

Fashion Industry Wins First Battle Against Copy Cats in Landmark Judgement - Ritu Kumar Triumphs in IPR Case

If you think you traced the sketch of a just-launched hot selling designer garment, but filled in different colours, you still can not get away from the long arm of the law. It is now possible to penalise the copycats through a proper process of law under Indian Copyright Act — after a Delhi court on June 24 last ruled that Ritu Kumar's designs were original and ordered Kolkata-based dealer to stop manufacturing and selling her lookalikes. Seen as a victory of original masters over the copycats, the first-ever judgement in the history of Indian garment industry could also open a Pandora's box if all the aggrieved designers beeline to the court, with complaints of copying of their designs which is so rampant in the garment industry.

Six-year-long legal battle against the plagiarists ended in victory for Ritu Kumar after court ruled in her favour and ordered plagiarists to pay her the litigation costs also.

Ritu was represented by trademark and intellectual property lawyers Shwetaree Majumder and Nidhi Chopra from Anand and Anand advocates.

The judge in his order said: "Defendant no.1 (Ashwini Aggarwal) and his partners, officers, servants, agents and all other acting on its behalf are restrained from reproducing, printing publishing and distributing or offering to sell designs in any form whatsoever that are a colourable imitation or substantial reproduction of the plaintiff's (Ritu) drawings/sketches, templates, film tracings, screens, engraving and/or fabric designs pertaining to the imitation of four prints..."

These four prints — *Buland*, *Medalion*, *Ambi* and *Minakari* — were arrayed as originals by the designer Ritu Kumar in the court. Apart from the garment manufacturer Ashwini Aggarwal, the designer had sued two printers, and the screen maker who worked for Aggarwal apart from the showroom owner who showcased Ritu's fakes.

During arguments the judge observed that the defendants were "obviously aware of the extensive reputation enjoyed by the plaintiff's company and has blatantly attempted to build an unlawful deceptive trade, involving the piracy of her intellectual property rights,

- What was infringed?**
- Drawing and Sketches
 - Templates
 - Film Tracings
 - Engravings
 - Fabricated Garment

combined with the misuse of her trademark *Ritu's*."

Ritu told court that each batch of fabric that comes out of her factory bore a distinctive stamp that symbolises her creativity. These designs are produced in limited editions so as to retain the exclusivity.

She uses best fabric such as pure cotton, silk and crepes as printing base and then these fabrics are tailored into three piece ensembles — *kurta*, *pyjama* or *salwar* and *odhani* or *dupatta* — of which no two areas are same. The front, back, sleeves, *odhani*, all over design, end-pieces and the design of *salwar* are all different, though coordinated in a unique way and created for the first time.

No one can accidentally arrive at the same mix of coordinates, she argued. It is the result of a painstaking research and effort, involving great amount of money and time, to ensure complete originality. For instance it would require 60 to 100 stencils or screens to create one design.

"The sketches, drawings, templates, film tracings and screen printed fabrics — each are original artistic works which are subject matter of copyright within the definition of Section 2 of Copyright Act, 1957 which includes 'artistic work', a

'drawing', a 'photograph', an 'engraving' and a work of 'artistic craftsmanship'," Majumder argued.

"Both the fabric design and the trademark *Ritu's* are virtually the plaintiff's signature and have acquired a secondary meaning as denoting goods and business of Ritu Kumar, and none else," he said.

"The plaintiff's drawings are original and the possibility of

third party arriving at exactly the same combination of the layout and get-up does not arise as there are myriads of influences in designs which have been contemporised to suit modern design needs by her designers. Therefore the deceptive similarity between the plaintiff's fabric and those being produced by the defendants is not accidental but deliberate," Majumder contended in the court.

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