

The Devil's Advocate Also Wears Prada: Arbitration & Fashion Law

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Abstract

The fashion industry has witnessed a rapid growth, leading to an increase in legal disputes. Arbitration offers a viable alternative compared to the traditional litigation system for resolving fashion-related disputes, providing a more efficient, tailored, and confidential way for dispute resolution. This paper sheds light on the intersection of fashion law and arbitration in India, examining the specific challenges and opportunities presented, which can be understood in a twofold manner. Firstly, analyzing the protection of fashion designs and trademarks and the suitability of arbitration in resolving fashion-related disputes. Secondly, examining the enforceability of courts in fashion industry licensing arguments and franchise agreements. By examining these areas, this paper aims to explore the potential benefits of alternative dispute resolution mechanisms for the fashion industry.

Keywords: arbitration, fashion, contractual disputes, intellectual property

Introduction

India is one of the leading representatives in clothing and apparel manufacturers, representing 4% of the global share as of now.¹ There has been a paradigm shift, as India is now the highest

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¹ Press Information Bureau (2025) *Threads of Progress: How Make in India is Shaping the Future of Textiles and Apparel Industry*. Ministry of Commerce & Industry, Government of India. Available at: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2117470>

exporter of raw materials, cotton, silk, jute, handmade or handcrafted products². Moreover, there are more than the average count of people who are engaged in industrial jobs, contributing to the country's economic growth, which also reflected in the global representation of the sector's development.³ The buying power of Indian clients gave the government the power of impetus that was much needed.

The Indian film industry and, particularly, Bollywood, has been the evergreen mascot for the promotion of the field of fashion. Millions of Bollywood and fashion industry fans serve as a captive audience for this field and a large consumer base at the same time. Street markets around the country flourish with first and second copies of most sought-after brands like Nike, Gucci, Raymond, Prada, Louis Vuitton, Armani, Zara, Louboutin, Woodland, and H&M. Internet penetration has further allowed consumers to access these duplicate products.

Fashion law is still a niche and nascent practice area in the country. The global interest in this area was initially generated after the establishment of the Fashion Law Committee of the New York Bar Association for studying a wide range of compliance and legal issues in the fashion industry. In India, a not-for-profit organization by the name of Fashion Design Council of India looks after the recent trends in the fashion business and ensures the sustainable growth of the industry in the process. The Copyright Act, 1957; Designs Act, 2000; The Geographical Indication Act of Goods Act, 1999; and the Trademark Act, 1999 are applied when there is an infringement pertaining to intellectual property in the fashion world, besides the Employment Laws and the Indian Contract Act, 1872. Trademark disputes in the fashion industry often bring complex challenges, as seen in high-profile cases such as the case of Christian Louboutin SAS v. Abubaker in 2018⁴. Such cases highlight the growing need for Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) as practical alternatives to traditional litigation. Among these, arbitration has emerged as a particularly useful tool, offering a faster, more private, and often more balanced process tailored to the industry's unique dynamics. Given how fast-paced and creative the fashion world is, relying solely on courts may not be

² Eximpedia (2024) *Textile Export from India: Global Market Statistics*. Available at: <https://www.eximpedia.app/blog/textile-export-from-india>

³ Seair Exim Solutions (n.d.) *Textile Exports from India: Market Trends & Stats*. Available at: <https://www.seair.co.in/blog/textile-exports-from-india.aspx>

⁴ Christian Louboutin Sas vs. Abubaker & Ors, AirOnline 2018 Del 256

the most effective way to handle disputes. In the U.S., for instance, a body like the Council of Fashion Designers of America (CFDA)⁵ could lead the way by establishing a structured, industry-led ADR program. This would give both designers and fashion corporations a fair and efficient method to resolve conflicts while upholding the collaborative spirit and innovative drive of the industry. This becomes especially relevant in light of the proposed Innovative Design Protection and Piracy Prevention Act (IDPPPA)⁶. While the act aims to protect original designs from counterfeiting, it could unintentionally harm smaller designers who rely on "inspired-by" creations to build their careers. By potentially expanding copyright protections in a way that favors established brands, the legislation might discourage risk-taking and creativity among new entrants.

Fashion & Arbitration

Importance of Arbitration in Fashion in India

The Indian fashion landscape has blossomed into the global stage, garnering international acclaim for its time-honored textiles and the inventive flair of its modern design talents. The dynamic sector faces considerable headwinds, including unauthorized replication of designs, the proliferation of counterfeit merchandise, concerns surrounding labor practices, and pressing ecological imperatives.

Fashion law in India assumes a pivotal role. the fashion industry in India. It encompasses various legal domains—including intellectual property, labour law, consumer protection, and environmental regulation—and provides enforceable standards to protect designers, artisans, and consumers. This framework ensures accountability, safeguards creativity, promotes ethical practices, and addresses issues such as plagiarism, counterfeit goods, and unfair labour conditions.

Acknowledging the distinct characteristics of this vibrant industry, the WIPO Arbitration and Mediation Center has actively collaborated with key stakeholders in the fashion ecosystem. Their emphasis lies in cultivating effective ADR mechanisms that prioritize expeditious and

⁵ Council Of Fashion Designers of America (Cfda)

⁶ Innovative Design Protection And Piracy Prevention Act (IDPPPA)

economical resolution of conflicts, while simultaneously preserving crucial business relationships.

ADR presents several compelling benefits for addressing disagreements within the fashion realm. It enables parties to appoint an impartial third party – whether a mediator, arbitrator, or specialist – who possesses both legal acumen and specific technical expertise within the fashion industry. The confidentiality inherent in arbitration proceedings protects sensitive business information from public disclosure, which is concerning for a fashion brand. Arbitration in India is primarily governed by the Arbitration & Conciliation Act, 1996. This Act allows parties to choose their arbitrators⁷ and establish the procedure for conducting arbitration hearings. In the context of the fashion industry, it has enabled quicker and more private resolution of disputes, as specified in the agreement. The arbitration tribunal is not bound by the Code of Civil Procedure, 1908, allowing greater flexibility in procedural rules and enabling a more efficient and tailored approach to dispute resolution based on the parties' agreement.

To optimize dispute resolution within the fashion sector, the WIPO⁸ Center engages in close cooperation with pertinent organizations and stakeholders. This collaborative strategy encompasses initiatives such as the joint organization of events and training programs, alongside the development of customized ADR frameworks. Notable partners in this undertaking include influential bodies like the Singapore Fashion Council (SFC) and the Camera Nazionale della Moda Italiana (CNMI).

In the case of *Prada S.A. v. Caporicci USA Corp*, a dispute arose between Prada and Caporicci regarding a deal about baby alligators. Caporicci didn't give Prada enough and wouldn't give back the extra money Prada paid. Instead of a long court fight, they used a special way called international arbitration. This was like a fair judge outside of regular courts. This special way helped them solve the problem faster and privately. The people in charge of the arbitration said

⁷ Arbitration And Conciliation Act 1996, § 11

⁸ World Intellectual Property Organization (WIPO) (n.d.) *Fashion Law*. Available at: <https://www.wipo.int/amc/en/center/specific-sectors/fashion/>

Caporicci had to give Prada money back for the alligators they didn't get. Caporicci also had to pay for the arbitration process, and a sum for Prada's lawyer fees.

Challenges in the Field of Arbitration & Fashion Law

The main challenge faced by the fashion industry is the threat to its protection. The creation of style must be protected. Each fashion outlet distinguishes itself by its label, which is subject to protection from other products and services. The protection must extend not only to the design and the fashion but also to the subject itself.

Enforcement and compliance with IP laws are another challenge in this field. The arrival of fast fashion refers to clothing designs that rapidly travel from the catwalk to the shops and online stores to meet current trends and influence impulsive buyers. The most widespread legal challenge in fast fashion is counterfeiting, which includes the selling of replicas or copies of designer products. Fast fashion is not based on originality but instead is based on selling copies of designer brands at affordable prices. Small vendors who have originality in their designs and are innovative with products and designs often face challenges in the fast fashion industry and become victims of counterfeiting. Fraud and cybersecurity issues are prevalent in the fashion market. Most fashion markets do not operate on a storefront basis; products are often sold online on non-verified websites. These websites do not have any consumer policies, which undermines brand integrity and puts the consumers at risk of data breaches, spam calls, credit card information theft, online payment fraud, and other cybersecurity issues. Fast fashion typically fails to provide important information about their supply chains, making it difficult to trace their data footprint. Additionally, the absence of return policies further complicates efforts to address these concerns. The environmental impact of the fashion industry is significant. The industry relies on low-quality materials, making it unsustainable. As a result, there is overconsumption by the consumers, who purchase more than required, contributing to environmental pollution. Cheap quality materials often consist of synthetic fibers, and on washing, they shed microplastics, which pollute the environment. Synthetic materials like nylon, spandex, and polyester are the biggest contributors of microplastics. Low-quality products are disposed of and subsequently end up in landfills as they are non-recyclable. They are burned and release harmful gases. The UN

reports that the textile industry consumes large amounts of water, particularly for the dyeing processes, and this water consumption, along with other factors, unknowingly impacts public health⁹. The Boston Consulting Group's most recent consumer sentiment survey¹⁰ found that not only is consumer awareness of the sustainability outcomes from fast fashion growing, but it has an impact on consumer purchasing decisions.

Fast fashion companies are frequently criticized for failing to comply with minimum wage laws, resulting in low pay and substandard working conditions that undermine workers' well-being and productivity. While certain brands endorse higher wage standards and participate in initiatives such as the International Accord on Health and Safety in the Textile and Garment Industry, others have been accused of perpetuating labor exploitation, particularly in developing countries. Additionally, the use of arbitration clauses in employment contracts can restrict workers' access to judicial remedies for wage-related claims and labor disputes. This contractual limitation may impede efforts to challenge exploitative practices and secure fair compensation for affected workers¹¹.

Arbitration as a Viable ADR Method

As fashion is a creative industry whose profits are linked to the success of branding, it relies heavily on intellectual property ("IP"). At the most basic level, IP protection comes in three forms: trademark, copyright, and patent. A trademark, which can be registered or unregistered, is a distinctive sign that identifies certain goods as those produced by a specific entity, which includes logos, words, or names. While both jurisdictions allow parties to shape the arbitration process and uphold the finality of awards, the U.S. system offers greater procedural flexibility due to the absence of rigid evidentiary or procedural rules. Indian arbitration, though supportive and adaptable, operates within a somewhat more regulated statutory framework, with courts retaining a slightly broader scope for intervention. While India has a well-

⁹ United Nations (2025) Fashion industry must respect rights of workers, says UN expert. UN News. Available at: <https://news.un.org/en/story/2025/03/1161636>

¹⁰ Pulse of the Fashion Industry, Global Fashion Agenda & Boston Consulting Group (2017), <https://www.globalfashionagenda.com/publications-and-policy/pulse-of-the-fashion-industry>

¹¹ Ross, E. (2021) Fast Fashion Getting Faster: A Look at the Unethical Labor Practices Sustaining a Growing Industry. International Law and Policy Brief. Available at: <https://studentbriefs.law.gwu.edu/ilpb/2021/10/28/fast-fashion-getting-faster-a-look-at-the-unethical-labor-practices-sustaining-a-growing-industry/>

established legal system, traditional litigation can be time-consuming and costly. For the fashion industry, where trends change rapidly, delays in dispute resolution can be particularly detrimental. Additionally, the formal nature of court proceedings may not be ideal for preserving ongoing business relationships, which are often crucial in the fashion sector. To give a further digital thrust to the economy, the Indian Government in its Union Budget of 2022 has announced medium to long term plans to strengthen India's technological and digital outreach, especially around innovations, new modes of digital currency/ payments, and the development of local logistics, etc.¹² Such initiative to foster growth in this space of the fashion industry is likely to have a positive impact on the economy. The sector, due to its promising economic outlook and borderless outreach, has seen bootstrapped companies such as Nykaa Fashions giving commendable performance in the fashion industry. This success led to the company eventually going public by announcing its initial public offering and getting listed on the National Stock Exchange of India and the Bombay Stock Exchange. It is safe to make an assumption and argue that, on a daily basis, consumers are becoming more mindful, aware and are willing to diversify their clothing choices. To stay relevant during retail apocalypse caused due to Pandemic and to catapult the financial difficulties, in recent past, we have seen an increasing trend of brand collaborations of acclaimed designers with leading business houses, such as The Reliance Group acquiring significant percentages in Abraham Thakore, Rim Kumar's Ritika Private Limited and launching a joint venture with couturier Anamika Khanna, Reliance Brands acquiring 51% stake in couturiers Abu Jani Sandeep Khosla.¹³

Further, in the last two years, the Aditya Birla Group has also announced collaborations with the famed Sabyasachi Couture, the House of Masaba, and Tarun Tahiliani. Such collaborations interalia have provided an unparalleled opportunity to the luxury brands to curate products for the segment and market, which were unexplored till date. Due to India's rich aesthetic couture, India will continue to enjoy a niche both in domestic and international markets. To tap the

¹² Arindam Sarkar & Komal Gadia, Seismic Shift of Luxury Brands in India, 15 INT'L. IN-HOUSE COUNSEL J. 7893 (Summer 2022).

¹³ Arindam Sarkar & Komal Gadia, Seismic Shift of Luxury Brands in India, 15 INT'L. IN-HOUSE COUNSEL J. 7893 (Summer 2022).

growing trajectory of the e-commerce market in India, we will continue to see an increasing trend of brand collaborations in India. However, such collaborations require deeper legal assessment IP rights must be promptly transferred and registered post-acquisition to avoid infringement issues. Volkswagen's failure to secure the Rolls-Royce trademark highlights the risks of poor IP due diligence in M&A deals not directly related to fashion; however is a reference made to understand indirectly.¹⁴

India is a diverse country with various regional and cultural nuances that can influence business practices and dispute resolution. Arbitration offers the flexibility to conduct proceedings in a manner that respects these cultural sensitivities, which can be crucial for maintaining positive business relationships. The fashion industry values confidentiality, especially concerning sensitive business information like designs, manufacturing processes, and marketing strategies. Arbitration provides a private forum for dispute resolution, ensuring that such sensitive information remains protected and does not become part of the public record. India is a signatory to the New York Convention, which facilitates the enforcement of international arbitral awards. This is particularly important in the fashion industry, where transactions and disputes often cross borders, making the recognition and enforcement of arbitral awards¹⁵ essential.

Brand Wars: Court Decisions

1. Aditya Birla Fashion and Retail Ltd. v. Manish Johar¹⁶

The Aditya Birla Fashion and Retail Ltd., the owner of the famous menswear brand Peter England, discovered that a store in Kanpur, Delhi, was misusing the brand name on the signboard and documents. They also found that fake products under their Allen Solly brand were sold with forged labels. In order to safeguard their rights and prevent prolonged court hearings, the issue was resolved through arbitration as a temporary remedy. The Delhi High Court issued an interim injunction, restraining the shop from trading on the trademarks, demonstrating how arbitration processes can quickly halt infringement and save consumers

¹⁴ Arindam Sarkar & Komal Gadia, Seismic Shift of Luxury Brands in India, 15 INT'L. IN-HOUSE COUNSEL J. 7893 (Summer 2022).

¹⁵ Arbitration And Conciliation Act 1996, § 49 (New York convention)

¹⁶ Aditya Birla Fashion and Retail Ltd. v. Manish Johar (2019) *TM No. 7/2017*, Saket District Court, New Delhi, 28 May.

from confusion. The process provided quick relief and safeguarded brand identity without lengthy litigation.

2. Adidas AG v. Export Fashion¹⁷

In this case, the plaintiff, Adidas AG, a German multinational company famous for sports accessories and clothing, enjoyed sole rights over its trademark and had adhered to the provisions of the Copyright and Trademark Acts. The defendant, who operated a wholesale business in sports accessories and clothing, was accused of faking the plaintiff's trademarks and selling products of lower quality, thus causing harm to the goodwill of the plaintiff. The court held the defendant guilty of infringing on the exclusive rights of the plaintiff and granted a permanent injunction, prohibiting the defendant from applying the labels of the plaintiff and doing business in counterfeit goods. The court also granted the suit costs to the plaintiff, asserting that the long use of the trademark had created an inalienable right and nexus for the plaintiff in its goods and services.

3. Yves Saint Laurent (YSL) v. Brompton Lifestyle Brands Pvt. Ltd.¹⁸

The dispute arose when Brompton continued operating a YSL boutique in Delhi after the termination of a franchise agreement between YSL and Beverly Luxury Brands. YSL terminated the franchise due to contractual breaches and asserted that Brompton, which claimed sub-franchise rights through a supply agreement, had no authorization to use YSL's trademarks or run the boutique. Brompton initiated arbitration proceedings, relying on its agreement with Beverly, but the core issues before the court were whether Brompton had any rights to operate the boutique, the validity of its arbitration claims against YSL, and the alleged trademark infringement. The court held that Brompton was unauthorized to use YSL trademarks or operate the boutique, noting that the supply agreement had been terminated along with the franchise agreement. It ruled that Brompton's arbitration claims were not maintainable due to a lack of privity with YSL and issued an injunction restraining Brompton from using the YSL marks.

4. M/S Inspiration Cloths & U v. Yash Traders¹⁹

¹⁷ Adidas AG v. Export Fashion (2018)

¹⁸ Yves Saint Laurent (YSL) v Brompton Lifestyle Brands Pvt Ltd (2019) Delhi High Court.

¹⁹ M/S Inspiration Cloths & U v Yash Traders (2014) Delhi High Court.

A dispute involving a commercial textile and fashion contract was resolved through arbitration, as stipulated in the agreement. After an arbitral award was rendered, the losing party challenged it under Section 34 of the Arbitration and Conciliation Act, 1996. The central issues were the validity and enforceability of the arbitration agreement and the grounds for setting aside the arbitral award. The Delhi High Court upheld the arbitration clause and enforced the award, emphasizing the judiciary's limited role in interfering with arbitral decisions. The judgment reinforced the principle that arbitral awards in commercial disputes should be treated as final and binding, thereby promoting efficiency and autonomy in dispute resolution.

5. Renusagar Power Co. Ltd. v. General Electric Co.²⁰

This landmark Supreme Court decision dealt with the enforcement of a foreign arbitral award under the NYC. The issue before the Court was whether the Indian courts can refuse enforcement on the ground that the contract is governed by Indian law and the award was made outside India. The Court held that the NYC applies to awards made in foreign countries regardless of the governing law of the contract. It emphasized the pro-enforcement bias of the Convention and limited grounds for refusal under Article V. This ruling established that Indian courts must enforce foreign arbitral awards unless one of the narrow exceptions applies, facilitating cross-border dispute resolution.

6. Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.²¹

The case involved enforcement of a foreign arbitral award and challenged delays in enforcement proceedings. The Court examined the scope of judicial review and the need for expeditious enforcement of foreign awards. The Supreme Court reiterated the limited scope of judicial interference and emphasized the importance of speedy enforcement to uphold the spirit of the NYC. This judgment strengthened the enforcement regime, discouraging dilatory tactics and ensuring that foreign arbitral awards are executed promptly.

Suggestions

²⁰ Renusagar Power Co. Ltd. v. General Electric Co., (1994) 1 SCC 644

²¹ Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 5

To address the global challenges in the field of fashion law and arbitration, the following are a few general recommendations:

1. Focus on sustainable fashion. H&M's case of sustainable fashion where an old clothes policy involves a garment collecting program where customers can bring unwanted clothing and textiles to H&M stores. In return, customers receive a voucher for a discount on their next purchase. H&M partners sort the collected items into categories for reuse, repurposing, or recycling
2. Arbitration is typically less expensive than litigation because it involves streamlined procedures, limited discovery, and fewer formalities. This helps fashion brands, especially emerging designers and SMEs, manage legal costs effectively
3. Arbitration proceedings are private, keeping sensitive information such as trade secrets, design details, and business strategies out of the public domain. This protects brand reputation and prevents negative publicity that could arise from public court cases.
4. Arbitration's less adversarial and private nature helps maintain ongoing commercial relationships, which is crucial in industries where collaboration and reputation matter
5. Parties can choose arbitrators with specialized knowledge in the relevant industry or legal area, leading to more informed and appropriate decisions compared to generalist judges
6. Arbitration is a valid, enforceable, and efficient dispute resolution method for fashion contracts and IP disputes.

Conclusion

The fashion industry must take an active role in shaping its dispute resolution landscape. A dedicated ADR system would not only address immediate legal concerns but also ensure that fashion remains a space where both legacy and emerging voices can thrive. Multiple types of disputes can be found in the fashion industry, depending on when the creator is at their creative stage, to the very end when the product has been finalized and is out in the market. It can be understood that it is significant to establish separate departments that deal with disputes arising

from the fashion sector under existing arbitration centers or establish independent arbitration centers such as WIPO and the Japan Intellectual Property Arbitration Center. Arbitration clauses are now commonly incorporated into fashion-related agreements to provide a neutral forum for resolving conflicts that may arise during brand acquisitions or collaborations. These clauses are tailored to the specific needs of the parties, ensuring that disputes over trademarks, copyrights, design patents, or contractual performance can be resolved by arbitrators with industry expertise. The use of arbitration not only streamlines dispute resolution but also supports the protection of brand value and fosters smoother business relationships, even in the face of complex issues such as innovation strategies for sustainability commitments. By integrating robust arbitration provisions into their contracts, fashion companies can better manage legal risks associated with partnerships, safeguard their intellectual property, and maintain operational continuity in a rapidly evolving global market. No strictly reported arbitration award in India in a fashion law dispute prevails as this sector is at a nascent stage and also an emerging field in law; however, the legal framework supports arbitration for commercial disputes in this sector. It is possible to resolve any dispute if arbitration clauses are present. This approach safeguards the industry's reputation, intellectual property, and valuable business relationships.