made yet to alter Section 15, and no Supreme Court judgment has upheaved it; yet academic commentary frequently questions if the law needs updating to reflect modern realities.⁴⁴

Ultimately, the divergence between the U.S. and Indian standards reflects different weighting of policy priorities. The U.S. model leans toward rewarding and preserving the artist's right even within industrial design, whereas the Indian model leans toward preventing the extension of those rights in ways that could inhibit competition and design proliferation. For fashion and product design, this means U.S. designers have a potentially stronger hand (they can rely on copyright for creative elements and have design patents as a complement), whereas Indian designers must act swiftly to secure design registrations or limit their distributions to remain within copyright. The U.S. scenario post-*Star Athletica* suggests that the law is *largely settled*, offering predictability: designers know what aspects of their creations can be protected and competitors know what they cannot copy (distinctive artistic features). In India, the current law is clear but in practice the industry sometimes finds it unsatisfactory hence, the situation feels *less settled*, with the possibility of reform looming.

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