

Profiting from Design: An Examination of Attitudes and Perceptions towards Patent Rights Infringement in Consumer Society

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Abstract—The purpose of this study is to critique and examine the infringement of design patents, and their impact on the Malaysian design industry and local consumers. The perspectives of local stakeholders are sought in aspects of their attitudes and perceptions towards design patent rights infringement. A review of secondary literature provides term definitions and statistics to highlight the ongoing challenges surrounding the issue, insights surrounding global intellectual property laws, relevant cases on design infringement, and differences in assessment of rights infringement for design. Another research aim is to discuss design rights infringement in the broader scope of creative works and content found online. The primary research methodology implemented is qualitative interviews with industry professionals, intellectual property agency, as well as local merchants and consumers from both retailing and service sectors who work within Malaysia. The major findings from research show that the benefits of intellectual property registration as a method to protect innovation and creativity are little comprehended. Counterfeit designs are still seen to be acceptable so long as market demand and pricing factors are stronger motivations than owning original or authentic works, and “doing the right thing” to support designers in their pursuit of excellence doesn’t justify avoidance of counterfeit goods which have misappropriated the brand or content owners’ intellectual property rights. Malaysian design practitioners must continue to develop keen understanding of how design rights are substantial investments of creative assets, and whether they work in content production or commercial marketing, educating consumers on the concept of disciplined and ethical consumption choices enables a healthier regard for design ideations, and this would improve social dialogues to create respect for designer input, thus planting a seed of change in consumer attitudes towards purchasing imitation goods.

Index Terms—Consumer attitudes, design patent, infringement, intellectual property.

I. INTRODUCTION

Infringement of design has soared to increasing heights of complexity around the world. Malaysians, with its urban population developing discerning and sophisticated tastes while undergoing rapid development from industrial to a technologically advanced era, have witnessed the incidents of forgeries, duplications and counterfeit goods, seen in permutation of famous brands with recognisable hallmarks

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ranging from packaging, iconic logo-marks, merchandise and other marketing or commercialised collaterals

Inspiration has become a declining commodity for “original works”, as the introduction of multichannel digital and web avenues for designers and brands enables direct engagement with virtual portfolios, catalogues, work samples and promoted content such as found on behance.net, Instagram, YouTube, Facebook, Pinterest, etc. Do designers still have the imperative to claim they own “original” content anymore in an age where copying, plagiarising and open sourcing have made rights protection a near-irrelevant issue that surpasses ownership assertions, such as patent and trademark applications?

To critically answer this question, an overview of the historical backgrounds and implications of design patent rights awareness will be examined in literature, while the second part of this paper analyses the key factors contributing to the widening the scope of design infringement cases and how these emergent issues facilitates (or hampers) rights protection measures to seek a more stable future for creative industry professionals.

The purpose of this study is to scrutinise the infringement of design patents, and their impact on the Malaysian design industry and local consumers. Questions for research are as follows: *How do patent right violations affect attitudes and perceptions of society towards the design industry? What strategies could prevent or reduce patent rights infringement?*

The objectives of study are:

- To understand the definitions and characteristics of design patent rights given under law and the attributable rights imputed to a design owner;
- To examine design practitioners’ range of concerns towards design patent infringement through case literature by identifying public attitudes towards design infringement; and
- To scope the extent of design patent laws as a functional benefit to designers, stakeholder parties or brands seeking protection.

This paper aims to contribute to existing research through documenting qualitative findings among a range of Malaysian stakeholders such as business owners and service industry employees, as this enables an “ordinary consumer perspective” to help practitioners seek solutions to the issue.

It is undeniable that the economic dimension of design patent infringement must be properly accounted for, as designers in the name of justice must seek to address ethical limits of acceptable consumption standards for works and content which will continue to promote authenticity over

forgery.

The next section of the paper reviews a selection of relevant literature on the definitions of key terms before turning to design infringement statistics, global report data and cases for the Asian region.

II. LITERATURE REVIEW

A. Term Definitions

Design Patent Right is one component of the six regimes of Intellectual Property (IP). Unlike other regimes, design patents accord owners' rights in protecting the façade of works from imitation or fraudulent copies. In Malaysia, industrial design registration procedures are governed by the Industrial Designs Act 1996 (552) [1].

The general meaning of infringement is an action that breaks the law or rule [2]. Infringement of registered Design Patent is defined as the unlawful appropriation of design without the consent of the owner, for the purpose of gaining profit, import, export and distribution of infringed brand or content, for which legal proceedings are allowed by the High Court, to enable registered owners to seek remedies claiming rights infringement of design [1: 21-23].

B. Overview of Design Patent Characteristics

The US Supreme Court considers design patent as evaluated through the judgement of visuality, while patent rights are accorded to industrial design and manufacturing of ornaments, shapes and patterns. These are considered intangible and requires proof through visualisation, connoting that verbalisation of visual imagination described by one, such as the owner of the design, can be interpreted differently by others, such as judges or a jury panel, despite evidence proving the designer's intention or concept to the contrary [3].

The downside of appearance-based evaluation is that cases involving untrained judges, tribunals and jury panels may be unfairly heard if said observers have not understood the process of the design that claims infringed rights, particularly in the context of utility patents [4].

Another contention is the "nexus" of commercial success which patent or brand owners seeking redress must establish if the infringement (such as copying) is to be validly argued as evidence of intellectual property misappropriation [5].

Norman [6: 4] states that for the United Kingdom, patent is the legal appropriation of products or processes which are asserted as form of tangible inventions. Patentability of work or content fulfils several criteria: it is derived of new sources, has unique character, bears inventive steps, is industrially applicable and not an excluded subject matter such as software or hardware [6: 1.1.3].

The protection of designs entails either *registered* (none can manufacture, offer, sell import, export, stock or use the product), *unregistered* (shape or configuration of the entire design or a part thereof) or via *copyright* (the right of owner to commercialise the work or to prevent others from reproducing, duplicating, distributing or dealing in infringed copies), as proved in the courts and validated through documentary evidence.

UK law governing unregistered designs provides half of

the benefits and rights protection of registered designs, with qualifying features as novelty and originality, but exclusionary clauses for rights which the courts deem to be against public interest [6: 298-299]. EU law further enshrines these rights under specific conditions: those users have sufficiency of information to recognise the design's novel characteristics and thus, value [6: 18.3].

Design patent is a regime under the laws of Intellectual Property Rights or IPRs in tandem with other statutory forms of ownership rights protection such as copyright, patent and trademarks [7], [8]. Introduced in 1840 to protect the appearance of designs, the first design patent in the US was issued to New York City's Statue of Liberty in 1842 [9].

A US design patent infringement case in 2008 changed the evaluative procedures of infringement lawsuits. In brief, the Egyptian Goddess Inc. (Fig. 1) claimed infringement of the registered four-sided design of the Swisa nail-buffer which had been copied by U.S. Design Patent '389. In affirming judgment by the district court, the Court of Appeals for Federal Circuit (CAFC) shifted from verbal and descriptive to a pure visual test, whereby defence was premised on an "ordinary observer" imagining the novelty of the copy as similar *but not identical* to the appearance of the patented device, through evidence based on tangible visual depiction [10].

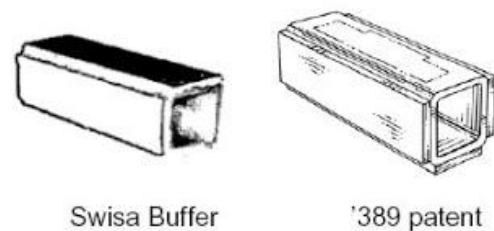


Fig. 1. Egyptian goddess infringement case [30].

Design patent infringement is seen as the hardest battles to be proved in the suite of IP regimes because of current jurisdictional methods that view visual evaluation (appearance) rather than utility as the test of claimed infringement [11]. Legality aside, another more critical concern among stakeholders are the socioeconomic factors that contribute to public attitudinal ignorance about rights infringement despite international attempts to curb the issue, as it is often a conflict of "conscience" in choosing between profits and ethical conduct [12].

C. Design Patents: Comparison of International and Asian Perspectives

Patent infringement has further cast its image as a global political snare with countries experiencing "deep fault lines" setting them apart as "net exporters" and "net importers [13], while harmonisation is still out of sight [14]. Countries recognised as leading producers ("net exporters") of imitation or counterfeit designs are under the watch of the US Trade Representative working collaboratively with the World Intellectual Property Organisation (WIPO) and INTERPOL [15]:

Priority Watch List: Algeria, Argentina, Canada, Chile, China, Colombia, India, Indonesia, Kuwait, Russia, Ukraine,

Venezuela.

The listed countries were identified as challenging for global trade relations due to counterfeit goods production and distribution, online piracy, illegal technology transfer and other infringements which undermine competitive advantages in innovation and creativity [15].

From the watch list, China is recognised globally for rampant design patent infringements. China’s IP mechanisms have been revamped to introduce Design Patent Rights through tighter policies to control the manufacture of imitation products believed to infringe original local designs for exploitative profits. Nevertheless, China (Fig. 2) is noted to have granted a substantial number of design patents compared to other countries [16], [19]. The registration of IP in China is furthermore considered to be a streamlined, cost-effective and hassle-free procedural matter [17], [19].

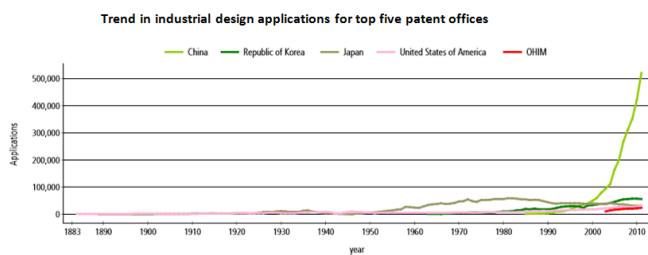


Fig. 2. Statistics of industrial design patent application [31].

As indicated by Japan’s Patent Office [18], the strong socioeconomic climate in Japan which fosters local creativity is accountable for the higher enforcement and implementation of industrial patent rights, with national policies such as tax incentives playing active roles in encouraging inventors to seek protection of industrial inventions and technological IP components or assets, ranging from hardware and software, semiconductor circuits and engineering systems, from unfair competition.

Based on WIPO statistics (Fig. 2), between 1950 to the 1990’s, Japan led the number of registered patent applications while Korea has grown steadily [19]. Emerging Asian tiger economies such as China, Hong Kong and Taiwan, pivoted on economic modernisation policies to support widening consumption patterns, are caught in a stiff race to put themselves on the global map as financial hubs, with neoliberal growth models that have inversely enabled them to be associated as major manufacturers of counterfeit products which are protected by US intellectual property laws [20].

In Malaysia, legal enforcement is nascent and shallow at best. Due to high importation and trading activities with neighbouring China, Indonesia, Philippines and Thailand, Malaysia has demonstrated largely failure in the protection of IP rights of brand and design owners, as evident from infringement case files involving brands and designers through the counterfeiting of goods. Fig. 3 shows the number of local applications for design patents to gain grant status for industrial innovations; the figure maintained steady growth preceding 2015, even though the number is relatively low compared to foreign applicants. However, the number dropped alarmingly thereafter for design registrations and grant applications, as elaborated in the statistics found on

Table I. This compels the next question: *How much do registration fees and cumbersome procedures contribute in discouraging designers from patenting works?*

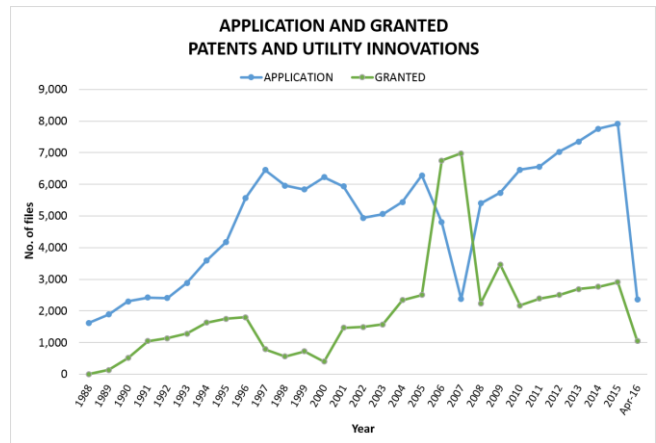


Fig. 3. Number of local and foreign industrial design registration [32].

In the US, enforcement is done through implementation of legal processes that prosecute design patent infringement. The end outcome is that creativity, *although and because* they are viewed as costly investments, is greater appreciated and deemed to have “net positive effect on social welfare” [21]. In Europe, design infringement cases filed for hearing under the European Court of Justice (ECJ) require content owners to produce samples of original content for evaluation in proving their case for protection should “likelihood of confusion” or “likelihood of association” arise from similarity of marks or quality which infringes the owners’ right to gain commercial profits [6; 15.3.3.2: 385-6].

TABLE I: COMPARISON OF LOCAL AND FOREIGN PATENT APPLICATIONS AND GRANTED (1986 – 2016), [33]

YEAR	APPLICATION			GRANTED		
	Malaysia	Foreign	Total	Malaysia	Foreign	Total
1986	29	233	262	-	-	-
1987	71	3,195	3,266	-	-	-
1988	73	1,547	1,620	-	6	6
1989	84	1,803	1,887	11	121	132
1990	92	2,213	2,305	20	498	518
1991	106	2,321	2,427	29	1,021	1,050
1992	151	2,260	2,411	10	1,124	1,134
1993	198	2,684	2,882	14	1,270	1,284
1994	223	3,364	3,587	21	1,608	1,629
1995	185	3,992	4,177	29	1,724	1,753
1996	221	5,354	5,575	79	1,722	1,801
1997	179	6,278	6,457	52	741	793
1998	193	5,770	5,963	21	545	566
1999	218	5,624	5,842	39	683	722
2000	206	6,021	6,227	24	381	405
2001	271	5,663	5,934	18	1,452	1,470
2002	322	4,615	4,937	32	1,460	1,492
2003	376	4,686	5,062	31	1,547	1,578
2004	522	4,920	5,442	24	2,323	2,347
2005	522	5,764	6,286	37	2,471	2,508
2006	531	4,269	4,800	187	6,562	6,749
2007	670	1,702	2,372	338	6,645	6,983
2008	864	4,539	5,403	198	2,044	2,242
2009	1,234	4,503	5,737	270	3,198	3,468
2010	1,275	5,189	6,464	204	1,973	2,177
2011	1,136	5,423	6,559	335	2,057	2,392
2012	1,160	5,867	7,027	308	2,193	2,501
2013	1,269	6,081	7,350	305	2,386	2,691
2014	1,439	6,321	7,760	381	2,381	2,762
2015	1,375	6,532	7,907	360	2,548	2,908
2016 (till April)	359	1,999	2,358	91	960	1,051
TOTAL	15,554	130,732	146,286	3,468	53,644	57,112

The duration of legal protection maybe up to 15 years depending on the place of registration, Malaysia provides a longer timeframe of up to a maximum 25 years for commercial selling, marketing and distribution rights [22]. In terms of the costs of patents, under the scope of IP rights protection in Malaysia, new design patent applications are charged processing fees of RM500 for new filings, and up to RM800 for patent extension with e-filing encouraged to

reduce environmental and printing costs to improve service efficiency [17], [23].

D. Design Infringement Issues for Commercial Industries

Infringement, aside from being a regular issue in the manufacturing of industrial designs, also permeates online commercialisation of graphic designs. In terms of web-marketed intellectual properties such as trademarks and designs, one of the key reasons for a lack of enactments to construct more robust protective measures for patents is the complexity of implementation. 21st-century communication technologies have woven revolutionary aspects of content creation into production and publication today, creating at the same time a bigger global concern, i.e. how far design rights infringement awareness has spread.

Rightful owners of design entities and content as personal property have few resources and credibility to deal with international authorities or agencies monitoring the flouting of IP regulations and the global scale of infringement have made jurisdictional oversight a challenging task.



Fig. 4. The misappropriation of online graphic design [34].

Although web-based design marketing platforms are good for exposure, graphic designers who depend on the Internet as a dominant tool of marketing and commercialisation may not justify infringement claims if they appealed purely on legality. Consumers are increasingly adopting the notion that imitation is acceptable so long as no one catches on; this is vastly different from the era where authentic design talents gained respect (and public favour) through their substantive investment into creative efforts.

The notion of “taking inspiration” is becoming a blurred notion to many young designers: 30% does not constitute a rightful claim of work or content ownership. Such forms of misappropriation via digital or online platforms for graphic works can have a detrimental impact on the entire industry of designing (see Fig. 4). As OECD [16] notes that regardless of the percentage of changed content, it is still an infringement of rights if the original artist or designer registered the work on legally-acknowledged intellectual property regimes.

One of the biggest design infringement issues is the production of imitation goods of recognisable fashion brands, products and merchandising design [24]. Recent court cases such as Star Athletica, LLC vs. Varsity, Inc. in the US have brought the issue of design patent to the forefront by generating discussions on “copyrightability” of design (colours, patterns, textures, shapes, etc.) as a concept separable from its functional (utilitarian) use on goods such as fashion apparels and merchandise [25], [26], cases as this may lead to misapprehension about design’s critical contribution to the commercial valuation of goods as patented designs are given 15 years of protection from competitor reproductions, while by comparison, the duration of copyright is the assurance of lifetime rights protection, with an additional 70 years [27].

Clearly, case literature would suggest that there is a lack of concerted industry efforts to battle infringement. Furthermore, some irresponsible designers make attempts to “take inspiration” from others’ works, the consequence which may lead an entire industry to stumble and stagnate in its development.

Equally, studies representative of current society’s opinions, attitudes and perceptions towards infringements are lacking. To gain depth understanding of Malaysia’s concerns, the research approach for this paper will map out the dynamics of knowledge through a qualitative framing method. The next section details the methodology of research used to attain this aim.

III. RESEARCH DESIGN AND METHODOLOGY

To contribute a uniquely Malaysian perspective, the research design for this paper sought to connect directly with industrial expertise. The first phase of research was gathering secondary data via relevant sources namely books, online journals and online articles. These helped to illuminate various aspects of patent rights and issues.

Data was gathered through various literature sources on intellectual property regimes, and relevant statistical reports. To gain key insights from professionals, which would distinguish opinions of design practitioners and regular consumer public, interviews were conducted which also helped to clarify the second objective of the study. To pursue a more critical line of inquiry in distinguishing attitudes and perceptions from critical assessment of infringed design works, qualitative frame was chosen as the primary research methodology.

According to Meadows [28], the basic approach of qualitative research for academic review processes (which also involves the deconstruction, coding and interpretation of data) is to provide preliminary analysis of actual respondents’ views. The data would then refocus the theoretical framework (the grounded theory approach) that may then be replicable in future by other academic peers and colleagues

doing field research.

A series of interviews was conducted in face-to-face sessions with key stakeholders, including: (A) local buyers with retailing and services industry experience, (B) design industry professionals, and a representative official from the Malaysian IP regulatory agency MyIPO. A sample of five interviewees was chosen for (A) due to their varied perspectives deriving from exposure to the Malaysian consumer scene. Designers (B) were from different disciplines namely graphic illustration, advertising and local creative services entrepreneur.

Their opinions bear directly on research as findings help address weaknesses in framing infringement issues. All interviews were conducted during a month-long span, and each was approached on an individual basis. The next section elaborates on perspectives gathered through analysis of interviewee responses, in order to lend credible expertise and insights to illuminate and interpret the rights infringement phenomena as explored by various published research studies and review of literature.

IV. DATA FINDINGS AND ANALYSIS

Interviews with local consumers from retailing and service backgrounds were sought for attitudinal insights on purchasing imitation or forged brands, while seeking reasons for consumer buying habits that are known to contribute to design patent infringement.

Interview questions were designed to provide a more holistic picture of local views pertaining intellectual property awareness especially towards design patents rights and infringement issues. Local consumers from different backgrounds were approached, and to ensure non-biased findings, no gender distinction was asked in the description of findings presented in the following section.

Participant who will be identified as Local Buyer A, stated:

"I am a collector of certain big brands for watches and when I look at the price of the product, it makes me think, why spent more if I can get the imitation at Petaling Street which offer the almost same quality if you just judge by the eyes?"

Local Buyer B:

In the end the product utility will be diminished the same way. The expensive product lasts a bit longer, but in the end, everything has a shelf life. If it's just something that I wanted I do not really care that much if it is original or not. It's not wrong, right?"

Local Buyer C, a wedding planner, says:

"Of course it is bad, but the products are selling at a cheaper price and people can't really tell the difference if they were to look (at the product) from a distance. Furthermore, sometimes the faked (imitation) good is much better looking than the original brands so ... why not?"

Local Buyer D, employee of an airline company in Singapore stated,

"The reason why I do not support such acts (buying counterfeit goods) is because I know creative talent is

something really rare. It is unfair to just blatantly copy and use others' design just because they think there's profit to be made. I know what design infringement is and having friends who work in creative industries; I know tough process of just getting that right idea into the final design. As a consumer, I feel it unfair. Just because everyone follows trends today, we seek only imitations of the real thing. Malaysians prefer to close their eyes and support products that are not authentic or produced by original designers."

The multiple digital media software and publishing platforms for designers provide template solutions for users, both professional and untrained. This implies that content creators must be financially and wholly prepared for any consequences once digital works are accessed by users anywhere in the world.

If the product design process was shown, would it make any difference on purchasing decision? This question was answered by all participants. Responses would lead the researcher to fathom the route to consumer awareness.

Local Buyer E, a Malaysia civil servant of senior rank, stated;

"What made me change my mind on buying original design was when I watched a show on [cable TV network] Discovery Channel showing the raw backstage view of Louis Vuitton runway project where Marc Jacobs was the designer. The process showed the hardship and sweat to gain approval of just one design product. It was so insightful. It made me much more aware of the craziness of the designer to go through so many hindrances just to achieve one simple idea".

As Local Buyer A states:

"If it is priced correctly for the targeted segment, then why would anyone buy an imitation when you can get an original at an affordable [cost]?"

MyIPO Design Industry Law Officer was the final in the series of interviews, whose response is decidedly the most crucial aspect of design patent protection from the Malaysian legal and institutional standpoint. Clarification was sought on the protection of designers' rights.

According to the officer, one key factor contributing to design infringement is a general low level of legal, social and educational exposure towards intellectual property assets.

Many designers and inventors have no direct access to information on the potential benefits of design registration, while consumers, as end users, are ignorant of *their* own rights of ownership of authentic content, brands or goods. The explanation by the MyIPO officer was similar to the above local buyer:

"Design infringement relates more to imitation goods. I feel that generally, local people know very little about how to prevent the situation in their buying choices and habits. [This is because] to them, it looks the same [as the original], so why spend more?"

The interviews conducted with Malaysian design practitioners were on a face-to-face platform. Most of the designers approached mentioned that the continued demand for authentic brands would still not prevent infringement

issues from permeating societal consciousness. Looking at the registration statistics in Malaysia, many local design talents are still being victimised with potential design infringement cases occurring and recurring in the future.

Questions for the industry professional were:

- *How can legal protection work for designers?*
- *How many are aware of the right way to protect creative content and works?*
- *Why don't more seek for rights protection of their design?*
- *Why do you think design patent right infringement is happening in the design industry?*

The replies and answers were as follows.

A Creative Director from a Malaysian advertising company:

"The design world is really big. Some designers seem to be afraid to explore new ways of creating ideas. And some are more interested to speed up the process to develop or pitch their ideas for financial returns. So, why not just take what is already here and spice it up to make it look like it's something from me?"

A graphic designer and lecturer at a local university:

"Infringement happen because of demand of the public. It's about making profit by serving current trends. Without that demand, I think most society will develop some courtesy to respect the particular product and not buy counterfeit stuff".

According to this participant,

"Registration of design is good for a designer who is fully involved in the industry, but if you are from the teaching industry one part of our job is to share the knowledge, so I guess there is a room for copyright knowledge to be spread".

A product designer working in Singapore:

"If we were to look at the nature of designing for commercial brands, it is all about improvising earlier or previous ideas ... to innovate and acknowledge who can create the best among the best is one of the game-plan of every brand".

All participants pointed that overall lack of product knowledge and exposure to the design process affects consumer ability to perceive the true value of authentic designs, and if the imitation is juxtaposed, it would still be difficult to shift fixed mind-sets because branded products primarily serves disposable wants not needs. The insights from findings suggest a huge gap of awareness on the importance of protection through registering design as intellectual property assets.

In comparison to UK law, Malaysia statutes do not institutionalise protection for unregistered designs in cases of rights infringement. The respondents' comments suggest perceptions are common that imitation goods are, and had long been, culturally acceptable practice and being customers, awareness of rights is not their imperative, but that of the designer or brand owner.

Only 2 of the 5 participants comprehend the scope of issues surrounding design infringement. Conscience plays a role in their decision not to affiliate with associates who

practice or support consumption of counterfeits. The key reason seemed to be empathy for the effort and skill of producing or generating design inspiration, and as consumers, knowing the processes behind the content production leads to avoidance of unethical demand.

Design infringement trends in Malaysia lean towards counterfeiting luxury brands, with long term implications. Imitation goods produced by opportunists devalue the status of national brands [7]. Other factors are crucial to understand the global infringement phenomena. Implementation of rights protection which fit the international legal frameworks of Intellectual Property policies and regulations would be one of the key solutions [6], [8].

Another factor as to why Malaysian designers still lack the motivation to apply for IP protection measures is the exorbitant processing fee requirements, even for companies or collaborative design groups. In order to ensure the development of stronger policies, designers, activists, brand owners and legal stakeholders with commercial interests must cohort to develop educational references and provide authorities clearer input on the degree and scope of protection for copyrightable designs, albeit to guide brand owners in the application of trademarks, copyright or patents, or to enable courts to recognise impediments which currently restrict such applications.

To sum the findings, if brands were to frequently communicate the efforts, challenges and processes behind product creation, awareness is a possible outcome, but this awareness may not necessarily translate to ethical action especially among aspirant classes with tendency to purchase based on wants instead of needs. Given a choice, the choice falls on what consumers' eyes perceive as acceptable imitation goods, the consumption of which to them isn't wrong if one did not get caught out as the owner of fake or counterfeit goods.

V. CONCLUSION

Design infringement has always been an emotive concern to all creative inventors. Undoubtedly, legal instruments may be enforced by the courts of different countries, yet the degree and variances of protection available for intellectual property infringement remedies is still an evolutionary trajectory.

The study also finds that the development of universal codes of conduct has so far eluded designers and practitioners who use online or web-based platforms to sell or promote works, while many have turned into both victims and perpetrators of unethical infringement. This study sought key frameworks of literature to understand legal, social, creative and consumer perspectives for intellectual property rights protection. The second aim was to understand why the marketing of imitation goods continue to be acceptable practice among consumers in Malaysia. A preliminary analysis of qualitative findings demonstrates a culture of ignorance towards protecting valuable knowledge pertaining the processes, ideation, creation and marketing of original designs and creative content.

Malaysians understand the basic idea of design patents, but there is lack of empathy for how intellectual property works to recognise the effort, skills and investment of design

owners, leading to broad disregard for talent development and nurturing of creative enterprises. On this slippery slope between the pocket versus the conscience, when the eye alone should not be the ultimate judge, grounded knowledge of design processes enables stronger appreciation for quality craftsmanship and result in enhancing respect towards designs and designers beyond knowing the purchase value.

Another issue is the screening and procedural costs of registering patents for designs and other IP regimes. The process of registration has been criticised as a hampering factor but at the same time, it enables substantive legal efforts to protect society from unbeneficial or harmful patents, and balancing the financial interests behind *legitimate, registered* design patents [21].

On the other hand, design owners should not blame fees and enforcement control mechanisms, but instead educate the stakeholders of industries, advocacy groups and consumers. As Burstein [21] affirms, registration costs must be recalibrated as investments to effectually increase the number of industrial design patents. With increasing awareness, designers should consider the full statutory benefits of local design patent protection (such as afforded by MyIPO) to exert claims over their works.

Critical social awareness among practitioners would lead to harmonisation of legal mechanisms for stronger rights protection solutions especially in the context of developing Asian economies, and this helps reset the dialogue between stakeholder groups and consumers who deserve opportunities to be enlightened in regard the sacrifices made by talented creative individuals and brand owners. As Chang and Grabel [7] state, IP rights issue is both “an opportunity and [an] obstacle” for reclaiming sustainable social development.

To end with a reflection from Allworth Press founder and publisher Tad Crawford [29], [34]: “... When it comes to matters of aesthetics and effective communication, we designers think we know better. Increasingly, it seems ... disrespectful clients are not listening”.

As a political issue at heart, government policymakers, scholars, activists, lobbyists and practitioners must continue to foster public debates on the proper designations, frameworks and acknowledgement of intellectual property rights in constructing ownership as a legal and regulatory matter. For the sake of attitudinal transformation, the implications of statutory protection for industrial and creative designers must receive greater eminence in scholarly literature, field studies and real-life cases, while ensuring consumers activate citizenship through ethical consumption and collective social responsibility. As cited in OECD [16], [361], “[Good] design pays for itself”.

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