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Exploration and Research on the Protection of Intellectual Property Rights in China's Fashion Design

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Abstract: In today's society, which has continued to develop for decades after the reform and opening up, people's material living conditions have been greatly satisfied, and they have gradually changed from "lack of food and clothing" to "food and clothing". China is the most populous developing country in the world and has great potential for development in the garment industry. However, due to the lack of intellectual property rights in the protection of clothing design in China, plagiarism and counterfeiting in this field have emerged in an endless stream, and they have been repeatedly prohibited. In view of this situation, this paper suggests that China can issue special regulations to classify clothing as a separate type of object and be protected by copyright together with other objects, and then creatively combine copyright protection with design patent protection. In addition, the law can recognize the use of any means of reproduction, and at the same time set up a simple and fast patent examination path, in the hope that the wind of "borrowing" in the market can be calmed down, so that those miserable clothing companies and designers can feel at ease, and China's clothing industry can flourish healthily.

Keywords: Costume design; Design patent rights; Copyright; Legal Protection

1. Introduction

Tracing the history of clothing, we can trace it back to the beginning of human beings, and it has continued to evolve and develop with the development of human civilization. In addition to basic warmth and shelter, more and more human beings are now carrying the idea of the world. People borrow clothing to show their aesthetics and beautify themselves and their lives^[1]. However, with the development of social economy and the increasingly fierce competition in the clothing market, people's utilitarianism has gradually increased, and they have begun to take the "wild road" to obtain greater economic benefits. Counterfeiting and plagiarism in the clothing market come and go, and these businesses steal other people's design ideas for their own benefits, which has become a headache for many clothing companies and designers, and at the same time, in the long run, it is not conducive to the healthy development of the market.

2. The current situation and problems of intellectual property protection of clothing in China

2.1 The Copyright Act gives legal protection to clothing

At the beginning of the legislation, China's copyright law adopted the model of "enumerating the bottom" to limit the objects that meet its scope, but there is no clothing design in it. Although many experts and practitioners have been calling for more attention to the intellectual property rights of clothing, there <Copyright Law of the People's Republic of China> is still no trace of clothing in Article 3 of the Copyright Law, as amended for the third time according to the Decision on Amendment issued by the 23rd Session of the Standing Committee of the 13th National People's Congress on November 11, 2020^[4].

However, in actual application, there are still many difficulties, which can be summarized as the following points:

2.1.1 Difficulties in clothing style innovation

Changes and innovations in clothing styles are an important reference factor in separation testing. However, clothing has evolved with the development of human society to this day. Although styles and styles are ever-changing, they remain unchanged. Many changes are just splitting and reorganizing on the original basis. It is far from meeting the standards to be considered original, so it is very brain-consuming and difficult to innovate in style. In the famous copyright dispute case between Huasi Group and Mengyan Company, the second-instance court held that there was no distinctiveness and high artistic appreciation, and it was just a rearrangement of some common elements in clothing design, which could not meet the originality requirements^[7].

2.1.2 It is difficult to identify plagiarism in ready-to-wear clothing

There are many points of contention in clothing infringement cases, the most common of which is the plagiarism of ready-to-wear. The

Bernier Convention for the Protection of Literary and Artistic Works (hereinafter referred to as the "Bernier Convention") allows member states to include clothing as "works of applied art" in the scope of protection of copyright law, but there is no such provision in China's copyright law. Although China is also a member of the Bernier Convention, and Article 6 of the Provisions on the Implementation of International Copyright Treaties issued on September 25, 1992 also clearly states that the term of protection for foreign works of applied art is 25 years from the completion of the work, in judicial practice, the application of this provision is only a handful, and there is still a suspicion of "supra-national treatment"^[8].

2.1.3 The nature of the clothing model is controversial

As mentioned earlier, the birth of a ready-to-wear must go through three steps from the design to the garment model and then to the ready-to-wear, and the garment model is an indispensable transition. Clothing design drawings are composed of points, lines, and surfaces, so they can be protected by the Copyright Law as graphic works, but there are great differences in judicial practice in determining the nature of clothing models. For example, the court of second instance in the case of infringement between Shanghai Faxun Dihe Trading Co., Ltd. and Guangzhou Wanxiang Trading Co., Ltd.^[9] (hereinafter referred to as the "Pingbu Qingyun case") and the court of second instance in the case of Shanghai Lukun Garment Co., Ltd. v. Shanghai Rongmei Brand Management Co., Ltd. and Suzhou Rihe Rongmei Trading Co., Ltd. (hereinafter referred to as the "Rongmei case") held that the clothing designer and pattern maker had paid the same intellectual labor to the clothing model drawing, and that it should be regarded as a graphic work and be protected by the Copyright Law.

If the clothing can be recognized as a work and is copyrightable, the next step in determining whether it is plagiarism is to determine whether the two are substantially similar, which generally adopts the consideration standard of "contact substance similarity". Objectively, the first step is to distinguish between ideas and expressions in fashion design and focus on expression, the second step is to put aside the existing public expression and the objective part that fully reflects the form of things, and finally compare and judge the remaining parts. Subjectively, according to the "ordinary observer" test in the United States, the general public is the subject of identification, and their feelings are the measure of this judgment method. This test method has also been applied in judicial practice in China^[10].

2.2 Patent law gives protection to clothing

Clothing designs can borrow the protection model of industrial designs, which has also been recognized by the World Trade Organization. But in our country, this method has not been promoted. With the rapid development of the garment industry, it needs a timely and complete intellectual property legal system to escort him, but according to China's current patent law system, it cannot provide effective protection. This also causes a great mismatch between the number of clothing design patent applications and the status quo of China's booming clothing industry. The author summarizes the reasons as follows:

First, China's garment enterprises and designers lack the awareness of design patent protection. According to the survey data in Table 1, the effective number of clothing design patents has grown rapidly in the past five years, from only 700 in 2017 to 3,071 in 2022, an increase of three times in five years, but the proportion of the effective number of design patents in the country is still low, and by 2022, this proportion will only exceed 0.1%. The grant of a patent is passive, and in order to obtain a design patent, the right holder needs to take the initiative to file an application. Before that, the right holder should consult the relevant laws and regulations, understand the corresponding application procedures, and submit valid application documents. From the data, it can be seen that the current situation of China's clothing design patent authorization is not ideal, and clothing enterprises do not respect the method of applying for design patents.

Table 1. From 2017 to 2022, the effective number of design patents and clothing design patents in China is compared.

year	Effective number of clothing design patents (pieces)	Effective Number of Design Patents in China (Pieces)	Proportion (%)
2017—2018	700	1346915	0.052
2018—2019	837	1495596	0.056
2019—2020	1402	1671586	0.084
2020—2021	1910	2961859	0.064
2021—2022	3071	2453506	0.125

Second, the design patent application spans a long period of time and the procedures are cumbersome. In China, design refers to a new design that is aesthetically pleasing and suitable for industrial applications on the whole or part of the shape, pattern or combination thereof, as well as the combination of color and shape and pattern. It can be seen from the concept that China has set high requirements for patent applications for product designs, which include a series of complex and lengthy procedures such as filing, acceptance, examination, publication, and authorization, and this cycle takes at least 6 months^[11].

2.3 The protection given to clothing by trademark law

Since its inception in 1991, French luxury footwear brand Christian Louboutin has been emphasizing the brand's relevance to red-soled shoe design, with the aim of reaching a point where people recognize the brand as soon as they think of the "double C" logo. Since 2003, the brand has promoted "red-soled shoes" products in China, and officially entered the mainland market in 2012, with sales of more than 900 million yuan, which can prove that the brand has formed a certain influence in the Chinese market. However, although the brand had successfully registered a trademark for red-soled shoes in the UK as early as 2007, its trademark application for red-soled shoes in China has not been approved due to Chinese law. Although the reasons for the reconsideration of the Trademark Review and Adjudication Board by the courts of first instance and the court of first instance were not the same, it can be seen from the victory of Christian Louboutin that the court recognized that this combination of "position colors" should be protected by trademark law.

3. Conclusion

The speed of development of the apparel industry is amazing, especially represented by the garment industry of "fast-selling" brands, which may have monopoly agreements, price discrimination, abuse of market dominance and other violations of the "Anti-Unfair Competition Law" and the "Anti-Monopoly Law" in terms of product price positioning and brand market development, so the legal protection of clothing design needs to be particularly rigorous for further research.

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