

Dupe or Deception? Rethinking Intellectual Property and Consumer Protection in the Fashion Industry

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Abstract

The rise of the “*dupe economy*” has transformed the relationship between fashion, consumers and intellectual property. Social media platforms and digital marketplaces have accelerated the circulation of products that closely resemble high-end fashion designs while being marketed as affordable alternatives. Although such products are frequently distinguished from counterfeits by the absence of unauthorised trademarks, their visual similarity raises complex questions concerning the boundaries between legitimate inspiration, imitation and intellectual property infringement. The growing popularity of fashion dupes therefore challenges traditional assumptions about originality, brand identity and consumer choice. This paper examines the adequacy of the existing intellectual property and consumer protection framework in addressing the legal challenges posed by fashion dupes, with particular reference to Indian law. It analyses the applicability of copyright, design protection, trademarks, trade dress and the law of passing off in determining when imitation becomes legally actionable. The paper further examines the consumer-protection dimension, particularly the possibility of consumer confusion, misleading representations, deceptive marketing and the role of influencers and digital marketplaces in promoting lookalike products. The paper argues that the legal treatment of fashion dupes cannot be reduced to a binary distinction between “original” and “copy.” Excessive protection of fashion designs may restrict legitimate competition and affordable consumer access, while inadequate protection may undermine creativity, brand identity and consumer trust. It therefore proposes a calibrated approach that distinguishes genuine counterfeiting and deceptive imitation from permissible inspiration and competitive design. The paper concludes by exploring whether Indian law requires a more coherent framework capable of balancing intellectual property protection, consumer autonomy, innovation and healthy competition within the rapidly evolving fashion economy.

Keywords: *Fashion Law; Fashion Dupes; Intellectual Property; Trademarks; Copyright; Design Rights; Passing Off; Consumer Protection; Fast Fashion; Consumer Confusion.*

I. Introduction

A dupe, in the vocabulary that social media has made globally intelligible, is a product deliberately designed and marketed to look like a more expensive counterpart while stopping short of copying the brand name or logo that would make it a counterfeit. Where a counterfeit deceives a consumer into believing they are purchasing the genuine article, a dupe typically does the opposite: it is marketed precisely on the basis that it is not the genuine article, and that this is the point. This distinction, intuitive as marketing, is considerably less stable as law. A garment's silhouette, a handbag's hardware, a shoe's sole colour, a jacquard weave, or a monogram-adjacent pattern can each carry as much source-identifying and reputational value

as a logo, yet each sits differently, and often uncertainly, across the separate statutory regimes of copyright, design, and trade mark law that were drafted for other purposes and other eras.

India's own case law illustrates how unstable that boundary can be. In a trio of judgments delivered by the Delhi High Court within a single year, Christian Louboutin's red-soled shoe was treated, in successive rulings, as a well-known trade mark entitled to broad protection, then as incapable of trade mark protection at all because a single colour cannot constitute a 'mark' under the Trade Marks Act 1999, and then, in a third ruling on materially similar facts, as again entitled to an injunction¹. If the doctrinal status of a single, globally recognised design cue can fluctuate this sharply within one jurisdiction and one year, the legal status of the far larger universe of lower-profile, deliberately unbranded fashion dupes is, this paper argues, not merely under-litigated but under-theorised. This paper's central claim is that Indian law's difficulty with fashion dupes is not primarily a gap in any one statute but a structural mismatch: copyright, design, and trade mark law each supply a partial, differently-shaped test for 'too similar', none calibrated to the pace, visual grammar, or marketing conventions of contemporary fast fashion, and none easily coordinated with the separate, increasingly consequential question of whether a dupe's marketing itself misleads the consumer buying it.

The paper proceeds as follows. *Part II* frames the dupe economy conceptually, distinguishing it from counterfeiting and tracing its acceleration through social media and digital marketplaces. *Part III* examines the applicability and limits of Indian copyright law. *Part IV* examines design protection under the Designs Act 2000. *Part V* examines trade mark law, trade dress, and the law of passing off. *Part VI* turns to the consumer-protection dimension, including the regulation of influencer marketing. *Part VII* draws comparative lessons from the United States and the European Union. *Part VIII* proposes a calibrated framework, and *Part IX* concludes.

II. The Dupe Economy: Definitional and Conceptual Framing

A. Dupes Distinguished from Counterfeits

The conventional legal distinction between a dupe and a counterfeit turns on trade mark use: a counterfeit bears an unauthorised reproduction of a brand's registered mark, engaging the strict-liability-adjacent infringement regime of trade mark law; a dupe, by design, avoids the mark itself while replicating the design cues, silhouette, colourway, hardware, or overall visual impression that the consuming public has come to associate with the original. This distinction matters legally because it routes dupes away from trade mark infringement and toward the considerably less certain terrain of copyright, design, and passing-off law, each of which requires a claimant to establish some form of protectable subject matter or reputation in the design itself, rather than merely pointing to an unauthorised mark.

¹Christian Louboutin SAS v Pawan Kumar, CS(COMM) 890/2016 (Delhi High Court, 8 December 2017) (well-known mark finding); Christian Louboutin SAS v Abubaker (2018) SCC OnLine Del 12215 (single-colour mark refused); Christian Louboutin SAS v Ashish Bansal, CS(COMM) 344/2018 (Delhi High Court, 31 July 2018) (ex parte injunction granted); see 'The Red Sole Dilemma' (MehtaIP) <<https://ipcentre.mehtaip.com/2018/10/31/the-red-sole-dilemma/>> accessed 13 September 2026.

B. Acceleration through Platforms

What has changed is not the existence of imitation, which fashion has always tolerated to some degree as the price of trend diffusion, but its velocity and visibility. Short-form video platforms have generated an entire content genre organised around the explicit comparison of an aspirational, expensive item with its more affordable 'dupe', often within seconds of a runway or celebrity appearance, while marketplace search and recommendation algorithms actively surface visually similar, lower-priced alternatives to a shopper who has merely viewed a luxury product. The dupe is therefore no longer a slower, downstream imitation reaching the market after a design cycle has run its course; it is frequently a parallel, algorithmically accelerated product category competing with the original within the same purchasing decision, which sharpens both the competitive threat that originators perceive and the practical urgency of the legal question this paper examines.

III. Copyright Law and the Limits of Protection for Fashion Designs

A. The Artistic Work and the Fifty-Article Threshold

The Copyright Act 1957 protects 'artistic works', a category broad enough to encompass an original textile print, embroidery pattern, or graphic motif independently of the garment onto which it is later applied. Section 15(2), however, imposes a critical limitation: where a design capable of registration under the Designs Act 2000 is not so registered, copyright in that design ceases as soon as an article to which it has been applied has been industrially reproduced more than fifty times². The Delhi High Court's decision in *Microfibres Inc v Girdhar & Co*, concerning upholstery fabric designs reproduced at industrial scale without design registration, confirmed that such designs lose copyright protection in their industrial application once the fifty-article threshold is crossed, even though the underlying artistic work may in principle continue to enjoy copyright in other, non-industrial forms³. For the fashion industry, whose entire commercial model depends on producing many thousands of units of a single design, this provision is close to dispositive: almost no mass-market garment design retains copyright protection in its industrial application unless the designer has separately registered it under the Designs Act, which, as Part IV shows, carries its own significant limitations for an industry organised around rapid seasonal turnover.

B. The Deeper Limit: Silhouette and Cut as Unprotectable Subject Matter

Even where the fifty-article threshold is not crossed, copyright's focus on 'artistic' subject matter sits uneasily with the aspects of a garment that dupe culture most often targets: not a printed motif but the cut, proportion, and silhouette of the garment itself, which function simultaneously as functional pattern-making choices and as source-identifying design signatures. Indian copyright doctrine, like most common-law systems, has no settled mechanism for protecting a garment's cut or silhouette independently of a specific ornamental

²Copyright Act 1957, s 15(2); Designs Act 2000, s 2(d).

³*Microfibres Inc v Girdhar & Co* (2009) SCC OnLine Del 2296; see 'The Intersection of Industrial Design and Copyright Law' (Khurana & Khurana, 9 October 2024) <<https://www.khuranaandkhurana.com/2024/10/09/the-intersection-of-industrial-design-and-copyright-law>> accessed 13 September 2026.

or artistic surface design, leaving the single most commonly 'duped' element of a fashion design largely outside copyright's reach regardless of the fifty-article rule.

IV. Design Protection under the Designs Act, 2000

The Designs Act 2000 protects the ornamental or aesthetic features of shape, configuration, pattern or ornament applied to an article, judged solely by the eye, provided the design is both new and original within the meaning of section 4⁴. The Bombay High Court's decision in *Whirlpool v Videocon* confirmed that mere imitation, however commercially successful, cannot itself qualify for registration, and that both novelty (absence of prior publication anywhere in the world) and originality (independent creative effort) must be separately established⁵. Indian courts have further required that differences between a registered design and an allegedly infringing one be 'substantial' and assessed by the eye of the ordinary purchaser rather than through minute, expert-level comparison⁶, a standard that, applied to fashion, could in principle capture the overall silhouette, proportion, and visual impression that a dupe most commonly replicates.

The difficulty is structural rather than doctrinal. Design registration is a prospective, registration-dependent right: protection exists only for designs the proprietor has affirmatively registered before disclosure, for an initial term of ten years extendable by a further five⁷. Fast fashion operates on production and trend cycles measured in weeks rather than years, generating hundreds of distinct designs each season, the overwhelming majority of which are never registered, both because the administrative and cost burden of registering each design is disproportionate to its short commercial life and because a garment is frequently disclosed to the public, at fashion weeks, on social media, or through retail sale, before registration can be completed a disclosure that itself destroys the 'novelty' section 4 requires for any design not already registered. The result is a protection regime formally available to fashion designers but, in practical operation, almost entirely unused by them, leaving the great majority of fashion designs unprotected by anything other than the considerably less predictable law of passing off.

V. Trade Marks, Trade Dress, and the Law of Passing Off

A. The Absence of a Codified Trade Dress Doctrine

Unlike the United States, where trade dress is expressly actionable under section 43(a) of the Lanham Act, Indian law contains no standalone statutory concept of trade dress. Protection for the overall look and feel of a product its packaging, colour scheme, or distinctive shape must instead be assembled from the general 'mark' definition in section 2(1)(m) of the Trade Marks Act 1999, which does include shape and combinations of colour, and from the common-law

⁴Designs Act 2000, ss 2(d), 4; *Whirlpool of India Ltd v Videocon Industries Ltd* (2014) SCC OnLine Bom 565.

⁵*Whirlpool v Videocon* (n 4).

⁶*M C Jayasingh v Mishra Dhatu Nigam Ltd* (2010) SCC OnLine Mad 3866; *Alert India v Naveen Plastics* (1998) SCC OnLine Del 292.

⁷Designs Act 2000, s 11.

tort of passing off, preserved by section 27(2) of the Act for unregistered marks and trade dress alike.

B. The Cadila Seven-Factor Test and Its Fit for Fashion

The Supreme Court's decision in *Cadila Health Care Ltd v Cadila Pharmaceuticals Ltd* supplies the governing test for deceptive similarity in Indian passing-off actions, directing courts to weigh, among other factors, the nature of the marks, the degree of visual and phonetic resemblance, the nature of the goods, the class of purchasers and their likely degree of care, and the mode of purchase⁸, applying a stricter standard where confusion carries serious consequences, as in the pharmaceutical context in which the test arose. Transplanted to fashion, several of these factors cut in the dupe's favour rather than the originator's: fashion dupes are typically sold through channels, and at price points, that make consumers acutely aware they are purchasing an alternative rather than the genuine article, and the 'nature of the goods' and 'class of purchasers' factors, read straightforwardly, suggest a sophisticated, price-conscious consumer unlikely to be deceived as to trade origin precisely because the dupe's entire marketing proposition depends on the consumer knowing it is not the original. Passing off's requirement of misrepresentation likely to deceive therefore sits in tension with the dupe economy's own commercial logic: a product marketed as 'get the look for less' is, definitionally, not attempting to pass itself off as the original in the sense the tort was designed to prevent, even where its visual similarity is total.

C. The Louboutin Trilogy as a Case Study in Doctrinal Incoherence

The Louboutin litigation examined in Part I illustrates the resulting uncertainty at its sharpest. In December 2017, the Delhi High Court found Louboutin's red sole to be a well-known trade mark and granted an injunction against an unrelated defendant⁹. Five months later, a different bench of the same court summarily dismissed a near-identical claim, holding that a single colour, unaccompanied by a distinctive shape or combination of colours, cannot qualify as a 'mark' under sections 2(1)(m) and 2(1)(zb) of the Trade Marks Act, and could not sustain even a passing-off claim once trade mark protection was denied¹⁰. Weeks later still, the same court granted an ex parte injunction on essentially the same red-sole claim against a third defendant¹¹. This sequence is not merely an isolated doctrinal wobble; it demonstrates that Indian trade dress law currently lacks a settled framework even for the paradigm case of a single, world-famous design cue, which leaves the far more numerous and lower-profile disputes generated by the dupe economy where the claimed trade dress is typically a garment silhouette or an accessory's overall shape rather than a single colour with essentially no predictable doctrinal anchor at all.

⁸*Cadila Health Care Ltd v Cadila Pharmaceuticals Ltd* (2001) 5 SCC 73.

⁹*Christian Louboutin SAS v Pawan Kumar* (n 3).

¹⁰*Christian Louboutin SAS v Abubaker* (n 3); see 'India: Delhi High Court Rules that Single Colour Cannot Be Trade Mark' (Managing IP) <<https://www.managingip.com/article/2a5bqo2drurt0bww4pm8g/india-delhi-high-court-rules-that-single-colour-cannot-be-trade-mark>> accessed 13 September 2026.

¹¹*Christian Louboutin SAS v Ashish Bansal* (n 3).

VI. The Consumer Protection Dimension

A. Misleading Advertisement under the Consumer Protection Act, 2019

Section 2(28) of the Consumer Protection Act 2019 defines a misleading advertisement broadly to include any advertisement that falsely describes a product, gives a false guarantee, or is likely to mislead consumers as to its nature, substance, or quality¹². Where a dupe's marketing goes beyond honest price-and-style comparison and instead falsely implies an affiliation with, manufacturing origin from, or material equivalence to the originating brand for instance, by falsely claiming the same factory, fabric, or supply chain such marketing is capable of falling within section 2(28), independently of whether the underlying product itself infringes any registered intellectual property right. The Central Consumer Protection Authority, exercising powers under section 18 of the Act, may impose penalties of up to INR 10 lakh for a first violation and up to INR 50 lakh for subsequent violations under section 21¹³, giving the consumer-protection route a more calibrated, marketing-conduct-focused remedy than the binary infringement-or-not framework of IP law.

B. Influencer Marketing and the CCPA Guidelines

The dupe economy is substantially propagated through influencer content, and the CCPA's Guidelines for the Prevention of Misleading Advertisements and Endorsements, 2022, together with its 2023 'Endorsement Know-Hows' guide, directly address this channel. The Guidelines require an endorser to disclose any 'material connection' with the advertiser or manufacturer including payment, free products, or a commercial affiliation in a manner that is clear, prominent, and not buried among unrelated hashtags, and impose a due-diligence obligation on endorsers to ensure that an endorsement reflects a genuine, substantiated opinion rather than an unverified claim¹⁴. Non-disclosure of a paid partnership in dupe-promotion content has been treated by the CCPA as an unfair trade practice under the Act¹⁵, a principle directly applicable to the common dupe-marketing format in which an influencer's 'comparison' or 'get the look' video is, in substance, a paid promotion for the dupe manufacturer or the marketplace on which it is sold.

C. Marketplace Accountability

A further, comparatively under-examined dimension concerns the digital marketplaces and platforms on which dupes are searched for, recommended, and sold. Search and recommendation systems that actively surface visually similar, lower-priced alternatives when a consumer views a luxury item, or that permit sellers to tag dupe listings with the originating brand's name as a discoverability keyword without disclosing the absence of any affiliation,

¹²Consumer Protection Act 2019, s 2(28).

¹³Consumer Protection Act 2019, ss 18, 21.

¹⁴Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements 2022 (CCPA, 9 June 2022); Central Consumer Protection Authority, 'Endorsement Know-Hows! For Celebrities, Influencers, and Virtual Influencers on Social Media Platforms' (20 January 2023).

¹⁵Digital Media and Law: Regulating Influencer Marketing and Misleading Advertisements' (Lawful Legal, 11 July 2025) <<https://lawfullegal.in/digital-media-law-regulating-influencer-marketing-and-misleading-advertisements/>> accessed 13 September 2026.

arguably engage the marketplace's own obligations under India's e-commerce consumer-protection framework, which imposes due-diligence and non-deceptive-practice obligations on marketplace entities independently of the conduct of individual third-party sellers. This dimension of the dupe economy platform design choices that actively accelerate lookalike-product discovery remains largely unaddressed by either the IP or the consumer-protection literature, which has focused overwhelmingly on the seller and the influencer rather than the platform architecture connecting them to the consumer.

VII. Comparative Perspectives

A. The United States: The Useful Articles Doctrine

United States copyright law has historically been markedly less protective of fashion design than Indian or European law, owing to the 'useful articles' doctrine codified in the Copyright Act 1976, under which the overall design of a garment, as a useful article, is not copyrightable, though a pictorial, graphic, or sculptural feature that can be conceptually separated from the garment's utilitarian function may be. The Supreme Court's 2017 decision in *Star Athletica LLC v Varsity Brands Inc* clarified the applicable separability test, holding that a design feature is eligible for copyright protection if it can be perceived as a two- or three-dimensional work of art separate from the useful article, and would independently qualify as a protectable pictorial, graphic, or sculptural work if imagined apart from that article¹⁶. The decision expanded protection for surface ornamentation such as Varsity's chevron and colour-block patterns, but left the underlying silhouette and cut of a garment again, the element dupe culture most consistently targets outside copyright's reach, confirming that even the jurisdiction with arguably the most developed judicial doctrine on this precise question has not solved the silhouette problem this paper identifies as central to the Indian analysis in Part III.

B. The European Union: The Unregistered Community Design

The European Union offers the clearest comparative alternative to India's registration-dependent model. Council Regulation (EC) No 6/2002 creates, alongside the registered Community design, an unregistered Community design that arises automatically upon a design's first disclosure within the Union and lasts for three years, without any registration, fee, or formal application, protecting the holder against deliberate copying (though not against independent, coincidental creation by a second designer)¹⁷. This unregistered right was decisive in *Karen Millen Ltd v Dunnes Stores*, in which the Irish High Court, applying the Regulation, restrained Dunnes Stores from selling garments its own witnesses admitted had been produced by directly copying Karen Millen's designs, notwithstanding that Karen Millen held no registered design right in the garments at all¹⁸. The unregistered Community design is explicitly recognised within the European Union's own design-policy literature as particularly well suited

¹⁶*Star Athletica LLC v Varsity Brands Inc*, 580 US ____ (2017).

¹⁷Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs [2002] OJ L3/1, art 11.

¹⁸*Karen Millen Ltd v Dunnes Stores* [2007] IEHC 449; see 'Designs Are Unregistered Community Designs Protected under EU Law' *The Irish Times* (Dublin, 2008) <<https://www.irishtimes.com/news/crime-and-law/designs-are-unregistered-community-designs-protected-under-eu-law-1.892742>> accessed 13 September 2026.

to seasonal, fast-turnover sectors such as fashion, precisely because it removes the registration-timing mismatch that, as Part IV showed, renders the Indian Designs Act largely unused by the fashion industry¹⁹. Karen Millen therefore stands as the closest existing judicial precedent, anywhere, to a genuine 'dupe' case decided on design-copying grounds rather than trade mark or passing-off grounds and it succeeded only because EU law had built a low-threshold right calibrated to fashion's production cycle, a right Indian law presently lacks.

VIII. Toward a Calibrated Framework

This paper's central argument is that the legal response to fashion dupes should not, and structurally cannot, rest on a single binary test of visual similarity. A calibrated framework requires distinguishing at least three categories of conduct that current Indian law tends to conflate: genuine counterfeiting (unauthorised use of a registered mark, already well addressed by trade mark law); deceptive imitation (visual copying combined with marketing that falsely implies affiliation, common origin, or material equivalence, properly addressed through passing off and the Consumer Protection Act); and permissible inspiration and competitive design (independent creation or trend-following that happens to resemble a prior design without deceptive marketing, which sound competition policy should continue to permit). The paper's five specific proposals follow from this tripartite distinction.

A. An Unregistered, Short-Term Design Right for Fashion

India should introduce, whether by amendment to the Designs Act 2000 or by standalone legislation, an unregistered design right modelled on the EU's three-year unregistered Community design, arising automatically upon first public disclosure and actionable only against deliberate copying, not independent creation. This would close the registration-timing gap identified in Part IV without requiring designers to abandon the existing registered-design route for their most commercially significant, longer-life designs.

B. A Codified, Fashion-Specific Trade Dress Standard

The Trade Marks Act 1999 or accompanying judicial guidance should articulate a clearer, multi-factor trade dress standard specifically calibrated to overall product appearance distinct from, and more structured than, the single-colour question that produced the Louboutin trilogy's inconsistency so that claims concerning a garment or accessory's overall look and feel are not left to depend on which bench happens to hear the case.

C. Recalibrating the Passing-Off Confusion Standard for Openly-Marketed Dupes

Courts and the CCPA should distinguish, more explicitly than the Cadila test currently requires, between visual similarity that risks point-of-sale confusion and visual similarity in a product openly marketed as an affordable alternative; liability should attach not to the resemblance itself but to marketing conduct that crosses from honest comparison into false claims of

¹⁹#GLPoint: Registered and Unregistered Designs — The “Ratio” behind Unregistered Community Designs' (GLP, 21 October 2022) <<https://www.glp.eu/en/update/news/?id=250>> accessed 13 September 2026.

affiliation, common manufacture, or material equivalence preserving the 'get the look for less' category as legitimate competition while still reaching deceptive dupe marketing.

D. Strengthened, Dupe-Specific Enforcement of Influencer Disclosure Rules

The CCPA's existing material-connection disclosure framework should be actively enforced against the specific and increasingly common format of paid dupe-comparison content, with clear guidance confirming that a 'get the look for less' video promoting a specific, sponsored dupe product falls squarely within the existing Guidelines, removing any ambiguity that currently allows such content to be treated as organic commentary rather than sponsored endorsement.

E. Marketplace Design Accountability

E-commerce platforms should be required, as part of their existing due-diligence obligations, to prohibit sellers from using a rival brand's name as a discoverability keyword or hashtag without a clear, prominent disclosure that the listed product is an unaffiliated alternative, extending marketplace accountability to the platform-level design choices that actively accelerate dupe discovery rather than leaving responsibility solely with individual sellers and influencers.

IX. Conclusion

The dupe economy has exposed a genuine structural mismatch in Indian intellectual property law: copyright's fifty-article threshold all but excludes mass-produced fashion from protection; design law's registration dependency is poorly matched to fast fashion's production cycle; and trade mark and passing-off doctrine, as the Louboutin trilogy starkly illustrates, remain unsettled even at the level of a single, globally famous design cue, let alone the far larger universe of ordinary garment silhouettes that dupe culture most often targets. Yet the answer is not simply more protection. A framework that treated every visually similar, honestly marketed, affordably priced alternative as infringing would restrict the very competition and consumer access that has always disciplined fashion pricing, and would hand originating brands a degree of control over silhouette and style that neither copyright's originality requirement nor design law's novelty requirement was ever intended to confer. The more defensible path, this paper has argued, distinguishes counterfeiting, deceptive imitation, and permissible inspiration as three legally distinct categories of conduct, and builds a calibrated response an unregistered design right suited to fashion's pace, a coherent trade dress standard, a passing-off test attentive to how dupes are actually marketed, and consumer-protection enforcement aimed squarely at the influencers and platforms that now mediate the dupe economy rather than forcing an increasingly sophisticated, digitally accelerated commercial phenomenon into intellectual property categories built for a slower and less transparent marketplace.

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