

Fashion Law

Fashion Law is a branch of the “recent” and “emergent” law which comprises all the legal aspects of the fashion industry.

This specialty has its origins in the United States of America and was coined as such by Susan Scafidi, which acknowledged the relevance of forming professionals specialized in business fashion in order to meet the requirements of this demanding industry.

According to Susan Scafidi, fashion law is a practice area that comprises the legal substance of style, including the subject matters that may arise during all the existence of an item of clothing, from the original idea of the designer and continuing through all the steps until the consumer’s closet. In structural terms, she considers four fundamental pillars of Fashion law: intellectual property, business and finance (with subcategories ranging from labor law to real state agreements); international commerce and governmental regulation; safety and sustainability; consumer culture and civil rights.

In addition to its main focus in clothing and accessories, fashion law comprises related areas, such as textile manufacturing, modeling, the media, and beauty and fragrance industries (...).¹

Thus, it is a practice area that covers all the fashion market, from prestigious designers, textile manufacturers, modeling agencies, models, runways, photographers, bloggers and influencers, fashion shows, marketing agencies, commerce of fashion and accessories, its manufacturing, distribution, colocation, retail companies, magazines, sales catalogues, among other products and/or related services.

It is worth highlighting that fashion is not limited to the textile sector; it encompasses multiple markets of several categories, such as: jewelry, shoes, costume jewelry, cosmetics, luxury, among others.

Nowadays, it is possible to assert that fashion law is consolidating and in international expansion, and has become an specialized law practice area due to its particular characteristics.

¹ Bello Knoll, Susy Inés y Echeverría, Pamela, Derecho y Moda, Marcial Pons publishing house, 2016 edition, Argentina, page 19.



Legal counseling that is provided at all stages of the production chain in this industry which covers from the procurement of the inputs and raw materials until the creation and design process, manufacture, distribution, commercialization, publicity and export of the product of the fashion industry, therefore, it includes a broad variety of legal disciplines that converge to cover this practice area, such as, among others:

Industrial Property. Within the fashion industry, this practice area is fundamental, since fashion is characterized by the creation and innovation of products and it is indispensable to make use of the instruments granted for the protection of the designs and creations by means of the registration of trademarks, patents, industrial secrets, utility models, industrial designs, among others.

The protection by means of the registration of trademarks is one of the main elements to distinguish the products of a company from those of others, and to evoke concepts in the public at large, thereby representing one of the most valuable intangible assets for companies and designers. It is worth highlighting that trademarks do not only protect designations and/or logos, but also tridimensional shapes or protect sounds, smells, holograms, etc.

Licenses. The titleholder of a registered trademark or of a trademark application may grant, by means of an agreement, a license to use such to one or more persons, with respect of all or some of the products or services to which such trademark protects. The aforementioned allows a third party to exploit the value of a distinctive sign, for the benefit both of the third party and of the titleholder of the trademark and is frequently used in the fashion industry, e.g. for the expansion of a product line, by including items which are different to those originally commercialized by the titleholder.

Franchises. Closely related to the trademarks and their standing, are the franchises. The franchise agreement is one of the most relevant instruments for the entry and expansion of fashion industry, since through this agreement not only the use of a trademark is granted, but also the transfer of know-how and technical assistance in order for franchisees to conform to the methods of the titleholder of the trademark, thereby maintaining the quality and prestige of the products or services.

For entering into a franchise agreement, there are certain legal elements to comply to prevent its annulment, such as clearly establishing the information that will be transferred to the franchisee, the form in which such shall be protected, the obligations of both parties and it is also necessary to maintain an appropriate administration of the agreement, i.e. to verify that the franchise is effectively operating in the agreed conditions.

Copyright. Considering the fashion industry is impulse by the creativity and originality of its products, such as: (a) sketches and drawings, (b) fabric patterns, (c) clothing designs, (d) photographs and images, (e) templates, (f) magazines, (g) commercials as audiovisual works. (h) runway performances, among others; it is highly relevant to protect the corresponding copyright.



Publicity and Consumer Rights. From this perspective, fashion industry must consider the legal aspects related to all information related to publicity campaigns of their products, especially those that might be considered deceitful, and the flyers and/or catalogs for their clients, the offer of their products through physical and electronic means and other subject matters and also to prevent and avoid possible conflicts, the counseling of a fashion law professional becomes necessary.

Normative Compliance. The fashion products might be subject to specific regulation, e.g. labeling, textile composition, washing and care instructions, use of captions (e.g. “handmade”), country of origin, use of printed images in the garments, etc. Therefore, it is important to implement the verification of normative compliance as a part of the regular operation of the business, to prevent associated risks at the moment of the commercialization.

This verification is not limited to textile industry, but to other fashion sectors, i.e. perfumes and related personal care products, which must comply with the applicable regulation, e.g. consumer information requirements, measuring units, permitted substances, requirements for prepackaged products and/or cosmetics, cautionary captions, etc.

Image Rights. Fashion law is currently increasing its role, and a large part of this innovative trend is due to “influencers” and trademark ambassadors. The distinction between them is that trademark ambassadors usually have assigned their image rights through agreements with various trademarks, while influencers are individuals of social relevance due to its presence in the media. Image rights are intrinsically related to an individual, therefore, entering into an agreement with a trademark to which such rights are being partially assigned gives rise to the obligation of using attires or accessories of a particular brand.

The role of influencers is further analyzed in the “E-commerce” practice area; since they have a preponderant social presence, they usually benefit from different trademarks in order for them to promote the products through their social media, without the need of being obligated by an agreement and with the risk of receiving a positive or negative feedback on their social media and other communication means.

Contract and Labor Law. Within the production chain of the fashion sector, entering into different agreements is part of the day by day activities, specially, manufacturing and/or production agreements, commercial mediation, purchase of products, transportation, storage or deposit, distribution, lease agreements in malls -retail companies- and lease agreements in general, franchise and license agreements, among others.

Likewise, it is important to consider the contracting modalities of the managing personnel, photographers, models, vendors, makers, messengers, creators and developers and employees, among others; and the labor schemes for outsourcing and subcontracting that fashion industries might need.



E-commerce and Foreign Trade. Currently we live in a globalized and developed world, therefore each day technology is opening more and more possibilities in our reality, such as, entering into online purchase of products (among other operations).

Online retail of products has become a reality. Each day there are more virtual platforms in which is possible the purchase and sale of products of the best quality through internet pages. Similarly, the business models used in the fashion sector may range from “click and collect”, referring to the possibility of buying a product and picking it at the store, to the home delivery of the products.

Internationally, e-commerce is highly regulated, since it is one of the most innovative practice areas and with greater current expansion. In addition to e-commerce provisions, foreign trade provisions are added, with relevant subject matters such as: international sale agreements, transfer of risks, custom regimes, international treaties and product import and export regulations.

The correct regulation in these subject matters is crucial for its correct operation, therefore, constant adjustments to the various regulations are necessary to adapt to the innovation, expansion and dynamism of such areas.

Domain Names. Other aspect to consider are the domain names. Domain names are those “easy to remember” associated to an IP address that allows to locate or identify a company or organization online, becoming a sole identifier of such company or organization on the internet, since 2 identical domain names cannot exist.

Thus, electing a domain name has become an important commercial decision of a company, since it is the manner in which every person shall relate and identify a company on internet; which is why companies must honor the relevance of registering the domain names.

In the fashion industry is relevant to mention that the impact of the domain names is such that companies like Zara and Mango among others have requested the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) for the domain extension of their name, e.g.: .zara, .mango.

An increasing problem associated with domain names is cybersquatting, the abusive registration of trademarks as domain names². In this practice, cybersquatters usually register domain names with names of famous products, names of stars and celebrities and book and movie titles, e.g. in 2003 claims were filed at the World Intellectual Property Organization (“**WIPO**”) related to the domain names “jrrtolkien.com” and “piercebrosnan.com”.³

² https://www.wipo.int/pressroom/es/prdocs/2004/wipo_upd_2004_217.html

³ Idem.



To fight cybersquatting, in 1999 the WIPO proposed the Uniform Domain Name Resolution Policy (the “**UDNRP**”).⁴ The UDNRP cases are solved online, which has multiple advantages with respect to a traditional dispute.

Due to the relevance of e-commerce, considering the restrictions imposed due to the pandemic, cybersquatting cases have increased, affecting both the trademark owners and the public at large. Likewise, cybersquatting cases at the WIPO have increased, especially in sectors as biotechnology, pharmacy, internet, IT, banking, finances and events.⁵

The timely registration of the necessary domain names, may help reduce the risks of cybersquatting to the legitimate owners.

ECIJA has ample and continuous experience in fashion law, in particular, we have counseled clients of the fashion and luxury sector, in all areas of Fashion Law practice as described in this document.

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⁴ https://www.wipo.int/amc/es/news/2020/cybersquatting_covid19.html

⁵ Idem

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