

LAW À LA MODE

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Fashion, Retail and Design Group

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THE RISE AND FALL OF THE AUSTRALIAN DOLLAR: IMPLICATIONS FOR AUSTRALIAN RETAIL

FIGHTING COUNTERFEIT FASHION: IMITATION IS THE GREATEST SOURCE FOR DAMAGES

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TRADITIONAL CULTURAL EXPRESSION AND THE FASHION INDUSTRY: INSPIRATION OR MISAPPROPRIATION?

FASHION FORWARD: THE RISE OF FASHION LAW PROGRAMS IN THE UNITED STATES



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Editorial

The Australian editorial team is delighted to bring you the 18th edition of *Law à la Mode*, the quarterly legal magazine produced by DLA Piper's Fashion, Retail and Design Group for distribution to clients and contacts of the firm worldwide.

The continuous fluctuations in the Australian dollar have both short and long term impacts for fashion, retail and design around the world. In this edition, we look at the rise and fall of the Australian dollar and the implications of this for Australian retail worldwide (page 4).

We explore issues that are raised in fighting counterfeit fashion (page 6), a landmark case for counterfeit goods in China (page 7), and the interplay between traditional cultural expression and the fashion industry (page 12).

Online retail continues to grow. We discuss the European Commission's focus on the e-commerce sector (page 8) as well as global content strategies and the online customer experience (page 22), and rules for online retailers in Turkey (page 16).

Advertisements in the industry span a number of forms. We delve into the detail of staying compliant, recent ASA rulings and discuss what's appropriate for the intended audience when using models in aspirational advertising (page 10).

We also cover the UK's *Modern Slavery Act 2015* (page 14), the rise of fashion law programs in the United States (page 13), sublicenses and factory outlet centers in Germany (page 15 and 18).

For this edition, we were delighted to chat with Lisa Chung, Deputy President of Trustees of the Museum of Applied Arts and Science, Chairman of The Benevolent Society and Non-Executive Director of APN Outdoor Group Limited. We sat down with Lisa to garner her insights on the Australian Centre for Fashion and its pivotal role in the Australian fashion industry (page 19).

We hope you enjoy this edition of *Law à la Mode*. If you have any comments, please get in touch with the Fashion, Retail and Design Group via our email address: fashion@dlapiper.com.



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THE RISE AND FALL OF THE AUSTRALIAN DOLLAR IMPLICATIONS FOR AUSTRALIAN RETAIL

By Melinda Upton, Jessie Buchan and
Courtney Adamson (Sydney)

Prior to 2014, the majority of large global retailers were electing to take a somewhat soft approach to their entry into the Australian retail market. By opening up websites locally and/or shipping to Australia via online means, overseas retailers were able to follow a low-cost, low-risk way of entering a new market to test the waters before investing further. One company that successfully followed this approach is US homewares giant Williams-Sonoma. The company elected to introduce Australian consumers to its products and brand online before investing in bricks and mortar stores. By the time Williams-Sonoma launched its ambitious plans to open stores domestically, Australia had already become its largest market outside North America thanks to its online presence.

Williams-Sonoma has since been joined by a collection of overseas department stores, such as H&M and Uniqlo, as well as fashion chains such as Zara and Topshop, that are pursuing organic growth in the Australian retail sector through a strong physical presence.

In 2014, these major global players showed a willingness to jump into Australian waters that they had once only been willing to test. April 2014 saw H&M open its flagship store in Melbourne, with a second store opening in Sydney's outer metropolitan region six months later. That same month, Japanese company Fast Retailing opened its first store in Sydney through its Uniqlo brand. By the end of 2014, it had established a further three stores in Australia. In October 2014, Forever 21 opened its first store in Brisbane, quickly followed by a second store in Sydney and the leasing of further retail space on Sydney CBD's main shopping strip, Pitt Street Mall. Existing global retailers also introduced new brands into Australia during this time, such as French LVMH Group's hugely successful cosmetic brand Sephora.

The retail architecture of Australia's major shopping locations, such as Pitt Street Mall in Sydney, has changed dramatically as major international brands have stamped out large retail spaces. These global competitors are being received well by more and more Australian consumers, and this has translated into strong performance and sales. The most successful global brands that now operate in Australia operate in the realms of either apparel and footwear or supermarkets. The experience of Swedish brand H&M provides a good example of the positive reception and rapid impact that international brands are having on the Australian market. After only a few months of trade in 2014, H&M identified the Australian retail market as one of its strongest sales markets globally when sales hit more than AU\$65 million.

However, since 2014, there have been a number of structural changes in the Australian economy, such as a sharp fall in the value of the Australian dollar, which have accelerated the



pace of change within the industry. This has prompted both overseas and domestic retailers to reassess their strategies for securing a profitable presence in the Australian retail market.

To illustrate, by the end of 2014, acquisitions of domestic retailers by international companies began to dominate transitions within the market. This trend continued throughout 2015 and, due to the weaker Australia dollar, falling share prices and low interest rates, it is set to continue into 2016. Domestic retailers are now more attractive to overseas buyers than they have been for years.

Recent examples of foreign buyer activity include South African based retailer Woolworths' acquisition of David Jones. By adding this new acquisition to a portfolio that already includes Australia's Country Road brand, Woolworths has since become a major player in the Australian retail market. Steinhoff Holding, another foreign entity that already holds significant operations in Australia in the form of retail brands Freedom, Snooze and Poco, also took ownership in Australia of the discount department store chains Harris Scarfe and Best & Less following its AU\$6.7 billion global acquisition of Pepkor.

Given that the majority of the world's leading global retailers with current operations in Australia are US companies, many would expect that inbound interest will continue to flow from the same direction. However, inbound trends for mergers and acquisitions indicate that deals are flowing in from Asia but are priced in currencies linked to the US dollar. This reinforces observations that Australia is being seen as an increasingly important retail market in the Asia Pacific region.

Interestingly, despite previous efforts to create greater commercial ties between Australia and China in the retail sector, of the eight strongest performing Chinese retailers that were included in Deloitte's list of 250 leading global retailers (see Deloitte's *Global Powers of Retailing 2015: Embracing Innovation* report), none hold any operations in Australia. However, in the wake of the 2015 China-Australia Free Trade Agreement, Chinese retail investors are more frequently looking to the Australian retail sector as an attractive, safe and receptive place to invest.

With a market outlook that is largely favourable to inbound global retailers and investors for 2016, a question that remains is the effect market conditions are having and will continue to have on Australia's domestic retailers. The falling Australian dollar has in some ways enabled price distortions that existed between products sold in Australia and overseas to correct. Products sold by Australian companies are once again becoming more attractive in terms of price to domestic consumers, and the upward price pressure on a range of imported goods is making international purchases seem somewhat less attractive than domestic offerings. However, a weaker Australian dollar has also increased costs for imported goods. This combined with increased competition from overseas is crunching Australian retailers' once world-high retail margins.

The pace of change in the retail landscape in Australia continues to adapt and evolve. As global players continue to enter the market and expand their store footprint at a rapid pace, Australian retailers will continue to face significant challenges beyond their ability to manage costs and pricing. Rather, their efforts to innovate online, drive improved processes and maintain consumer loyalty will be critical to their ability to remain competitive in Australia's existing and future retail market. Likewise, as it becomes more difficult for offshore retailers to establish a presence in Australia organically because of increased competition, and with an exchange rate tailwind behind them, it is likely that we will continue to see such retailers take a more aggressive approach to gain a foothold in the Australia market. Either way, the rapid transformation is set to continue.

FIGHTING COUNTERFEIT FASHION IMITATION IS THE GREATEST SOURCE FOR DAMAGES

By Ann Ford, Ashley Green, and Naomi Abraham (Washington, DC)

Counterfeit apparel can be a fashion house's worst nightmare. The illegal practice of manufacturing and selling designer knockoffs through various outlets not only damages a brand owner's reputation, but also lowers consumer confidence in the brand.

Recently, after the fashion house *Belstaff* discovered thousands of websites selling knockoffs of its iconic leather jackets, it embarked on a comprehensive intellectual property protection program. The program consisted of registering trademarks, monitoring domain name registrations and taking a robust approach to trademark enforcement. As a result, *Belstaff* created a foundation for its fight against the counterfeiters and was able to present a clear snapshot of its IP rights by demonstrating exactly which properties had been infringed. The US District Court for the Southern District of New York listened, awarding an unprecedented US\$42 million in damages against the online websites charged with selling infringing goods.

While the arguable lack of formal intellectual property protection mechanisms designed specifically for fashion design in the US can make it difficult to combat counterfeiters,

the *Belstaff* case demonstrates how trademark registration and a proactive approach to intellectual property enforcement can assist fashion designers fight against knockoffs. The global reach of the Internet means that sellers of counterfeit apparel can reach consumers all over the world. Therefore, keeping up with potential trademark infringement is a crucial first step for brand owners, especially as luxury brands aim to expand their e-commerce presence.

The *Belstaff* case sends a clear message that while the online marketplace for luxury brands can increase sales and global brand awareness for a fashion house, it can be equally lucrative for counterfeiters. As luxury brand owners increase their online presence, they should seek legal counsel on the best ways to protect their intellectual property.



LANDMARK CASE FOR COUNTERFEIT GOODS INFRINGEMENT IN CHINA

By Ed Chatterton (Hong Kong)



In a recent landmark decision, the newly established Beijing Intellectual Property Court (Court) awarded the first ever maximum statutory damage under China's new trademark law in favor of French-Italian luxury outwear maker Moncler, in its dispute against a domestic apparel company for trademark infringement and unfair competition.

BACKGROUND

The facts of the case are unremarkable. In 2013, Moncler, known for its iconic down jackets, discovered that Beijing Nuoyakate Garment Co., Ltd (Nuoyakate) was manufacturing and selling down jackets with counterfeit Moncler logos. In addition, Moncler discovered that Nuoyakate also tried to register several fake trademarks and domain names in China and other countries. In December 2014, Moncler brought an action against Nuoyakate for trademark infringement and unfair competition.

The Court ruled in favour of Moncler and awarded the maximum statutory damage of RMB 3 million (US\$480,000) under China's new trademark law, a significant increase from the previous maximum statutory damages of RMB 500,000 (US\$80,000). In addition, Nuoyakate was ordered to stop using the domain name <http://www.mockner.com> and stop selling clothes that would infringe Moncler's trademarks.

SIGNIFICANCE OF THE CASE

Foreign companies bringing infringement cases in China have always had the burden of proving the actual damage suffered as a result of infringement. Historically, providing such proof has been difficult due to the absence of automatic disclosure or discovery of documents in legal proceedings, meaning that it was difficult for brand owners to show the damages which had been caused. While brand owners could, in such situations, rely upon statutory damages (which can be awarded without proof of damage), awards have historically been low. However under the 2014 trademark law, if the brand owner has presented as much proof of its claims as is practically possible, the Court can order the infringing party to submit its accounts books or any financial statements which reveal the amount of profit the infringer has earned as a result of its infringing actions. Failing that, the court can exercise its discretion to award the maximum statutory damage with regard to the circumstances of each case. In this case, Nuoyakate failed to provide its earnings or relevant

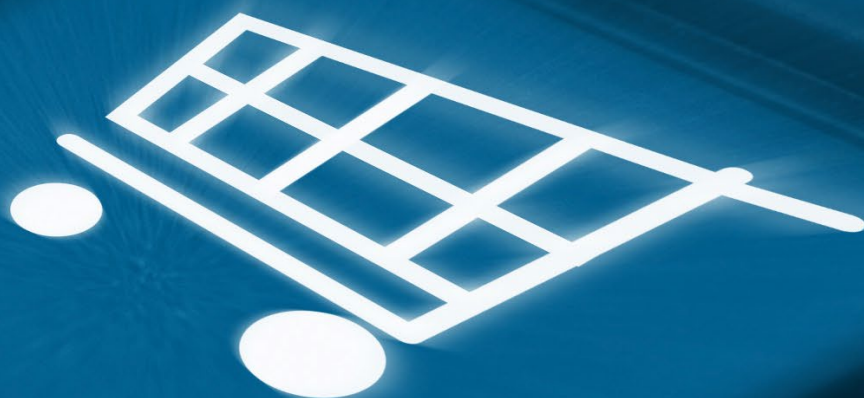
financial statements. Therefore, the Court awarded the maximum statutory damage by considering the following factors:

- Moncler had maintained a good reputation in its trademark since its entry into the Chinese market in 2008.
- Nuoyakate displayed goods on its website <http://www.mockner.com> with the same Moncler trademark and deliberately did not state the name of the manufacturer.
- Nuoyakate sold the infringing goods at high prices.
- Nuoyakate had committed similar infringing activities for a long time and on a large scale and was in the process of setting up franchising stores and distributors.

This decision comes at a time when China is trying to shake off its reputation as a haven for widespread pirated and counterfeit goods. It demonstrates that China is taking a much firmer approach towards enforcing stricter sanctions under the new trademark law, even when the party being sanctioned is a domestic business.

THE EUROPEAN COMMISSION **FOCUSES ON THE E-COMMERCE SECTOR**

By Alexandra Kamerling and Marianna Kinsella (London)



The European Commission has announced a competition law inquiry into the e-commerce sector in the context of a Digital Single Market strategy in the EU. The Commission suspects that companies that engage in selling consumer goods on the Internet may be restricting online trade by using anti-competitive methods such as territorial fragmentation and restrictions of price competition.

The inquiry, announced in May 2015, will focus on identifying obstacles that hinder cross-border e-commerce of digital content and tangible goods (notably clothes, shoes and electronic goods) in particular restraints in distribution agreements. Unilateral, abusive conduct by companies with a strong market position will also be targeted by the Commission.

In line with the EU's agenda of creating a single unified market, the Commission is now focusing its efforts on breaking down barriers to trade and crossborder commerce. A targeted change to the existing e-commerce framework is expected which will run parallel to the Commission's work on opening up digital markets.

E-COMMERCE SECTOR INQUIRY

Under EU competition law,¹ the Commission has the power to conduct inquiries into particular industry sectors where the level of trade between member states, rigidity of prices or other circumstances suggest that competition may be distorted within the internal market.²

Consumers within the EU often find that they cannot access goods or services offered on websites from other countries. Although there may sometimes exist reasonable justification for this, such as varied legal frameworks or language barriers, there may also be aspects that could amount to anti-

competitive agreements, concerted practices or abuses of a dominant position.

The scope of the sector inquiry is extremely broad, however it will initially focus on those goods and services in which e-commerce is most widespread such as electronics, clothing and shoes as well as digital content. It will cover manufacturers and retailers, online content service providers, and online platforms such as marketplaces and price comparison websites.

The Commission informally indicated that it has sent out approximately 2,000 requests for information (RFIs) to companies across the EU. RFIs are part of the Commission's initial fact-finding exercise and questionnaires can be rather data intensive. Companies that have received an RFI are likely to be given approximately one month to respond.

While the establishment of a sector inquiry does not mean that there are necessarily grounds for enforcement action, the information that the Commission receives may lead to follow-up investigations. It is intended that by mid-2016, a preliminary report will be published by the Commission with a final report expected in early 2017.

GEOBLOCKING ISSUES

The Commission will focus on arrangements between suppliers and e-commerce platforms and will assess whether there are territorial or pricing restrictions on tangible goods as well as on digital content – i.e. geoblocking. Contractual restrictions on an online retailer's ability to engage in passive sales across the EU member states are prohibited³ (i.e. if responding to customer queries rather than actively marketing). However, individual retailers are free to unilaterally decide to re-route customers (within their own corporate group) to a particular local web portal, based on the customer's

location according to its IP address. The competition law concerns arise when a retailer agrees with its distributor (online or offline) to partition the EU market.

The Commission can take action against unilateral behavior by online platforms where they are abusing a dominant position. Examples of ways in which sellers and providers of services have created geoblocking barriers include:

- Blocking any access to websites across borders. This is often coupled with automatic rerouting to national websites.
- Allowing access to websites across borders but denying the possibility to complete the order or purchase after the e-commerce platform has obtained information on the location of the user.
- Allowing access to websites across borders but denying the possibility to pick up, deliver or ship the goods across borders.

CONCLUSION

The Commission's decision to conduct an inquiry into the e-commerce sector at this time appears to be triggered by a number of factors, not least the fact that existing practice rules do not appear to be suited to the current framework for analysing competition issues arising out of online sales and distribution.

The divergent approaches of member state competition authorities creates a more complex trading environment.

It is hoped that the e-commerce sector inquiry will clarify issues in a way that will enable cross-border trade in Europe to flourish.



¹ Article 17 of Council Regulation 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

² Previous inquiries have been conducted in the markets for pharmaceuticals, banking services and energy.

³ Article 4(b) of the Vertical Block Exemption Regulation.

FASHION MODELS CROSSING A THIN LINE

By Ruth Hoy and Emily Leach (London)

Social responsibility in the fashion industry is a hot topic. Fashion brands need to be wary of scrutiny for creating aspirational advertising that can be perceived as socially irresponsible.

The use of size zero models, both on the catwalk and in advertising, is a trend that has been on-going for many years since the rise of Twiggy in the sixties (so-called for her slim frame). However, with worrying statistics regarding eating disorders and a growing social backlash to this perceived 'iconic' body shape, we are seeing growing legislative intervention in this area.

THE LAW

In April this year, the French National Assembly approved a bill to legislate against the use of excessively thin models in the fashion industry. Models with a body mass index (BMI) below a level prescribed as healthy by health authorities will not be able to work in the modeling industry. In addition, any photo-shopped images in fashion advertising will need to be accompanied by a notice detailing the fact that the image has been edited. Modeling agencies that do not comply with this legislation could face fines of up to €75,000 and imprisonment of up to six months, while advertisers that do not adhere to the notice requirement could face a fine of €37,500 or up to 30 percent of the sums spent on the advertising.

This move by the French legislature follows the introduction of legislation in Israel. Israel was one of the first countries to legislate in this area and uses the BMI measure set by the World Health Organization to monitor the industry. Models are required to produce certificates to evidence their healthy BMI before they're able to

work. The Israeli legislation also requires notice of photo editing to be given in advertising.

In 2006 the Spanish Association of Fashion Designers banned models with a BMI of under eighteen from walking the catwalk at Madrid Fashion Week. A system of self-regulation has since resulted in Spain. The Italian fashion industry also relies on voluntary codes of conduct.

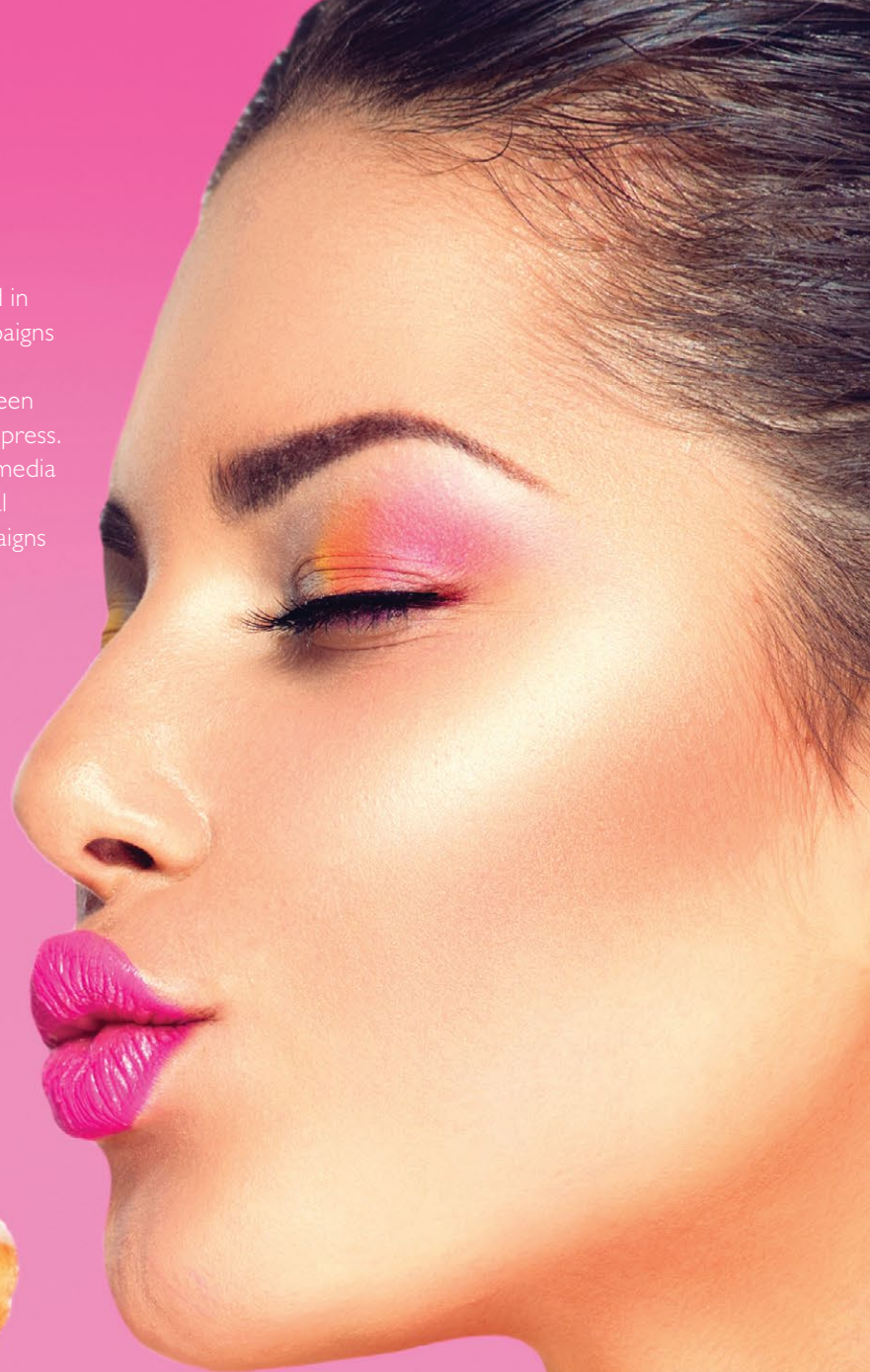
The UK is yet to formally legislate on this issue however a series of adjudications by the advertising regulator, the Advertising Standards Authority (ASA), shows its concern. The ASA enforces the UK Code of Nonbroadcast Advertising, Sales Promotion and Direct Marketing (CAP Code). The complaints that have been upheld against fashion brands in this area tend to be held to breach rule 1.3, which states that *'marketing communications must be prepared with a sense of responsibility to consumers and to society'*. Although this rule does not expressly concern weight issues like the legislation mentioned above, it is clearly in place to combat social concerns and to ensure that advertisers take their social responsibility seriously.

In 2011 and 2014, complaints about the use of 'unhealthily thin' models brought under rule 1.3 were upheld against Drop Dead Clothing Ltd and another major fashion brand. In both decisions, the ASA emphasized the social responsibility of the brands to consider the audience of their adverts and the need to not portray an unhealthily thin figure as something to aspire to.

In June this year, the ASA also upheld a complaint against Yves Saint Laurent SAS (YSL) regarding an advert that featured a woman wearing high wedge-heeled shoes that contrasted with her slim legs, and arching her back exposing her ribcage. The advert was challenged on the basis that the model appeared too thin, and therefore the advert was irresponsible. YSL expressed that they did not agree with the suggestion that the model was unhealthily thin, however they did not give a detailed response to the complaint. In their decision, the ASA commented on the lighting effects, positioning of the model and contrast between the model's slim legs and large shoes which made her appear very thin.

SOCIAL BACKLASH

It is not just legal implications that need to be considered in this area. This year several high profile social media campaigns have resulted from consumer posts on Twitter. Tweets criticizing the size and frame of shop mannequins have been shared over six thousand times and reported in national press. In May last year, La Perla came under criticism on social media for using mannequins that had visible ribcages. Such social backlash sits amongst growing anti-eating disorder campaigns and a rise in the use of plus size models.



TOP TIPS FOR ADVERTISERS

- Use models from a reputable modeling agency; one that is compliant with the law within the jurisdiction they operate.
- Keep up-to-date with complaints made to national regulators to avoid the pitfalls made by other advertisers.
- For global advertising campaigns, consider the legal implications of your advertisement in all jurisdictions where it will appear.
- Consider your audience and those that will aspire to the lifestyle you're advertising, and target your advertisement in a socially responsible manner.
- Consider the advertisement as a whole; your model may be healthy but ensure that her image doesn't suggest otherwise.
- Be wary of social media; check whether there are any high-profile campaigns going on while your advertisement is live.
- Consider implementing an internal policy on the use of photo editing in advertisements.



It is not new that the fashion industry takes inspiration from the cultural heritage and traditional know-how of indigenous peoples and local communities. A substantial number of fashion designers rely on indigenous and traditional expressions – for example, block printing, embroidery techniques, traditional beading or use of patterns – to create new designs and materials. For instance, last year, the London-based fashion house KTZ, debuting at New York Fashion Week for fall season 2015, featured a homage to Native American aesthetics. Recently, Brazil-based sandal manufacturer Havaianas created a line of flip-flops with a design inspired by the aesthetics of the Yawalapiti tribe.

TRADITIONAL CULTURAL EXPRESSION AND THE FASHION INDUSTRY

INSPIRATION OR MISAPPROPRIATION?

By Sara Balice and Giulia Zappaterra (Milan)

But, increasingly, the question of cultural misappropriation is impacting the fashion world, at times creating considerable public outcry. Where is the line between inspiration and misappropriation of such cultural expressions? The answer is not straightforward.

The World Intellectual Property Organization (WIPO) has pointed out that traditional cultural expressions include a number of forms that are to be considered as a part of a community's identity and heritage, passed from generation to generation. This heritage might consist not only of songs and ceremonies but also – and more importantly for the fashion industry – in design, signs, symbols, handicrafts and other artistic expressions.

WIPO has been working on protecting traditional cultural expressions for quite some time, while recognizing that providing such protection would also mean an important shift in intellectual property laws. WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is currently addressing international legal protections of traditional cultural expressions.

Some countries already have special legislation for the protection of folklore. New Zealand, for instance, has a long-standing statutory framework that specifically protects Māori cultural heritage. However, this is an exception. Traditional cultural expressions are not generally protected

by current national intellectual property systems. In fact, in most cases the approach of many national IP laws is to consider the traditional cultural expression as part of the public domain, with the consequence that they cannot be the subject of exclusive rights of certain communities or groups.

A step towards the enhancement of traditional cultural expression protection in the EU would be the extension of geographical indication protection to non-agricultural products. This was the subject of the European Parliament resolution of 6 October 2015. According to the EP, geographical indication protection should also be granted to products that are created through traditional know-how and to techniques that form a part of a culture's heritage, and should include non-verbal signs and symbols associated with a particular region.

This is very relevant for Italy, which is divided into regions that each have a strong cultural expression with unique locally made products (such as the coral jewels of Torre del Greco).

In Italy, fashion designers currently seem to be free to draw inspiration from traditional cultural expressions, but in future they might encounter problems if geographical indication protection is granted to non-agricultural products based on traditional know-how.

It will be interesting to see the evolution of this long-awaited shift in IP and see how the balance is struck between protecting cultural heritage and encouraging designers' inspiration.



FASHION FORWARD

THE RISE OF FASHION LAW PROGRAMS IN THE UNITED STATES

By Ann Ford, Ashley Green, and Naomi Abraham (Washington, DC)

The fashion industry is a trillion-dollar global industry with hundreds of billions of dollars spent annually in the United States alone. The scope of this industry ranges from large fashion design houses to smaller design shops to international retailers to local boutiques. Fashion touches many cities, occupations and sectors of the economy. Yet despite fashion's economic reach, the intersection of fashion and the law is an area that has historically been overlooked in US law school curricula.

Indeed, it can be said that fashion has never been afforded the same level of intellectual property protection as other creative works in the US. While an original pattern on a dress and accompanying jewelry may be protectable under copyright law, the structure of the fashion item itself is generally not protectable. Other legal issues intersect with the fashion world as well. These include international trade concerns around tariffs for textiles, civil rights and health initiatives for models, financing of business startups for designers, and copyright concerns around the appropriation of popular art and expression.

In an effort to help lawyers and fashion industry professionals alike navigate this complicated landscape, some law schools now offer programs geared toward fashion law. Schools in New York and California, to name a few, now offer various courses centered

on legal issues in the fashion industry. More law schools are starting to offer at least one course on pressing fashion issues, in addition to hosting workshops and panels where experienced lawyers in the industry can offer insight into the fashion world. Recognizing the impact the fashion industry has on the economy, these programs aim to give students access to industry insiders and insight into the pertinent facets of the law. From lessons on protecting brands and designs, to tips on managing the online retail market and advice on the international trade of textiles, these programs cover the full gamut of legal issues that fashion professionals may encounter in the market.

Given the artistic and economic impact fashion has on the economy, these fashion law programs are a great starting point for students, lawyers, and industry professionals to learn the business of fashion.



THE UK'S MODERN SLAVERY ACT 2015 5 STEPS TOWARD COMPLIANCE FOR THE FASHION SECTOR

By Gurpreet Duhra (Sheffield)

The enactment in the UK of the Modern Slavery Act 2015, which aims to tackle the worryingly pervasive issues surrounding forced labor and human trafficking, has been welcomed and proactively backed by many large organizations, including the British Retail Consortium.

The Act requires UK companies with a global turnover in excess of £36 million to produce annual statements regarding the steps (if any) taken by the business to ensure that slavery and human trafficking does not take place in its business or in any of its supply chains, wherever they are based. The extraterritorial application of the Act inevitably brings with it a burden of closely monitoring labor conditions across widespread and often complex supply chains.

Compliance with the Act is hoped to go some way toward suppressing the existence of slavery and human trafficking crimes within many industries – in particular, the retail and fashion sector, where revelations regarding child labor and working conditions have been most prevalent in recent years.

The impact of the Act's requirements on fashion retailers is likely to require greater awareness and more due diligence regarding suppliers and sub contractors. Some of the steps that retailers should consider to demonstrate their compliance with the Act are:

- Conducting an audit of supply chain so that risks can be identified and mitigated.
- Identifying specific high-risk geographies. Third-party sources (such as the Global Slavery Index) can be used to support any particular selection and to avoid any implied criticism of a particular government or culture.
- Introducing new review mechanisms, processes, policies and procedures and reviewing the adequacy of those already in place.
- Reviewing standard terms with suppliers to secure appropriate commitments from suppliers to uphold acceptable labor standards.
- Appointing a senior manager in the business to take responsibility for compliance.

In light of the Act's requirements, the Home Office has issued guidance which is intended to assist companies by explaining in more detail which companies have to publish a statement, how to write the statement, and how it should be approved and published.

Whilst this practical guidance is welcome, it leaves much to every organization to consider what is a relevant and proportionate response. Whilst it appears a modest obligation merely to issue a statement, in reality it places an onerous burden on the director who will now be obliged to sign off on this. He or she will need to satisfy themselves that appropriate underlying verification work has been undertaken, to ensure the organization is indeed taking steps to prevent modern slavery and human trafficking in its supply chains.

In truth, the verification required behind making such a statement covering all tiers of a supply chain means this is no small enterprise for any organization and businesses will have to take the generic guidance and adapt it as appropriate for themselves, fully mindful of the reputational risk if they do not.

USE CAUTION WITH SUBLICENSES IN THE GERMAN FASHION INDUSTRY

By Dr. Annemarie Bloß and Alexa Mattfeld (Hamburg)

As a consequence of the *M2Trade* and *Take Five* decisions of the German Federal Court of Justice (BGH), sublicenses continue to exist once the main license is terminated. This has a severe impact for both licensor and licensee in the fashion sector.

LICENSING IN THE FASHION INDUSTRY

The advantages of licensing in the fashion industry are numerous, including risk and cost reduction, increase of market penetration, market profile and revenues. Licensing is commonly used to expand fashion companies and generate additional income beyond the company's own capacity, geographical reach and production strength. By means of brand extension licensing, for example, fashion designers license their trademark for use on branded eyewear (e.g., Gucci, Prada, Paul Smith) or perfume (e.g., Polo Ralph Lauren under license to L'Oréal). Co-branding, character licensing as well as seals of quality or origin are other licensing models that have become key components of today's value chain in the fashion industry.

THE M2TRADE AND TAKE FIVE DECISIONS OF THE GERMAN FEDERAL COURT OF JUSTICE

Licensing is a very attractive business tool, but it can bring significant risks, especially for the main licensor in cases in which the main licensee is entitled to grant sublicenses.

In its *M2Trade* and *Take Five* decisions, the German Federal Court of Justice ruled that the sublicense survives the expiry of the main license in cases in which the main license is terminated. The Court based its decisions on the principle of protection from succession

(*Sukzessionsschutz*) which applies to industrial property rights under German law. The only remedy left to the main licensor is a claim against the main licensee for the assignment of any license fee claims against the sublicensee under Section 812 of the German Civil Code (unjust enrichment).

The original decisions were handed down in 2012 and remain highly relevant. The judgments are generally held valid not only for copyright licenses but for industrial property rights also. Having been confirmed in several subsequent judgments, the practical consequences of these decisions are becoming fully apparent only now. As a consequence, an extensive discussion regarding the appropriate drafting of license agreements has ensued.

PRACTICAL CONSEQUENCES

The *M2Trade* and *Take Five* decisions create legal certainty for the sublicensee and are intended to protect the sublicensee against the economic consequences of an unforeseeable termination of the sublicense. On the flip side, the main licensor loses control over its intellectual property.

For the main licensor, the key aim should be to stay in control of its intellectual property rights. This can be achieved either by entitling the main licensee to grant sublicenses with the prior written approval of the main licensee only, or by choosing the more effective and practical alternative – that is, obligating the main licensee to grant sublicenses

only under the condition that the sublicense subsequently expires upon termination of the main license.

The main licensee, on the other hand, bears the risk of being unable to fulfil certain contractual obligations towards the sublicensee once the main license agreement has been terminated, as some of these obligations, such as support obligations, depend on services received from the main licensor. Upon termination of the main license agreement, the main licensor is no longer obligated to render these services, leaving the main licensee faced with damages claims.

Finally, the sublicensee may suffer negative effects also, despite the court's intention to protect its economic interests. Not only does the sublicensee run the risk of no longer receiving necessary services from the main licensee, but the main licensor is now no longer hindered from granting licenses to immediate competitors of the sublicensee; nor is it obligated to maintain its intellectual property or protect it from infringements by third parties.

All parties' interests may be served and the above negative effects prevented by granting the main licensor the right to take over the sublicenses should the main license terminate. In any event and given the consequences of the decisions for all sublicenses subject to German law, existing license contracts should be revised and new contractual provisions drafted carefully in order to protect the interests of all parties involved.

TEN RULES FOR ONLINE RETAILERS IN TURKEY

By Hatice Ekici Tağa (Istanbul)

Enactments of new consumer protection legislation in Turkey is a hot topic. In 2014, the new Consumer Protection Law was entered into force, followed by its secondary legislation. In May of this year, the long expected Law on Regulation of Electronic Commerce was implemented.

Businesses engaged in e-commerce, including online retailers, are now required to comply with several obligations stipulated in these new laws.

DUTY TO INFORM CONSUMERS

Online retailers must disclose certain information to consumers prior to entering into an e-commerce contract, namely:

- Identity and contact information of the seller
- Main characteristics and price of goods
- Payment and delivery information
- Technical steps for entering into an e-commerce contract
- Right of withdrawal
- Data privacy and dispute resolution methods.

TAKING ORDERS

Sellers must provide the following steps to consumers at the stage when orders are placed:

- An order confirmation page, that appears prior to payment and that includes contractual terms, including the total amount to be paid
- Technical tools to enable consumers to detect and correct data entry errors prior to placing the order
- Confirmation of receipt of the order without delay.

DELIVERY

Sellers are obliged to deliver orders within the promised delivery term. This term may not, in any event, exceed thirty days. If the delivery is not possible, sellers must inform consumers within three days and return the payment

together with all delivery expenses within fourteen days of notification. However, it should be noted that insufficient stock is not acceptable as an event that makes delivery impossible. Therefore, sellers should make sure that their online stores correctly reflect stock levels.

RIGHT OF WITHDRAWAL

Consumers have a right to withdraw their order within fourteen days from the delivery of the order without stating any reason at the expense of the seller. As mentioned, sellers must inform consumers of their withdrawal right when entering into an e-commerce transaction. Unless the consumers are duly informed, the withdrawal term will be extended by one year.

DEFECTIVE GOODS

In circumstances where goods are defective, sellers are required to recognise the consumers' elective rights, which are:

- (i) Return of payment
- (ii) Reduction of the sale price
- (ii) Repair of the goods
- (iv) Product exchange.

Consumers may exercise these rights within two years of delivery.

LANGUAGE AND FORM REQUIREMENTS

There is no express language requirement stipulated in the legislation. Having said that, the consumer protection legislation provides that consumer contracts, including T&Cs, privacy policy and pre-contractual information disclosures, must be provided in a clear, simple and readable manner. Therefore, it is accepted that consumer contracts should be provided by sellers in Turkish. Additionally, in terms of form requirements, a font size of at least 12 points should be used.

UNFAIR TERMS

Sellers should not include unfair terms in their consumer contracts as these terms are accepted as invalid and may not be enforced against consumers. Unfair terms are defined as contractual terms which have been unilaterally concluded without negotiating with the consumer, which cause an imbalance between the parties' rights and obligations arising from the contract to the detriment of the consumer in violation of good faith.

DIRECT MARKETING MESSAGES

Sellers may only send commercial electronic communications by obtaining prior consent (opt-in) from consumers. Such consent can be obtained in writing or through electronic communications means. Additionally, consumers have a right

to refuse commercial electronic communications (opt-out) without stating a cause; the seller must comply with such opt-outs within three business days from the receipt of the refusal.

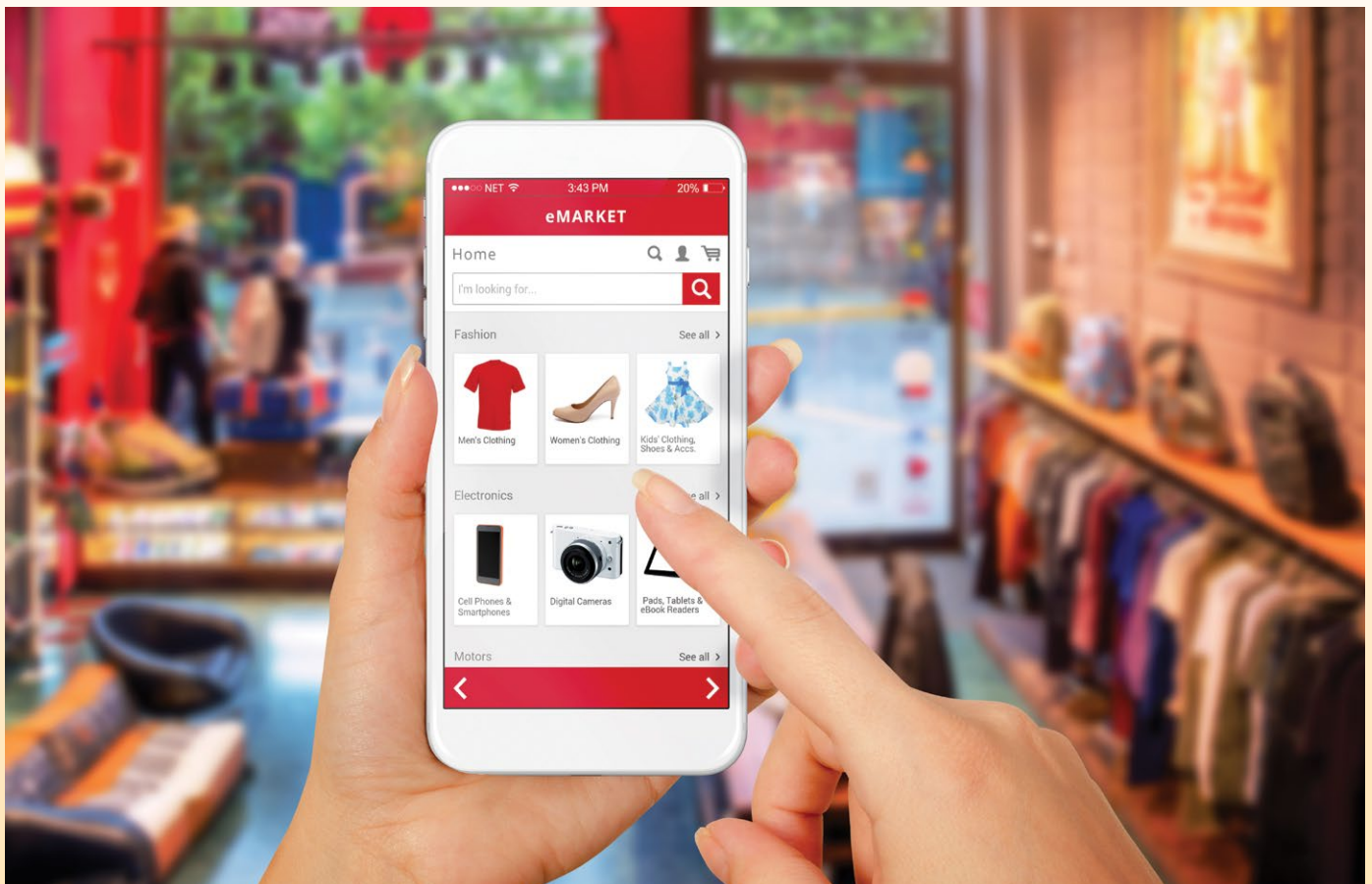
DATA PROTECTION REQUIREMENTS

Sellers are responsible for storing any personal data collected from consumers. Such personal data cannot be transferred to third parties or used for other purposes without the approval of the consumer (data subject).

DATA RETENTION

Information and documents with respect to e-commerce transactions and the fulfillment of seller's obligations (such as information and delivery obligations) must be retained by the seller for three years. Additionally, records of commercial electronic communications must be retained for one year. The records retained by the seller must be provided to administrative authorities upon request.

In light of the above, the recent legislative enactments have brought many rights in favor of consumers which will build consumer trust. When evaluated together with Turkey's young population and the increasing number of Internet users, these changes are expected to boost e-commerce and the participation of international companies in the Turkish market.



FACTORY OUTLET CENTERS AND THE GERMAN FEDERAL CARTEL OFFICE'S DECISION ON RADIUS CLAUSES

By Carla Nicolai (Frankfurt)

The establishment of factory outlet centers as a new retail concept started as a trend in the US. These centers, which tend to be located away from big cities, offer well-known brand product manufactures the opportunity to sell their products with significant discounts to end consumers. Over the past 25 years, such large outlet centers have spread to Europe. While market saturation has been reached in some European countries, such as Great Britain, Germany still has potential for new outlet centers. In 2012, three new outlet centers were opened in Germany, increasing the number of sites from six to nine at that time. However, outlet centers face massive criticism, often by retail or communal associations and, prior to a potential opening, the outlet center has to overcome numerous legal barriers.

Branch experts assume that most of the lease agreements between operators of outlet centers and brand product manufacturers contain prohibitions of competition in the form of so-called radius clauses. Such radius clauses forbid tenants to open up shops in another outlet center within a certain radius.

In this context, a conflict recently arose between Value Retail (VR), the operator of Wertheim Village Factory Outlet Center, and Stable International, the operator of the fashion outlet center in Montabaur, because VR's radius clauses forbid its tenants to open up shops in other factory outlet centers or individual outlets within a radius of 150 kilometers of Wertheim Village, while Montabaur is only 147 kilometers away from Wertheim Village. In response, Stable called in the German Federal Cartel Office (FCO) claiming a substantial impairment of its freedom of competition because potential tenants, which were already running a shop in Wertheim Village, were restrained from signing a lease for Montabaur due to VR's extensive radius clause.

In 2013, the FCO sought an injunction against VR. After a preliminary assessment found such radius clauses to be anti-competitive, the FCO conducted a comprehensive market survey. In March 2015, the FCO ordered that VR could not rely on radius clauses

in lease agreements with brand product manufacturers "if these extend beyond a 50 kilometer air radius and a term of 5 years". The president of the FCO said, "Restrictive radius clauses of this scale not only restrict competition between existing factory outlet centers, they significantly hinder companies wishing to enter the market with a new factory outlet center."

The FCO's decision is not yet final, but was issued as being immediately enforceable. VR has already taken steps to challenge the decision and has criticized what it sees as a one-sided directing of the proceedings carried out by the FCO, which did not consider VR's own investigation results that could have been used to defend the radius clause. In particular, in VR's view, no proof was provided to establish that existing or new outlet centers are adversely affected by the radius clause currently used, nor that tenants' ability to compete with other brand manufacturers is impaired. Stable, on the other hand, welcomed the FCO's decision and has indicated that it will amend the already existing lease agreements on its tenants' request, which provide for a 50-kilometer radius and an indefinite term.

Tenants' freedom of establishment was at the essence of the FCO's decision, and it offers not only tenants

but also existing operators of factory outlet centers greater possibilities for competition. According to a March 2015 market survey carried out by Ecostra, a leading German advisory company, ten factory outlet centers are currently operating in Germany. These operating outlet centers have a current market share of 1.2 percent compared to the German fashion trade. If the FCO's decision becomes final, it will not only ease leasing in Montabaur, but will also make opening factory outlet malls more attractive in general.

According to Ecostra's market survey, twelve further factory outlet centers are already in an early or advanced planning phase. These new outlet centers will benefit from this enlarged freedom of competition. It is estimated that in 2020, approximately twenty factory outlet centers will be operating and the market share will be increased up to a maximum of 3 percent of the German fashion trade – and, very likely, market saturation might be reached.

Even though the FCO's decision seems instinctively the right one, it remains unclear why exactly the line was drawn at a radius of 50 kilometers and a term of five years. Critical voices recognize arbitrary aspects in this decision. Further developments in this area therefore remain worth following.

WORD FROM THE INDUSTRY'S MOUTH

Interview with **Lisa Chung**, Deputy President of Trustees of the Museum of Applied Arts and Science, Chairman of The Benevolent Society and Non-Executive Director of APN Outdoor Group Limited.

By **Melinda Upton** and **Jessie Buchan** (Sydney)



Image credit: Jayne Ions

The Museum of Applied Arts and Sciences (MAAS) is Australia's contemporary museum for excellence and innovation in applied arts and sciences. In April 2015, the MAAS launched the Centre for Fashion (CFF), Australia's first dedicated centre for fashion excellence. We sat down with the Deputy President of Trustees of the Museum, Lisa Chung, to garner her insights on the CFF and its pivotal role in the Australian fashion industry.



Image credit: Jayne Ions

LISA, CAN YOU TELL US A LITTLE ABOUT YOUR ROLE AT THE MAAS?

The governance of the MAAS is shared among the Minister for the Arts, the Trust (made up of nine Trustees) and the Director. I am the Deputy President of Trustees (and also the Chair of the CFF). The Trust regularly reviews the activities and finances of the MAAS, advises on the directions of and plans for the MAAS and advocates within the public and private sectors on its behalf. As a trustee, it is my responsibility to represent the public in the management and policy formulation of the MAAS.

HOW DID THE CENTER FOR FASHION COME ABOUT?

The MAAS holds a unique place in the museum space as Australia's only museum of applied arts and sciences. For me, fashion is the ultimate applied art and it belongs in spaces such as the Museum.

The CFF, which was conceived of by the Museum's Director of Curatorial, Collections and Exhibitions, Dolla Merrillees, is housed within Sydney's Powerhouse Museum, and the impetus for its creation is to provide the best possible access to the museum's outstanding collection of fashion, textiles and costumes, and to use that as a focus for engaging with our audiences, stakeholders, industry and young designers. To give you some context, the museum's wonderful collection comprises over thirty thousand items, from eighteenth century court dress, colonial dress, the most comprehensive shoe collection in the country and works by twentieth century and contemporary international and Australian designers such as Coco Chanel, Collette Dinnigan, Christian Dior, John Galiano, Issey Miyake and Yohji Yamamoto.

The timing of the establishment of the CFF is fortuitous. The Australian Fashion Chamber, founded in 2013, is really hitting its stride, and this year marked twenty years of Fashion Week Australia. The Australian fashion industry is blossoming and the CFF is integral to this united vision to strengthen and further develop the Australian fashion industry.

To ensure we deliver on this promise, the CFF has an advisory committee which is governed with the task of steering its strategic direction. Each of the members of this committee bring to the table varied and invaluable knowledge and expertise. With the likes of Edwina McCann, Editor-In-Chief of *Vogue Australia*, who has over twenty years' experience in the luxury fashion market and extensive media experience, Peter McNeil, Professor of Design History and Associate Dean (Research) at the University of Technology Sydney, and inaugural patron Gene Sherman, a well-known arts identity in Sydney and an avid supporter and collector of Japanese fashion, the diversity of representation will ensure that the CFF delivers on its remit and the museum's overall vision to become the leading hub for fashion in Australia. This expertise is also extended by a number of respected fashion and textile curators within the MAAS team.

THE REMIT FOR THE CFF IS TO FOSTER CREATIVE EXCELLENCE, SCHOLARLY INQUIRY AND PUBLIC CURIOSITY. WHAT INITIATIVES IS THE CENTER UNDERTAKING TO DELIVER ON THESE OBJECTIVES?

The museum's recent September 2015 launch of the exhibition *Collette Dinnigan: Unlaced*, generated a lot of interest in the industry and was a great success. Exclusive to the museum, this was the first exhibition to honor the internationally acclaimed designer and bring into focus Collette's unique creative perspective. Following the launch of the exhibition, Suzy Menkes, one of the world's best known fashion journalists, esteemed fashion critic and current *Vogue* international online editor, held an intimate on-stage conversation with Collette. The event was a hot ticket in the Australian fashion industry and, during the course of the conversation, various topics were touched upon ranging from competitiveness within the industry, Dinnigan's work with lace, and the future of the Australian industry. Interestingly, Suzy Menkes also shared her views about how young Australian designers should shift their focus to capture resort and swimwear, and she identified this as the obvious link and means by which Australians can tap into the Asia-Pacific and US markets. Australian fashion label Zimmerman is a good example of this.

Other recent events include a lunch with members of our Designers Circle at Gene Sherman's gallery where we hosted British milliner, Stephen Jones, and the CFF recently hosted a morning of fashion conversation with iconic Australian designer, Carla Zampatti, and Fashion Editor of *The Australian*, Glynis Traill-Nash. Carla encompasses what the museum and the CFF is about – showcasing creativity but pushing through to ensure you create a commercially successful product. This is an incredibly important learning for young Australian designers, and the objective of sessions such as these is to ensure students understand how the industry works, how they can obtain business contacts and take the next step.

In March of this year, the museum also revealed its exhibition *Undressed: 350 years of underwear in fashion*, featuring more than eighty garments from the London Victoria and Albert Museum's extensive collection of underwear, a collection spanning three hundred and fifty years of fashion history. Collaborations with other institutions is of utmost importance to the museum and our curators are overseas several times a year building these relationships and gaining insight into what other museums are doing in the fashion space. Leveraging these relationships is key. In May this year, four items from our collection featured in the Costume Institute's *China: Through the Looking Glass* exhibition at the Metropolitan Museum of Art in New York.



Image credit: Jayne Ions

THE CENTER HAS ATTRACTED THE INTEREST OF DESIGNERS FROM AROUND THE WORLD, INCLUDING AUSTRALIAN DESIGNERS SUCH AS COLLETTE DINNIGAN, ZIMMERMAN AND DION LEE. IT ALSO HOUSES KEY PIECES FROM THE ARCHIVES OF PIONEERING INTERNATIONAL DESIGNERS. GIVEN THE RECENT INFUX OF INTERNATIONAL RETAILERS IN THE AUSTRALIAN MARKET, HOW IMPORTANT IS IT THAT INITIATIVES SUCH AS THE CFF SHOWCASE OUR HOME-GROWN TALENT?

Making sure we continue to foster the next generation of Australian fashion designers is a key aspect of the CFF's mandate. The CFF's remit is to foster fashion excellence. Ensuring we provide support to local designers is a key focal point to ensuring we deliver on this remit. With Australian designers now very much on the world stage and retailing right up there with the top international brands, the idea is to continue to support young designers who are coming into the industry so that they can reach their full potential – both creatively and commercially. The Australian Fashion Chamber is working hard to instil business and commercial discipline in young designers and we want to complement that. By working in collaboration with students and teachers from design schools such as White House, and the University of Technology, we hope to contribute to the field of students' fashion studies, curation and conversation, and act as a tangible access point for these discussions.

WHAT DO YOU SEE AS THE NEXT BIG THING IN FASHION AND RETAIL?

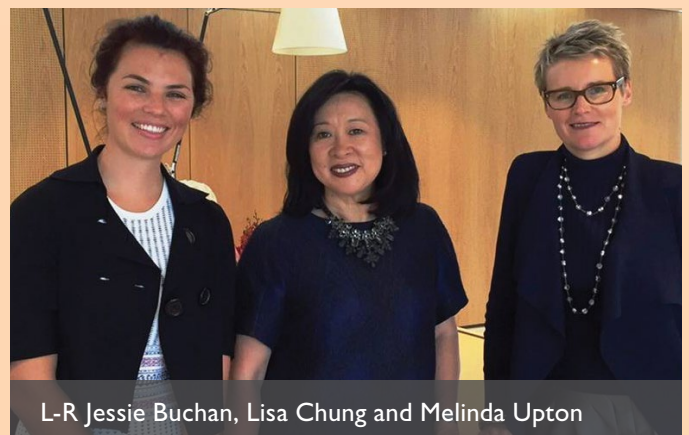
Sustainability in fashion and the retail industry's role in that is currently receiving a lot of attention. How and from where garments are sourced, the conditions under which workers produce garments, as well as the environmental sustainability of the industry are hot topics. Consumers are increasingly interested to know about every stage in a garment's life and want more visibility and transparency in how these garments are made. I think this issue will continue to gain traction in the coming years.

YOU RECENTLY RETIRED FROM PARTNERSHIP IN THE REAL ESTATE GROUP AT MADDOCKS AND HAVE NOW ASSUMED A NUMBER OF NON-EXECUTIVE DIRECTOR POSITIONS. HOW HAS YOUR EXPERIENCE IN THE LAW ASSISTED YOU IN YOUR CURRENT NON-EXECUTIVE ROLES?

Experience as a lawyer develops professionalism, and provides excellent training in analytical thinking and commerciality. The practice of property law, in particular, is very commercially focused, and the skills I developed during my time as a lawyer in this field are easily translatable into my current roles on boards, such as my position at the museum now. However, it is important to remember that, as a director on a board, you are fulfilling a very different role to being a legal adviser and it is a matter of combining the skills you have developed as a lawyer with other skills, such as sector and commercial knowledge, and applying them in a new context.

FINALLY, CAN YOU SHARE WITH US WHAT YOU ARE WEARING TODAY?

I am wearing Dries van Noten, a Belgian fashion designer, and EK Thongprasert, a designer of Thai heritage based in Antwerp. I am also very fond of these culottes by Stella McCartney. My usual rule in fashion is that if I have worn it in a previous fashion cycle, I can't wear it again... culottes are the exception!



L-R Jessie Buchan, Lisa Chung and Melinda Upton

BUSINESS ROUND UP

GLOBAL CONTENT STRATEGIES AND THE ONLINE CUSTOMER EXPERIENCE

By Melinda Upton, Jessie Buchan and Courtney Adamson (Sydney)

The emergence of online retail has steadily broken down all physical and geographical limitations on consumption. It has reinvented the concept of customer experience and provided a kaleidoscopic array of opportunities for consumers to access and experience goods and services at any time of day, in any location, and on an array of different viewing devices.

The emergence of online retail has steadily broken down all physical and geographical limitations on consumption. It has reinvented the concept of customer experience and provided a kaleidoscopic array of opportunities for consumers to access and experience goods and services at any time of day, in any location, and on an array of different viewing devices.

While online is not a new phenomenon for Australian or overseas retailers, this rapidly evolving channel for customer access and experience presents numerous ongoing challenges. The capacity for consumers to simultaneously view, review and compare a plethora of items from different retailers is rapidly enhancing consumer choice and industry competition.

How do retailers continue to adapt to this rapidly evolving and increasingly competitive online environment?

One leading example in Australia's retail industry is e-tailer SurfStitch Group Limited with its global content strategy. By leveraging content that is relevant to its online offering, SurfStitch has been able to appeal to an increasingly sophisticated consumer base. It has also been able to innovate in, adapt to and evolve with an online environment that knows no limitations for the type of experience it can offer to consumers.

By acquiring surf weather site Magicseaweed.com, global online magazine *Stab* and, more recently, media and entertainment companies Garage Entertainment Aust Pty Ltd and TAG Media Pty Ltd, SurfStitch has created a full spectrum of media and online content. Its site has become a destination for customers who seek to experience everything action sports and surfing related, including the surf and sports themed clothes and accessories that it sells. The company's global content strategy has been hugely successful. For 2015, SurfStitch is on track to double full year's earnings to between AU\$15 million and AU\$18 million, with revenue sitting at AU\$199.4 million (a 30 percent rise).

Possible issues in the making of a fashion collection

By Elena Varese (Milan)

There are few reported decisions concerning the relationship of a designer and his or her supplier with respect to the making of a clothing collection, in the absence of a clear agreement setting out the parties' respective obligations.

In a recent judgment of the Court of Milan, an acclaimed Italian designer was condemned for breach of contract and damages in favor of his licensee. The case arose because the designer contacted his clients to negotiate the final price of his products, which was a right exclusively granted to his licensee.

On the other hand, in the Court's view, the licensee had not used its best endeavors to manufacture the designer's line of clothing, producing poor-quality garments and thus harming the designer's image. In light of the above, the licensee was also ordered to pay damages for the harm caused to the designer's image rights.

This decision stresses how important it is for fashion houses or suppliers to enter into detailed agreements with designers that set out the timing for devising a given clothing line and the relevant sketches, as well as clear quality criteria to verify whether the final products meet the luxury industry's standards. Rather than risking a court ruling as a result of a short memorandum of understanding between the designer and its supplier, drafted while waiting for a more comprehensive agreement, it would be best practice to set out the parties' respective obligations up front, as well as the applicable penalties and the processes to quickly solve potential conflicts.

Private equity firm to buy major U.S. department store for approximately US\$3 billion

By Alexandra Mackey (New York)

Belk, Inc., the largest family owned and operated department store in the United States, has announced that it has entered into a definitive merger agreement with Sycamore Partners LLC, a New York-based private equity firm. Sycamore will acquire 100 percent of Belk shares for a total value of nearly US\$3 billion.

Belk, Inc., a North Carolina based retailer, owns close to three hundred stores across more than a dozen Southern states in the US. Established in 1888 by William Henry Belk, the retailer is in its third generation of Belk family leadership. Sycamore is a private equity firm recognised for investing in consumer and retail companies. Sycamore has stated its strategy is to partner with management teams to improve the operating profitability and strategic value of their businesses. Sycamore's other investments include Nine West, Stuart Weitzman and Aéropostale, Inc.

Under the terms of the agreement, announced in August 2015, Belk shareholders will receive US\$68 per share in cash. Further, Tim Belk, the current Chief Executive Officer, will remain in his position and the retailer will keep its headquarters in Charlotte, North Carolina. Some experts are commenting that Belk was an attractive target for Sycamore as a way for it to increase profitability for the private equity firm by positioning some of its other investments in the retailer.

The deal is set to close in the fourth quarter of 2015, subject to customary conditions, including but not limited to regulatory and stockholder approval which, at the time of publication, are still underway.

Reform to the Australia's low value threshold

By Melinda Upton, Jessie Buchan and Courtney Adamson (Sydney)

Australia's newly elected Prime Minister, Malcolm Turnbull, recently refreshed the nation's tax reform debate with his first major speech on the state of the country's tax system. He took a somewhat kitchen sink approach to the discussion and among the numerous topics he covered was the contentious issue of Australia's Goods and Services Tax (GST).

One issue relevant to Australia's GST is the continued operation of the Low Value Threshold (LVT). The LVT is an exemption that applies to imports entering Australia with a value of less than AU\$1,000. These goods are exempt from GST, customs duty, fees and charges, and the requirement to complete a full import declaration.

The operation of the LVT has long created a price distortion for products under AU\$1,000 that favours international retailers.

A number of reviews on the utility of the LVT have indicated that its removal will have a very marginal negative effect on the Australian economy overall, but will benefit the retail sector. The Australian retail industry has consistently supported the removal of this exemption as a way to reduce the price gap between domestic and overseas products, and to fend off job losses that are predicted as retail sales continue to go to overseas online providers.

Removing the LVT alone will not completely reduce the price gap between local and offshore prices. Operating costs for local retailers are up to 40 percent higher than overseas and pure online retailers due to factors such as labour and occupancy costs. A historical lack of competition intensity in Australia is also a reason for costs sitting at a higher level and a weak Australian dollar will continue to place upward pressure on pricing and downward pressure on retailer's margins.

CALENDAR



Mercedes-Benz Fashion Week Amsterdam

8 – 18 January

London Collection: Mens

9 – 12 January

Milan Men's Fashion Week

16 – 19 January

Mercedes-Benz Fashion Week Berlin

19 – 22 January

Paris Men's Fashion Week

20 – 24 January

Paris Haute Couture S/S 2016

24 – 29 January



New York Fashion Week

11 – 18 February

London Fashion Week

19 – 23 February

Milan Fashion Week

24 February – 1 March



Paris Fashion Week

2 – 9 March

Melbourne Fashion Festival

7 – 13 March

World Mastercard Fashion Week Canada – Toronto

21 – 25 March

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