

THE ROLE OF INTELLECTUAL PROPERTY RIGHT (IPR)
IN PROTECTING FASHION INDUSTRY
IN MELAKA

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‘Saya/Kami* akui bahawa telah membaca karya ini dan pada pandangan saya/kami* karya ini adalah memadai dari segi skop dan kualiti untuk tujuan penganugerahan Ijazah Sarjana Muda Pengurusan Teknologi (Inovasi Teknologi)’

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DECLARATION

"I acknowledge this report is my own work except the summaries and quotes I have explained each of the sources"

Signature :

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Date : 11 June 2019

To all who involved in this research, either directly and indirectly.

I couldn't have done this without you.

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ABSTRACT

This research is studying about the Role of Intellectual Property Right (IPR) in Protecting Fashion Industry in Melaka. The purpose of this research contain three main objectives. The first one is to identify the role of IPR in protecting fashion industry in Melaka. Next is to examine the factors of fashion industry to be protected under IPR and lastly is to recommend better IPR for fashion industry in Melaka. The procedure of collecting the data is using qualitative method through interview. Interview session with four respondents from fashion design companies in Melaka is made to gather the data needed in order to answer the research questions. Analysis shows that all respondents had protected their intellectual property under IPR Law in Malaysia. All companies had registered under the Trademark Law meanwhile one of them had registered their design under Industrial Design Law under Intellectual Property Corporation of Malaysia (MyIPO). The finding also found out that the significant role of IPR in protecting fashion industry in Melaka is protect brand of the companies as all companies wanted to avoid people from copying and riding their brand. Meanwhile, the major determinant for the company to protect their intellectual property is to protect their company's reputation because brand is used to distinguish their brand from competitor. To recommend better IPR for fashion industry, awareness of designers, public and authority role with the existence of IPR is important to make sure the to make sure IPR roles as protection tool can be effective and foster more creativity in the industry.

ABSTRAK

Kajian ini mengkaji tentang Peranan Hak Harta Intelek (IPR) dalam Melindungi Industri Fesyen di Melaka. Tujuan penyelidikan ini mengandungi tiga objektif utama. Pertama adalah untuk mengenal pasti peranan IPR dalam melindungi industri fesyen di Melaka. Seterusnya adalah untuk mengkaji faktor-faktor industri fesyen untuk dilindungi di bawah IPR dan akhirnya adalah untuk mengesyorkan IPR yang lebih baik untuk industri fesyen di Melaka. Prosedur pengumpulan data menggunakan kaedah kualitatif melalui temuduga. Sesi wawancara dengan empat responden dari syarikat reka bentuk fesyen di Melaka telah dijalankan untuk mengumpulkan data yang diperlukan untuk menjawab soalan penyelidikan. Analisis menunjukkan bahawa semua responden telah melindungi harta intelektual mereka di bawah Undang-Undang IPR di Malaysia. Semua syarikat telah didaftarkan di bawah Undang-Undang Tanda Perdagangan sementara salah seorang daripada mereka telah mendaftarkan reka bentuk mereka di bawah Undang-undang Reka Bentuk Perindustrian di bawah Perbadanan Harta Intelek Malaysia (MyIPO). Penemuan ini juga mendapati peranan penting IPR dalam melindungi industri fesyen di Melaka adalah melindungi jenama syarikat kerana semua syarikat focus untuk mengelak daripada pihak yang cuba menciplak jenama mereka. Sementara itu, penentu utama syarikat untuk melindungi harta intelek mereka adalah untuk melindungi reputasi nama syarikat mereka kerana jenama digunakan untuk membezakan jenama mereka daripada pesaing. Bagi mengesyorkan IPR yang lebih baik untuk industri fesyen, kesedaran pereka, peranan awam dan kuasa pihak IPR dengan kewujudan IPR adalah penting untuk memastikan untuk peranan IPR sebagai alat perlindungan yang berkesan dan memupuk lebih banyak kreativiti dalam industri.

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CHAPTER 1

INTRODUCTION

1.0 Introduction

Clothing choices specifies how people interpret a form of culture for their own purposes. Fashion can be seen as an encouragement to dress in certain way and simultaneously about a way of an individual expressing themselves (Hebdige, 2012). Fashion are not generally only about clothing. Fashion is about something we deal with everyday and one certain thing in this matter is fashion world is changing. New fashion ideas peppers through videos, music, books and television. This creates values in the fashion industry which leads fashion as a big business. More people are involved in buying, selling and production of clothing than other business in the world (Kapferer, 2012).

In 2017, the global fashion industry represents the world's 7th largest economy (Amed et. al, 2018). They are extremely competitive and fast and they need protection. Huge intellectual capital is invested in the creation and marketing of fashion products, which is why a few large fashion houses utilise variety of intellectual property (IP) tools in order to protect their intellectual property (Pisano & Teece, 2007). Intellectual Property Right (IPR) plays it role over this matter. It is a type of property that includes intangible creations of human intellect and encompasses copyright, patents,

trademarks, geographical indication and industrial design (Sople, 2016). They moves against unfair competition.

Hermes is one of instances of branding protection under IPR. This French luxury brand uses trademark registration portfolio of brand in plain word of “HERMES” and logo forms. Strategic use of IP assets giving the brand rights in establishing and growing their market position for a fashion label that seeks to differentiate itself from its competitors by investing in creativity (Hebdige, 2012). Appropriate use of the tools of IP can also create interest from the investors, enhance the value of a business and facilitate commercial negotiations, particularly for those that involves licensing and franchising arrangement (WIPO, 2018)

It is very well known that IP play a vital role in the modern economy with the right given to their owners. It is a strong tools uses by many industries to protect investments, time, money, effort invested by creator of the IP since it grants an exclusive right for a certain period of time to the creation (Saha & Bhattacharya, 2011). Thus, IPR aids the economic development of a country in promoting better way of competition and encourage development of industry and growth of economy including fashion industry.

1.1 Background of the study

Fashion indicates anything that is in the current trend in look and dress up of a person including clothing, footwear and accessories. Fashion represents life of person that shows how creative, interesting, stronger and complicated a person is (Medine, 2017). The purpose of fashion is a necessity and not only about trends (Kim & Ko, 2012). Fashion is also an expression of a person personality and way of they represent themselves to the word. It also a form of creation of a person, an art that a person embrace and turn into a piece of a material to express their ideas and way of wordless communication (Medine, 2017). The concept of fashion will change accordingly through a person perspective and opinion.

Every year fashion changes through new look, new dimension, which could be pessimistic or optimistic for the business. Fashion industry across the globe undergone transformation in the past two decade due to various changes in business environment such as outsourcing, fast seasonal change and mass production (Bhardwaj & Fairhurst, 2010). It can be loosely categorize into two general areas which is those that are carried and those that are worn. Carried fashion includes handbags, glasses, wallets and meanwhile worn fashion are clothing, jacket, shoes, belts, watches, jewelery, scarves and stocking (Ampomah, 2016). This study covers the general areas of fashion which is clothing apparel, textiles and scarves.

Fashion design products relate to aesthetic appeal or innovative ornamentation which they are the centre of the fashion industry (Xinbo, 2012). In the industry area, fashion earn multibillion dollar per year only by making and selling clothes. Fashion runways and fashion shows are the biggest influence of fashion industry expansion as it bring fashion-conscious exposure to the consumer (Bhardwaj & Fairhurst, 2010). Where it all started from a custom-made production in 19th century and as the technology and global development rise, clothing had increasingly being mass-produced.

Meanwhile, intellectual property (IP) refers to a protection of creation of the mind which contains moral and commercial value. The value refers to an intellectual acts of some sort may or may not be invariably present when interest is taken in an object (Alikhan & Mashelkar, 2009). IPR laws grants the author of the creation an exclusive right for exploiting and benefiting from their creation (Landes & Posner, 2009). This is called monopoly right. IP also confers individuals, enterprises or other entities the rights to prohibit others from using their creation (WIPO, 2018). Type of protection are depending on which category the creation falls under. It is either copyright, trademark, geographical indication, trade secret, industrial design and patent.

IPR ensure the availability of the genuine and original product (Sharma, 2018). As instances, patent and copyright are an important means used by firms in protecting company's investments in innovation (Srinivasan, Shankar & Holloway, 2002.). Despite being an advantages to the creators, IPR also have its own flaws. The monopoly right given can discourage the community in being inventive as patent of idea may prevent the owner of a property to utilize it according to his wishes (Rajec,

2013). This condition has put IP as a tool that bring both advantage and disadvantage either to their own creator as well as the consumer.

Intellectual property is a core asset of fashion business growth and an opportunity for designer to display their creative talent, attract media attention freely which in the same time build awareness upon their brand (Lewis, 2018). Industrial design, copyright, trade dress, design patent and trademarks are tools offered by IPR in each countries for fashion protection. The offer of protection are different according to the country as trade dress enforcement are available only in the United State. Meanwhile in Malaysia context of IP protection towards fashion will be under industrial design. Industrial design protect the visual appearance of a product and can be a valuable commercial asset (MyIPO, 2018). It includes feature of shape, pattern or ornament applied to a finished article that is appeal to the eyes. The function of IPR as a brand reputation guideline, open favourable circumstance for the industry to grow in freedom.

Arguments either fashion should be protected and saved under intellectual property has been going on for years. The US Congress limit the scope of fashion design protection by mainly focus that fashion design falls under seam of traditional IP regime.(Cox&Jenkins, 2005). It argues that fashion industry does not properly have its own regulation to fall under the IP law. Alongside with IP basic goal to given monopoly right to the owner, fashion are afraid to be lack of incentive in creating new design and the whole industry will wither if they gain protection (Xinbo, 2012). Eventhough fashion are valuable human creations it is currently the suffering from an irreparable harm. Such as a case in Malaysia where Ezuwan Ismail copying a design from brand Balmain for a custom made night dress requested by his customer. The case signify that copying other people creation is legal and not wrong as the creator reasoned that the design are made and copied according to the customer request and to satisfy them. It significantly unfair for the owner of the design.

Real versus Steal Sigerson Morrison Huarache Stiletto Sandals is another example of knockoff product which the Angiolini is not an exact copy of the Hurache, but it is very similar in term of the design of the stiletto sandal. This is an answer either the fashion industry should have their own right under the law. Protection of the industry

will not just grant the person a monopoly right but also against infringement and knockoff product. The need of IP for fashion industry is crucial.

IP is valuable. It work as a catalyst for economic development and social and cultural well-being (WIPO, 2018). The sector is slowly recognizing the value of its IP and acknowledge that unauthorized copying not only constitutes infringement of those IP rights, but affecting on their bottom line and reputation. However, they are not always the most effective routes for act since it particularly difficult to prove and enforce especially to register design right that is a more certain and arguable right. Fashion is different from the traditional IP subject matter as it have less innovation compared to copyright and patent subject matter (Xinbo, 2012). Designers demands for their right.

To assist the right of fashion design protection under the Intellectual Property Right law, study of the role of the intellectual property right and the factors of protection towards fashion industry in Malaysia is made.

1.2 Problem Statement

As fashion industry becoming bigger throughout the year, protection becomes important. The industry has change through the rapid global economy, consumer shift and the fashion system itself. Fashion industry has significantly evolved, particularly over the last 20 years. Recent years have seen fashion retailers compete in term of production of apparel, footwear, accessories, watches and jewel, cosmetic and textile with others to ensure speed of their market with their ability to provide rapid fashion trends revealed through fashion shows and runways. The market is highly competitive and the constant need to always following the trend and change of season indicates how fast the industry is moving. It requires huge amount of money and effort investment in design making.

Intellectual property rights (IPR) plays it huge role as a tool in protecting industrial design whereby it is designed to protect the right and interest of persons who are

responsible for the creation of intellectual property. They are not many designers know how intellectual property right works to protect them. The awareness of importance of IP in protecting their creation is still encouraging among designers. Lack of informed IP information may also lead to unprotected design and pattern in the fashion industry.

Despite being the fast moving industry, it still lacking in protecting designers' design and pattern. Rapid movement of the fashion industry leads to growth of illegal action of the free riders which include infringement, imitation and violation towards designer's work. Currently, the Domestic Trade and Consumer Affairs Ministry (KPDNHEP) disposed wide range of counterfeit goods that worth RM1.26 million in Penang collected from January to October 2018. Load of knockoff products have been produce daily and sell in a cheaper price in the market which damages the designer's hard work. These creates a loophole in the fashion industry, as the duration in obtaining intellectual property right is long yet the illegal manufacture already copied and steal their design before it could be protected.

IPR too consist of requirements and subject of matter that the applicant needs to fulfil in order to acquire protection for their design. This requirements are hard surpass such as Industrial Design Act in Malaysia set that a design must state it novelty indicating why and how the design is novel. It is also tough for the designer to identify where their design and fashion belongs to. Since IPR contains different types of protection, different types of fashion category falls under different type of protection. It is either industrial design, trademark, copyright and patent. These factors cause designers to not to protect their design under IPR.

Damages towards designers' works will be continuous if these problems remain unsolved. Thus, this research is important to discuss the role of IPR, factors of fashion industry to be protected under IPR and to recommend better protection right for the fashion industry.

1.3 Research Question

1. What is the role of IPR in protecting fashion industry in Malaysia?
2. What are the factors for fashion industry to be protected under IPR in Malaysia?
3. What is the recommendation of better IPR protection for fashion industry in Malaysia?

1.4 Research Objective

The objective of this project are:

- i) To identify the role of IPR in protecting fashion industry in Malaysia.
- ii) To examine the factors for fashion industry to be protected under IPR in Malaysia
- iii) To recommend better IPR protection for fashion industry in Malaysia.

1.5 Significance of Study

From this research, audience are able to gain knowledge on importance of protection toward designers' work. It creates awareness among fashion industry people to always be conscious with the existence of Intellectual Property Right (IPR) as a tool of design and pattern protection. This research can also be a guideline for them to see clearly on how IPR actually work as property protection.

This study may also be beneficial towards the next researcher who is interested on doing research related to the fashion industry or IPR. They are able to make this research as a reference on the factors on why infringement happened in the industry and role of IPR to protect and goes against infringement. Analysis of this research may

gave a general view from the targeted respondent, which helps the researcher to go deeper about their research regarding this field.

The importance of this study is to educate everyone about the value of fashion industry as a fast moving sector around business area. The speed and expansion of the industry influence them in obtaining IPR for protection and fight against knockoff product. This knowledge can be used as an indicator to acquire respect from the surrounding towards fashion industry and designers' work. It also recommend better view of protection towards industries other than the fashion industry.

1.6 Scope and Limitation of The Study

This study focuses on the protection of fashion industry in Malaysia under Intellectual Property Right (IPR). It is to identify the role of IPR in protecting the industry, the factors of fashion industry in Malaysia to be protected under IPR and to recommend better IPR protection for the industry in Malaysia.

The research will be conducted mainly focus in Melaka. Fashion will be all time favourite industry as the world evolve since the pre-historic and human crave for beauty, thus influences new fashion to be obsolete in any time. Melaka vision to build its own integrated fashion to cater state and national market for fabrics and fashion (Asmaliana, 2009). Transformation of Melaka as a green city, opens bigger market for the fashion industry in Melaka to grow as it integrate urban development in attracting stakeholders and tourist to enter the city (Subramaniam, 2018). With each green city plan countries are moving from away from business-as-usual to forge a clear, concise vision for a city's future based on factors such as comprehensive analysis and consensus among key stakeholders. Respondents for the research paper will be textiles or fabric companies and also boutique that contributed in the fashion industry areas in Melaka. This is in order to validate the aims of this paper project about fashion industries protection in Malaysia.

The limitation that occurs in the study is the schedule of the research as it specifies the timeline according to which the components of this paper research need to be delivered and including the deadline for completion. Another project constraint are the resources and cost as this research involves the financial limitation of resources input. This research paper requires time and money to solve the objective of the study and gathers the data collection to answer the research questions. Furthermore, the scope of discussion also becomes one of the limitation of this study as the researcher does not have many experience in conducting and producing academic paper. The scope and depth of discussion for the paper is compromised in many levels compared to the works of experienced scholar.

1.7 Summary

Fashion shows a self-expression that allows people to try on many roles in life which influence the increase of consumer demands on fashion year by year. Indicating that strategic protection of IP assets is critical to establish a growing market position for the fashion level. Which is why the research questions for this study is to know about the role of IPR protection and the factors for the fashion industry to be protected under IPR. The research seeks to identify the roles of IPR protection in protecting the fashion industry and examines the factors that influences fashion industry to be protected under such right. The study also aim to recommend better IPR protection for the industry to keep growing