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The New Frontiers of Fashion Law

Edited by
Rossella Esther Cerchia and Barbara Pozzo
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About the Editors

Rossella Esther Cerchia is a Full Professor of Comparative Law at the University of Milan (Italy) and an Adjunct Professor of Law at Cornell Law School (USA). She also serves as Coordinator for the University of Milan of the post-graduate courses in “FASHION LAW, The legal problems of the fashion industry”, as well as the Ph.D. Program in Comparative Law at the University of Milan. Rossella Esther Cerchia is a Member of various scientific committees, such as the Consultative Committee of the American Law Institute (ALI) and European Law Institute (ELI) for the Project “Principles for a Data Economy”; the Scientific Committee of the “Information Society Law Center” at the University of Milan; the Scientific Committee of the Interuniversity Centre for Research in Comparative Law (CCDC); the Scientific board of the Centre of Research on European and Transnational Dispute Settlement. She is both a Member and Delegate of the Commission for the Internationalization of the Law School at the University of Milan, as well as a Representative of the Law School of the University of Milan for the League of European Research Universities. She sits on the Board of Professors and Review Commission for the LLM Program in Sustainable Development—University of Milan. Furthermore, she is a Member of the “Società Italiana per la Ricerca nel Diritto Comparato” (SIRD), an Elected Associate Member of the International Academy of Comparative Law, a Fellow of the European Law Institute (ELI), and a Member of the Scientific Board of many Italian and International law journals. Finally, she has lectured in several national and international Universities and has authored many books and articles in her areas of research.

Barbara Pozzo is a Full Professor of Comparative Law at the University of Insubria (Como), and Director of the Department of Law, Economics and Cultures; Coordinator for the University of Insubria of the post-graduate course in “FASHION LAW, The legal problems of the fashion industry”, in partnership with the University of Milan; Coordinator of the PhD Program in “Law and Social Sciences” of the University of Insubria; Member of the Board of the “Società Italiana per la Ricerca nel Diritto Comparato (SIRD); Elected Titular Member of International Academy of Comparative Law; Director of the Summer School Program in Comparative Environmental Law, in association with the University of Aix-en-Provence/Marseille (France), Utrecht University (The Netherlands) and Opole University (Poland). She has been invited to speak at the Fashion Law Institute at Fordham University in New York, as well as at symposia organized by the International Bar Association on Fashion Law organized in Milan (2018) and London (2019). She has been a visiting professor at the University of Hamburg (Germany), Montpellier (France), Louisiana State University, University of California at Davis, McGeorge School of Law at Pacific University, William S. Boyd School of Law at Nevada University (U.S.), Hitotsubashi University (Tokyo), Pontifícia Universidade Católica do Rio Grande do Sul—Porto Alegre (Brazil), Universidade Federal de Santa Catarina—Florianopolis (Brazil), and is also a Member of the Scientific and Editorial Boards of various Italian and International Law Reviews. In September 2018, she was awarded the UNESCO Chair on “Gender Equality and Women’s Rights in the Multicultural Society”.

Preface to “The New Frontiers of Fashion Law”

Fashion law encompasses a wide variety of legal issues that accompany a fashion item throughout its lifecycle, from the need to protect the artist’s creativity to problems related to the protection of end consumers. The fundamental aspects that define this new field of law (which are deeply embedded in different cultural backgrounds) depend on the business, market, and legal circumstances specific to various phases of production and distribution. More specifically, whether the subject is haute couture or ordinary clothing, fashion law incorporates the legal questions inherent to the design, manufacture, distribution, marketing, retailing, advertising, and promotion of all types of fashion products. Sector growth and the presence of various industrial players have encouraged market actors to specialize in a variety of areas. Moreover, production is increasingly dispersed along a complex global supply chain and various distribution channels are utilized to deliver products internationally. Contract law, intellectual property law, company law, tax law, international trade, and customs law are of fundamental importance in defining this new area of law that is gradually being studied in a growing number of universities around the world. At the same time, the fashion industry appears to be characterized by an internal tension that defines our time; on the one hand, fashion is increasingly becoming a globalized phenomenon, on the other, it is clear that certain products, traditions, and ways of thinking are particularly culture-bound compared to local realities. This tension implies the need to acquire a vision of the phenomenon that holds together the global perspective with the understanding and respect of local cultures that reflect ancient traditions and religious beliefs. Against this background, it is important to identify the new challenges this sector will face in the future. For instance, as securing the future of the planet and humanity is a pressing concern of our time, sustainability is a central challenge of the fashion industry. Indeed, the fashion industry has been recognized as one of the most polluting. It has been described as a foe to animals and its involvement in the labor market of fragile economies cannot be ignored. Thus, given the significant portion of the world’s population involved in the fashion industry, sustainability is on the agenda of most national governments. To this end, great efforts are being made to promote the establishment of a circular economy, one in which unused or unwanted textiles and/or clothing items are upcycled, recycled, and re-used—such that what was once considered “waste” becomes a resource. The call for “green fashion” also appears to have had an impact on consumption patterns—especially amongst the so-called “Generation Z”—as an unprecedented number of consumers ask themselves “who made my clothes?” and base purchasing decisions on variables such as climate change. It is therefore not surprising that the fashion industry has responded with private initiatives to address the issues consumers care about, such as corporate social responsibility (CSR) programs and codes of ethics. A so-called “slow fashion” business model has been proposed as a sustainable alternative to its fast fashion counterpart, which encourages incessant production and consumption at unsustainable levels. At the same time, the role of the press, social media, and the internet must also be accounted for. In fact, both intellectual property and advertising law must contend with rapidly evolving technology. For instance, one cannot ignore discussions related to the manipulation of photographed images, made possible by programs such as Photoshop. In fact, excessive “touch-ups” may harm the personal image of photographed models, as well as the public. For this reason, fashion law deals with the regulations and mechanisms adopted to restrict image manipulation practices and/or inform consumers that graphics editing techniques have been used. Further, digital marketing, e-commerce (which proved especially effective during

the height of the Covid period), and the role of bloggers and influencers that promote en vogue styles present an assortment of legal issues. For example, expression through digital technology raises questions regarding transparency, the veracity of commercial communications, and consumers' freedom of choice, especially as these new technologies could facilitate the sale of counterfeit goods. Likewise, legal compliance is increasingly difficult in a world where a growing number of users avail of smart electronic devices that can detect, analyze, and transmit users' personal data. Thus, fashion law addresses issues such as whether traditional advertising and other consumer protection laws are capable of effectively regulating digital marketing and forms of expression without compromising fundamental rights—such as freedom of speech, including commercial speech—or stifling competition. Today's increasingly widespread recognition of fashion's artistic value has revamped the debate on the appropriateness of rights and remedies provided by IP law to fashion designs. Even catwalks, which have traditionally represented private sales channels for select wealthy customers, appear to take on a new function, as their current value might lie more in their ability to entertain a crowd than sell chic clothing. All of this brings a variety of new legal issues. This Special Issue focuses on the new frontiers of fashion law, taking into account the various facets that have recently emerged, and which are of great interest for the entire fashion world. The scope of this research will range from sustainable fashion to wearable technologies, from new remedies to cultural appropriation it will also address regulation of models' weight and advertising law in the digital market before finally addressing the impact of new technologies on product distribution and much more. In an attempt to highlight the newest international developments and stimulate discussion on emerging problems capable of defining new boundaries of fashion law, the purpose of this Special Issue is to reflect recent trends in order to arouse ideas for new legal solutions from a comparative and global perspective. Therefore, this Special Issue, "The New Frontiers of Fashion Law", aims to outline the areas of law in which the fashion industry was engaging before the Covid-19 pandemic, identifying some new legal issues that are not comprehensively addressed by current literature. Indeed, composition was nearly complete when the global health crisis set into motion a "tsunami" that affected all sectors worldwide. As concerns the fashion industry, it was hit in such a way that it is difficult to imagine the industry will ever be the same after Covid-19, as the contagion appears to have caused the development of certain new processes to accelerate while slowing the progression of others, whose outcomes are to be evaluated. The prolonged crisis situation will inevitably cause the fashion industry to reinvent itself and the way it does business, leading to new frontiers that will have to be analyzed again.

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