

SOCIAL MEDIA: ONE OF FAST FASHION'S BIGGEST INFLUENCERS

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I. INTRODUCTION

On average, social media users spend approximately two and a half hours online every single day.¹ During this time users digest masses of information, with the ability to receive transglobal trends,² and engage in any number of activities, ranging from “connecting with family and friends to participating in global movements.”³ Social media allows individuals to easily share information with a potentially infinite audience.⁴ This exchange has become a huge influence in our day-to-day lives.⁵ The exchange of mass amounts of information across the globe exposes users to worldwide trends, and current research suggests social media’s “impact on personal and managerial decision making can be extensive.”⁶

Specifically pertaining to the fashion industry, social media has allowed “consumers [to] pick up fashion ideas today from media and movies, social sharing and friends, street styles, and many other places. They often talk about these ideas online and before you know it, the ideas can grow into trends.”⁷ And with the rapid influx of information available, new trends are constantly coming and going, often

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1. Josh Howarth, *Worldwide Daily Social Media Usage (New 2023 Data)*, EXPLODING TOPICS (Jan. 9, 2023), <https://explodingtopics.com/blog/social-media-usage>.

2. See Clara Sundqvist & Svante Östholm, *Social Media Made Me Buy It: A Qualitative Study On How Consumers Decision-Making Process Gets Affected by Social Media Advertising Exposure in The Evaluation Stage of the EBM Model When Purchasing Fashion Items* (May 27, 2022) (Bachelor thesis, Linnæus University) (on file with Digistala Vetenskapliga Arkivet).

3. Janhavi Ajit Vaingankar, et al., *Social Media-Driven Routes to Positive Mental Health Among Youth: Qualitative Enquiry and Concept Mapping Study*, JMIR PEDIATRIC PARENT (Mar. 4, 2022), doi: 10.2196/32758.

4. See Daniel J. Power & Gloria Phillips-Wren, *Impact of Social Media and Web 2.0 on Decision-Making*, 20 J. OF DECISION SYS. 249 (Apr. 18, 2012), <https://doi.org/10.3166/jds.20.249-261>; *How Social Media Has Changed the Game in the Fashion Industry*, THE FASHION NETWORK (July 11, 2018), <https://thefashionnetwork.com/how-social-media-has-changed-the-game-in-the-fashion-industry/> [<https://perma.cc/G7YE-2ZK9>].

5. See Sundqvist, *supra* note 2, at 11.

6. Power, *supra* note 4.

7. Michaela Elram & Lavie Orna Steiner, *Fashion Conscious Consumers, Fast Fashion and the Impact of Social Media on Purchase Intention*, 4 ACAD. J. INTERDISC. STUD. 173, 174 (Dec. 2015).

disappearing as quickly as they emerge.⁸ To keep up, big brand clothing companies, such as Shein and Zara, are producing clothing at unprecedented rates.⁹ Because these companies are turning to both low-quality textiles and cheap, inhumane labor practices to mitigate costs,¹⁰ “cheap clothing [is] becoming more accessible”¹¹ to consumers. The short-lived trends and low prices, coupled with “our culture normalizing the disposeability of these items,”¹² has resulted in a phenomenon known to many as Fast Fashion.¹³

Fast fashion has severe negative consequences for both the environment and public interest as production and sales often involve excessive waste, unethical labor practices, and intellectual property theft.¹⁴ Because much of current fashion is “algorithmically informed,” social media is one driving factor behind current trends, and subsequently, fast fashion.¹⁵ Legal intervention is the only way to curb social media’s promotion of fast fashion, and it is imperative in terminating the unsustainable practices of the fashion industry.

Throughout this paper, I will discuss how social media has played an impactful part in the development of fast fashion, through its encouragement of mass consumerism, shown by brand use of promotional advertisements, influencers, hauls, and microtrends, among other methods. Further, I will present the current regulations of fashion brands’ social media usage, exposing the need for new laws, and propose a legal framework designed to ensure sustainable business practices and ultimately curb deceitful content within the industry. Finally, I will discuss how this framework should be enforced and the role we, as individuals, can play in preventing the further devastating effects of fast fashion.

8. See Loraine O’Grady, *How to Stay Ahead of Fashion Trends in the Era of Social Media*, HEURITECH (Jan. 12, 2021), <https://www.heuritech.com/articles/fashion-solutions/trends-on-social-media/> [https://perma.cc/GET2-MVAZ]; see also Georgia King, *How to resist Buying into Short-lived Fashion Trends*, FASHION J. (July 25, 2022), <https://fashionjournal.com.au/fashion/resist-buying-short-lived-trends/> [https://perma.cc/B92F-BWBT].

9. See Bennett Coleman & Co. Ltd., *The Future of Fashion is Pre-Loved*, THE TIMES OF INDIA (Oct. 7, 2022); see also Vauhini Vara, *Fast, Cheap and Out of Control: Inside Shein’s Sudden Rise*, WIRED (May 4, 2022), <https://www.wired.com/story/fast-cheap-out-of-control-inside-rise-of-shein/>.

10. *Id.*

11. Hanalei Potempa, *The Dangers of Fast Fashion, Consumer Culture and Microtrends*, THE ARBITER (Apr. 27, 2022), <https://arbiteronline.com/2022/04/27/the-dangers-of-fast-fashion-consumer-culture-and-microtrends/> [https://perma.cc/WLU6-M3W3].

12. *Id.*

13. Amy Lamar, *Shein’s Controversial Rise Into a \$100 Billion Fast Fashion Juggernaut*, THE BUS. OF BUS. (Apr. 29, 2022), <https://www.businessofbusiness.com/articles/rise-shein-100-billion-fast-fashion-scandals/> [https://perma.cc/JU3M-6NNK]; Coleman, *supra* note 9.

14. See Potempa, *supra* note 11.

15. Sarah Spelling, *Are Portia’s Outfits on ‘The White Lotus’ Good or Bad*, VOGUE (Nov. 28, 2022), https://apple.news/A_oRQNUSvQbCUO1gvHet5nQ.

II. BACKGROUND

a. Technology has consistently influenced shopping trends.

New and emerging technological advancements have played a key role in the fashion industry for the past two and a half centuries.¹⁶ With new technology, along came new ways of production, marketing, purchasing, and so on.¹⁷ One facet of the fashion industry that has changed dramatically with the evolution of technology is *how* individuals shop.¹⁸

For instance, the invention of universal product codes in 1974 played a role in the rising popularity of mass retailers.¹⁹ Stores could now “identify product features, such as the brand name, item, size, and color, when an item [was] scanned at checkout,” if they chose to invest in the technology.²⁰ This favored wealthier conglomerates, rather than smaller family-run stores, due to their ability to obtain the new technology.²¹ The Home Shopping Network is another example. Created in 1985, it enhanced an already existing piece of technology and allowed television and shopping to come together.²² Consumers were able to shop via infomercials and could now purchase items from the comfort of their own homes.²³ Following infomercials, there was the development of online shopping, mobile payments, and eventually social media.²⁴ Evolving technology has always played a role in shopping trends, and the emergence of social media is no different.

b. Social media plays a significant role in current shopping trends.

Although the fashion industry is newer to the online game, only popularizing around 2009-2010,²⁵ social media has played (and continues to play) a tremendous role in the fashion industry, and more specifically in the shift of shopping trends.²⁶ Social media allows users to “browse through products on social platforms and

16. *Fashion and Technology: Fashion & Textile History Gallery*, THE MUSEUM AT FIT, <https://www.fitnyc.edu/museum/exhibitions/fashion-and-technology.php> (last visited Apr. 22, 2023) [<https://perma.cc/N2ZS-YWRM>].

17. *Id.*

18. See Thomas Knox, *Three Technology Trends Transforming The Retail Industry*, FORBES (Jan. 25, 2022), <https://www.forbes.com/sites/forbestechcouncil/2022/01/25/three-technology-trends-transforming-the-retail-industry/> [<https://perma.cc/6XXF-APUY>].

19. Dinesh K. Gauri et al., *Evolution of Retail Formats: Past, Present, and Future*, 97 J. OF RETAILING 42, 43 (March 2021).

20. CuriousRubik, *Bar Codes and Item Labels in NetSuite*, NETSUITE BLOGS (Apr. 4, 2018), <https://netsuiteblogs.curiousrubik.com/bar-codes-and-item-labels-in-netsuite> [<https://perma.cc/Y4ZD-D449>].

21. See Tim Harford, *How The Barcode Changed Retailing And Manufacturing*, BBC NEWS (Jan. 23, 2017), <https://www.bbc.com/news/business-38498700> [<https://perma.cc/F5ZV-AUNE>].

22. See Stephanie Braun, *The History Of Retail: A Timeline*, LIGHTSPEED (May 8, 2015), <https://www.lightspeedhq.com/blog/the-history-of-retail-a-timeline/> [<https://perma.cc/3FFZ-5PS5>].

23. *Id.*

24. *Id.*

25. See Elram, *supra* note 7.

26. Braun, *supra* note 22.

make purchases directly within an app without going to a third party website.”²⁷ This means platforms have a user’s attention for the entirety of the transaction—a feature unique from other forms of retail.²⁸

Social media scrollers are also able to connect with friends, influencers, and brands contemporaneously, “mak[ing] shopping interactive, fun, and all about building relationships and leading consumers from inspiration to checkout.”²⁹ The appeal of the “seamlessly blend[ed] social experiences and e-commerce transactions through a single path to purchase, all enabled by a single platform,” has ushered in a new era of shopping: social commerce.³⁰ Subsequently, more individuals are using social media to find, research, and purchase products.³¹ According to a Forbes 2021 respondent study, which polled over 6,000 individuals, approximately two-thirds of shoppers today use social media before making a purchase.³²

Not only has social media ushered in a new age of *how individuals* shop, but it has also played a large role in *what* is being purchased.³³ With new information, pictures, and products posted to platforms daily, new trends are consistently budding.³⁴ Thanks to instantaneous broadcasting capabilities, said trends seem to dissolve as quickly as they appear, creating a vicious cycle of mass consumerism.³⁵ As it pertains to apparel, the fashion industry is no stranger to the cycle of purchase, purge, and repeat—especially with fast fashion.³⁶

c. *What is fast fashion?*

Fast fashion is a term of art coined to characterize the mass production of low-quality apparel that is sold for extremely low prices.³⁷ A big appeal, and arguably the crux of its popularity, is the ability of fast fashion retailers to quickly produce “inexpensive clothing to accommodate consumers’ desire for products in line with

27. Frida Ekholm, *How Social Commerce is Changing Shopping Habits*, CURE MEDIA (May 7, 2021), <https://www.curemedia.com/how-social-commerce-is-changing-shopping-habits/> [https://perma.cc/YK8Z-ASM8].

28. *Id.*

29. *Id.*

30. Robin Murdoch et al., *The Social Commerce Revolution: Future of Shopping and Social Commerce*, ACCENTURE (Jan. 2, 2022), <https://www.accenture.com/us-en/insights/software-platforms/why-shopping-set-social-revolution> [https://perma.cc/X23P-NELK].

31. See Grace Gordon, *Understanding the (Surprisingly Short) Life Cycle of a Fashion Trend*, SAVOIRFLAIR (Sept. 19, 2017), <https://www.savoirflair.com/fashion/237591/fashion-decoded-life-cycle-fashion-trend> [https://perma.cc/4KVQ-J3YQ].

32. Rebecca Brooks, *How Shoppers Are Using Social Media*, FORBES AGENCY COUNCIL (Aug. 27, 2021), <https://www.forbes.com/sites/forbesagencycouncil/2021/08/27/how-shoppers-are-using-social-media/> [https://perma.cc/S9FT-V2QQ].

33. See Riley Johnson, *How Social Media Affects the Fast Fashion Industry*, UNTITLED MAG. (Apr. 23, 2021), <https://untitled-magazine.com/how-social-media-affects-the-fast-fashion-industry/> [https://perma.cc/ML74-VA55].

34. *Id.*

35. *Id.*

36. *Id.*

37. Coleman, *supra* note 9.

ever-changing fashion trends.”³⁸ Inexpensive pieces of clothing, coupled³⁹ with the fact that pieces are no longer designed to last, consumers feel little remorse when discarding clothing on a whim.⁴⁰ Resultingly, there exists an ongoing pattern of “buying, wearing and quickly discarding.”⁴¹ In addition to massive amounts of clothing waste washing up on beaches and consuming landfills, there are severe environmental, social, and economic implications.⁴²

i. environmental implications of fast fashion

It is no surprise the fast fashion industry has a significant negative impact on the environment.⁴³ Just scratching the surface, “the clothing and textile industry is depleting non-renewable resources . . . using massive quantities of energy, chemicals, and water [and] emitting huge quantities of greenhouses gases.”⁴⁴ The World Resources Institute’s recent study on the apparel industry, explains that approximately “2,700 liters of water are required to make one cotton shirt.”⁴⁵ This “is the equivalent to the average consumption of water [for one person, over the course of] two and a half years.”⁴⁶

The reason behind the need for resources stems from clothing production processes.⁴⁷ The production of clothing demands a significant number of resources, from collecting production materials to shipping finished goods to eager customers, each step of the production operation requires an abundance of natural resources.⁴⁸

First, raw materials, such as viscose (a material collected from wood pulp), cotton, and other natural fibers, are harvested and processed.⁴⁹ The fibers are then spun into yarn and subsequently woven into fabric, dyed and finished, assembled into apparel, and finally distributed to retailers.⁵⁰ The dyeing and finishing is “[t]he

38. Honey Bum, LLC v. Fashion Nova, Inc., 63 F.4th 813, 818 (9th Cir. 2023).

39. *Id.*

40. See Coleman, *supra* note 9.

41. Elizabeth Reichart & Deborah Drew, *By the Numbers: The Economic, Social, and Environmental Impacts of “Fast Fashion,”* WORLD RESOURCES INST. (Jan. 19, 2019), <https://www.wri.org/insights/numbers-economic-social-and-environmental-impacts-fast-fashion> [<https://perma.cc/3X7B-UQDX>].

42. *Id.*

43. Kimia Ipakchi, *The Environmental Impact of Fast Fashion*, A NEWS EDUC. (revised Mar. 1, 2022), <https://www.anewseducation.com/post/environmental-impact-of-fast-fashion> [<https://perma.cc/5K3Q-QCGK>].

44. *Fast Fashion Quick to Cause Environmental Havoc*, UNIV. QUEENSLAND AUST., <https://sustainability.uq.edu.au/projects/recycling-and-waste-minimisation/fast-fashion-quick-cause-environmental-havoc> (last visited Dec. 4, 2022) [<https://perma.cc/K63K-Q4S5>].

45. Deborah Drew & Genevieve Yehounme, *The Apparel Industry’s Environmental Impact in 6 Graphics*, WORLD RESOURCES INST. (July 5, 2017), <https://www.wri.org/insights/apparel-industrys-environmental-impact-6-graphics> [<https://perma.cc/U58L-QSS3>].

46. *Id.*

47. *Id.*

48. Kirsi Niinimäki *et al.*, *The Environmental Price of Fast Fashion*, 1(4) NATURE REV. EARTH & ENV’T 189 (2020), <https://doi.org/10.1038/s43017-020-0039-9> (last visited May 8, 2024).

49. See Ngan Le, *The Impact of Fast Fashion On the Environment*, PRINCETON UNIV. (July 20, 2020), <https://psci.princeton.edu/tips/2020/7/20/the-impact-of-fast-fashion-on-the-environment> (last visited Dec. 4, 2022) [<https://perma.cc/9ENF-3UQV>].

50. *Id.*

most energy intensive stage,”⁵¹ due to “the wet processes used, resulting in heating high amounts of water.”⁵²

Another study conducted in 2017 by the Ellen MacArthur Foundation, an organization founded to promote a circular economy,⁵³ “estimated that the fashion industry . . . uses around 93 billion cubic [meters] of water per year, which is four percent of all freshwater extraction globally.”⁵⁴ This exorbitant amount of water usage is not the end of the fashion industry’s detrimental effects on the environment. The industry also relies on natural gas, coal, and other resources to sustain its supply chain operations.⁵⁵

Not only is the fashion industry rapidly draining natural resources, but it is also actively contributing to global pollution at an unprecedented rate.⁵⁶ This is because “clothing production and disposal create harmful gases for the Earth’s atmosphere.”⁵⁷ According to a 2018 *Quantis* research study, the fashion industry contributes to approximately “6.7% of global GHG emissions, [which is] equivalent to about 3.3 billion metric tons of CO₂-eq.”⁵⁸ Additionally, many fast fashion brands use synthetic fibers “such as polyester, nylon, and acrylic,”⁵⁹ which can “take up to a thousand years to biodegrade.”⁶⁰

If the fashion industry continues down this path, the undesirable effects will only grow. By 2030, it is anticipated that the fashion industry will “increase 49%.”⁶¹ This would mean “the apparel industry alone will emit 4.9 metric gigatons of CO₂-eq, nearly equal to today’s total annual US greenhouse gas emissions.”⁶² Additionally, “it is estimated [in 2023] the fashion industry will consume resources

51. See *Sustainability Certification Organizations in the Fashion Industry*, FASHION UNITED, <https://fashionunited.com/i/sustainability-certification-organizations-in-fashion> (last visited Dec. 4, 2022) [<https://perma.cc/5MN2-56AT>].

52. *Clothing and Energy*, THE CONSCIOUS CLUB (June 18, 2019), <https://www.theconsciouschallenge.org/ecologicalfootprintbibleoverview/clothing-energy> [<https://perma.cc/55HG-TW77>].

53. *Circular Economy*, ELLEN MACARTHUR FOUNDATION, <https://www.ellenmacarthurfoundation.org/topics/circular-economy-introduction/overview> (explaining a circular economy as one that attempts to reuse materials and prevent waste) (last visited Dec. 4, 2022) [<https://perma.cc/QUU3-424A>].

54. *The Issues: Water*, COMMON OBJECTIVE (Nov. 23, 2021), <https://www.commonobjective.co/article/the-issues-water> (referencing Ellen MacArthur Foundation, *supra* note 53) [<https://perma.cc/U3AK-5XK8>].

55. See generally Rachael Dottle and Jackie Gu, *The Global Glut of Clothing Is an Environmental Crisis*, BLOOMBERG (Feb. 23, 2022), <https://www.bloomberg.com/graphics/2022-fashion-industry-environmental-impact/#xj4y7vzkg>.

56. *Id.*

57. See *Social Media “Influence” Accelerates Fast Fashion Culture*, OPEN ACCESS NEWS (Apr. 22, 2022), <https://www.openaccessgovernment.org/social-medias-influence-accelerates-fast-fashion-culture-environment-pollution/134242/> [<https://perma.cc/2SYZ-UTRZ>].

58. *Measuring Fashion*, QUANTIS (2018), https://quantis.com/wp-content/uploads/2019/11/measuringfashion_globalimpactstudy_quantis_2018.pdf (regarding insights from the Environmental Impact of the Global Apparel and Footwear Industries study) [<https://perma.cc/K25K-SHKV>].

59. *Sustainability Certification Organizations in the Fashion Industry*, *supra* note 51.

60. *Fast Fashion Quick to Cause Environmental Havoc*, *supra* note 44.

61. *10 Must-Know Fast Fashion Statistics & Not-So-Fun Facts*, ZEITGEIST, <https://wearingzeitgeist.com/fashion-sustainability-ethics/fast-fashion-statistics> (last visited May 8, 2024) [<https://perma.cc/7N2E-5KAD>].

62. *Measuring Fashion*, *supra* note 58.

equivalent to two Earths,”⁶³ “with the demand for clothing forecast to increase by 63%.”⁶⁴

ii. social implications of fast fashion

As mentioned previously, one of the main reasons why people shop for fast fashion is because of the low price tags.⁶⁵ However, these low prices are achieved by using low-quality materials and cheap labor, which are often inhumane.⁶⁶ In addition, some brands also employ child labor and fail to provide livable working conditions, among other unethical practices.⁶⁷ As a result, fast fashion brands have created significant social policy issues resulting from unethical practices.⁶⁸

Fast fashion is a labor-reliant industry employing a large percentage of the world’s population.⁶⁹ However, many of these brands opt for the cheapest labor possible.⁷⁰ Fast fashion brands can achieve this by moving to areas where labor regulations are far less stringent than in the United States.⁷¹ Many companies moved their production to low-income areas in Asia, particularly to impoverished areas in Bangladesh, India, China, Vietnam, and the Philippines.⁷² These countries have little, if any, wage regulation.⁷³

With extremely low wages, fast fashion brands keep garment workers in a perpetual cycle of poverty.⁷⁴ In a recent study conducted by Oxfam, it was discovered that in 2019, approximately “0% of Bangladeshi garment workers and 1% of Vietnamese garment workers earned a living wage.”⁷⁵ This means that of all garment workers in both Bangladesh and Vietnam combined, less than one percent earned enough money to sustain their living costs.⁷⁶ With no funds to sustain themselves and the inability to create a safety net while applying for work elsewhere, laborers are trapped in an inhumane industry.⁷⁷

Because many laborers cannot sustain themselves on their income alone, their children are forced into the workforce.⁷⁸ Children, as young as ten years old, are performing the strenuous jobs of garment workers, just so their families can afford

63. Niinimäki, *supra* note 48.

64. Jaclyn McCosker, *The Impact of Fast Fashion on Garment Workers*, GOOD ON YOU (Apr. 19, 2021), <https://goodonyou.eco/impact-fast-fashion-garment-workers/> (referencing Niinimäki, *supra* note 52) [<https://perma.cc/32RK-XRT9>].

65. Coleman, *supra* note 9.

66. *Id.*

67. McCosker, *supra* note 64.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *See id.*

74. *See id.*

75. McCosker, *supra* note 64.

76. *See id.*

77. *See id.*

78. *Id.*

to live.⁷⁹ This prevents children from receiving an education, and the perpetual cycle of poverty becomes generational.⁸⁰

Both the physical and psychological conditions of factories have proven to be unacceptable.⁸¹ Architecturally, fast fashion brands are skimping on essential infrastructure, ultimately creating dangerous working conditions.⁸² For example, Rana Plaza, an eight-story commercial building collapsed in 2013, killing 1,134 individuals and leaving thousands more injured.⁸³ The day before the incident, an investigation of the building showed ‘large structural cracks’ that posed a danger to anyone inside, but management ordered employees to continue working.⁸⁴ The lack of precautionary measures taken for employee safety is abhorrent, and but for management orders, thousands of garment workers would have been saved from injury.⁸⁵

The psychological welfare of employees is also not a priority of fast fashion corporations. It has been found that many garment workers, especially female employees, experience psychological, sexual, and physical abuse daily.⁸⁶ An estimated one in four female Bangladeshi garment workers has experienced some form of abuse while at their place of employment.⁸⁷ However, the majority of workers will not report their experiences with abuse because they are afraid of the ramifications.⁸⁸ Potential unemployment is not an option for these women, with so few alternate jobs available.⁸⁹

iii. *economic implications of fast fashion*

Not only does fast fashion create massive environmental and social policy issues, but it also has long-lasting effects on the economics of the fashion industry itself. Due to the unique, labor-intensive nature of the fashion industry, many safeguards were put in place to protect the intellectual property of designers.⁹⁰ For example, in the 1940s, the organization, *Fashion Originators Guild*, was founded specifically to prevent others from copying designs.⁹¹ Despite such efforts, “[t]here is a huge industry of counterfeit products produced every year that replicates bags, shoes, etc”⁹² At first, counterfeit products were sold on street corners with tourists “flock[ing] to New York City’s Canal Street to look at knockoff handbags

79. *Id.*

80. *See Id.*

81. *See Rana Plaza*, CLEAN CLOTHES CAMPAIGN, <https://cleanclothes.org/campaigns/past/rana-plaza> (last visited May 8, 2024) [<https://perma.cc/CLD3-TTV5>].

82. *Id.*

83. *Id.*

84. *Id.*

85. *See id.*

86. McCosker, *supra* note 64.

87. *Id.*

88. *Id.*

89. *See id.*

90. *See generally* Daryl Wander, Note, *Trendsetting: Emerging Opportunities For The Legal Protection Of Fashion Designs*, 42 RUTGERS L.J. 247 (2010).

91. *Id.* at 252.

92. Chau, *Dupes vs Counterfeit Fakes*, LIMELIGHT LANE STYLE (Feb. 1, 2020), <https://limelightlane.com/2020/02/01/dupes-vs-counterfeit-fakes/> [<https://perma.cc/E75X-SZH5>].

from sellers discreetly whispering designer names like ‘Gucci’ and ‘Louis,’ then leading them into back rooms filled with plastic-wrapped purses.”⁹³ Presently, those in search of luxury look-alikes can now find almost any dupe on fast fashion websites.⁹⁴

In-house designers of fast fashion brands do not change much of the luxury brands’ designs, essentially intending to appropriate them entirely.⁹⁵ In order “[t]o produce the most profitable knockoffs, [fast fashion brands] only copy popular seasonal items and minimize alterations to the original designs such that customers on a budget will recognize the designs and buy the knockoffs instead of the originals.”⁹⁶ This popularization of luxury dupes has had a significant impact on luxury fashion brands.⁹⁷

Some critics suggest that designers should view copies of their designs as an homage to their work.⁹⁸ However, many disagree.⁹⁹ Fashion designers are fed up with companies copying their intellectual property and undercutting their ideas, discouraging many from continuing their craft.¹⁰⁰ With the lack of incentives for designers, coupled with easily accessible dupes, designer clothing is becoming obsolete—thanks to fast fashion brands’ low-cost dupes of high-end labels.¹⁰¹

Not only does the fast-fashion industry stifle the creative minds of designers by stealing their intellectual property, it also creates customer confusion.¹⁰² After purchasing dupes from fast-fashion brands, customers are confused as to where the original designs came from and the source of the products.¹⁰³ Dupes and counterfeit replicas are so realistic “that even the smartest shoppers—even the ones that do

93. Becca Risa Luna, *The Truth About Counterfeit Luxury Handbags*, MEDIUM (Apr. 24, 2018), <https://beccarisaluna.medium.com/the-truth-about-counterfeit-luxury-handbags-9bfc8cd364f2> [<https://perma.cc/S283-F434>].

94. See Sophie Canon, *The Best Designer Dupes of 2023 and Where to Buy Them: Gucci, Carter*, N.Y. POST (Mar. 10, 2023), <https://nypost.com/article/best-designer-dupes/> [<https://perma.cc/WC33-PUT8>].

95. See Lizzie Schneider, *Saving Your Coin? Beware How Dupes Hurt the Business of Designer Brands*, MAKING IT IN MANHATTAN, <https://www.makingmanhattan.com/blog/fashion/what-designer-dupes-do-to-the-industry> (last visited Apr. 23, 2023) [<https://perma.cc/NX8V-J9DZ>].

96. Keyon Lo, *Stop Glorifying Fashion Piracy: It Is Time To Enact The Innovative Design Protection Act*, 21 CHI.-KENT J. INTELL. PROP. 159, 167–68 (2022).

97. See Lucy Maguire, *Gen Z Loves Dupes. Is This Bad News For Luxury Fashion Brands?*, VOGUE BUSINESS (Apr. 10, 2023), <https://www.voguebusiness.com/fashion/gen-z-loves-dupes-is-this-bad-news-for-luxury-fashion-brands>.

98. Lo, *supra* note 96, at 185.

99. *Id.* at 186.

100. *Id.* (referencing Nathalie Doucet, *Challenges*, ARTS OF FASHION FOUNDATION (Jan. 18, 2018), <http://www.arts-of-fashion.org/The%20Foundation/pages/+AoFFoundation.html>) [<https://perma.cc/GAW5-MZPL>].

101. Ronda Majure, *How Indie Artists Can Protect Designs From Unauthorized Retail Use in the Digital Age*, RETAIL INFO SYS. (Oct. 1, 2016), <https://risnews.com/how-indie-artists-can-protect-designs-unauthorized-retail-use-digital-age> (explaining the use of copyright protections to protect from corporate overreach); John Samples, *Why The Government Should Not Regulate Content Moderation Of Social Media*, Cato Institute, Policy Analysis No. 865 (Apr. 9, 2019), <https://www.cato.org/policy-analysis/why-government-should-not-regulate-content-moderation-social-media> [<https://perma.cc/HE34-6FX7>].

102. Lo, *supra* note 96, at 174.

103. *Id.*

their research—can get fooled by counterfeits.”¹⁰⁴ The concept of dupes perpetuates the potentially nonconsensual use of intellectual property and does not allow designers to receive credit for their ideas.

Despite designers’ increasing efforts to alter current fashion laws, “[d]esigns of handbags, jewelry, and shoes themselves are not protected by copyright law,” due to tricky loopholes in the laws.¹⁰⁵ For instance, “if you purchased a bag that is *shaped* like a Hermès Birkin bag . . . you are not *necessarily* carrying an illegal fake—it may just be knockoff or a blatant copy, which is not technically illegal”¹⁰⁶

Designers have been continuously working to get copyright protection over their designs. “[T]he Council of Fashion Designers of America has argued before Congress that high-end designers need legislation to protect them from knockoffs, which are showing up in stores faster and more frequently.”¹⁰⁷ However, these efforts have had little effect on regulation.¹⁰⁸

Other fast-fashion retailers have brought copyright infringement claims against fast-fashion companies when their own designs were quickly produced and sold as low-cost knockoff versions.¹⁰⁹ This not only hurts the financial stability of smaller designers but also dilutes luxury brands’ equity and reputation.¹¹⁰ This practice undermines the originality of the fashion industry as a whole and while high-end brands attract customers, fast-fashion brands sit back and wait to see how designs fare, later mass-producing the most popular pieces for as cheap as possible.¹¹¹

III. HOW SOCIAL MEDIA PLAYS A ROLE IN PROMOTING FAST FASHION

With the potentially infinite audience and overreaching capability to form consumer relationships, more and more fashion brands are utilizing social media advertising and marketing to attract customers.¹¹² In turn, this has led to an extremely competitive online environment where brands are producing increasingly more content, in order to take customers’ attention away from their counterparts.¹¹³ As a result, social media has become one of the driving factors across many

104. Luna, *supra* note 93.

105. *Id.*

106. *Id.*

107. Eric Wilson, *The Knockoff That Won’t Be Knocked Off*, N.Y. TIMES (Sept. 9, 2007), <https://www.nytimes.com/2007/09/09/weekinreview/09wilson.html> (last visited Dec. 4, 2022).

108. *Id.*

109. *See United States: Fast-Fashion Brand Zara Alleges Massive Scam*, MONDAQ BUS. BRIEFING, LexisNexis (Feb. 10, 2023).

110. Helena Pike, *The Copycat Economy: Do knockoffs harm the fashion business? Or Does Copying Keep The Wheels Of The Industry Turning?*, BUSINESS OF FASHION (Mar. 14, 2016), <https://www.businessoffashion.com/articles/news-analysis/fashions-copycat-economy/> [<https://perma.cc/Y3F5-92H3>].

111. Lo, *supra* note 96, at 173.

112. Tamara Úblová, *Fashion Brands on Social Media: Why Consumers Engage With Companies Via Social Media*, THE SWEDISH SCHOOL OF TEXTILES, UNIVERSITY OF BORÅS, Report no. 2014.11.14, <https://www.diva-portal.org/smash/get/diva2:815893/FULLTEXT01.pdf> [<https://perma.cc/B7J2-MP9C>].

113. *See id.*

industries, specifically in the fast fashion industry.¹¹⁴ Social media promotes a culture of peer competition,¹¹⁵ so when you add in influencers, haul videos, microtrends, and the like, there is grandiose social pressure to keep up with the newest trends,¹¹⁶ ultimately leading to the encouragement of mass consumption.¹¹⁷

a. Peer Pressure

Social media's impact on individuals, teens especially, is widespread.¹¹⁸ It is “distracting them, disrupting their sleep, and exposing them to bullying, rumor spreading, unrealistic views of other people’s lives and peer pressure.”¹¹⁹ Numerous studies have discussed the detrimental effects of social media on teens, suggesting that continuous social media use has caused teens to constantly compare themselves to their peers.¹²⁰ A study conducted in 2019 “found that using social media more than three times a day predicted poor mental health and well-being in teens.”¹²¹ Additionally, “an older study on the impact of social media on undergraduate college students showed that the longer they used Facebook, the stronger was their belief that others were happier than they were.”¹²²

When scrolling social media, teens see their peers posting and compare what they see to themselves and their own lives.¹²³ It results in feelings of inadequacy because what is portrayed on social media is, more often than not, a fabrication of reality.¹²⁴ With the ability to edit, photoshop, and finetune social media content, teens are looking at the ‘perfect,’” most-idealized version of their peers.¹²⁵ Psychiatrist Patrice M. Harris states, “it can be difficult to step back and recognize that most things posted to social media are only the highlights of others’ lives—and don’t include everything that happens behind the scenes . . . [it] can affect teens’ and young adults’ sense of identity, self-worth, and belonging.”¹²⁶

114. Reichart, *supra* note 41.

115. Christopher J Ferguson et al., *Concurrent and Prospective Analyses of Peer, Television and Social Media Influences on Body Dissatisfaction, Eating Disorder Symptoms and Life Satisfaction in Adolescent Girls*, J. YOUTH ADOLESC. doi: 10.1007/s10964-012-9898-9, (Jan. 24, 2014).

116. Johnson, *supra* note 33.

117. Reichart, *supra* note 41.

118. *Teens and Social Media Use: What’s The Impact?*, MAYO CLINIC, <https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teens-and-social-media-use/art-20474437> (last visited Dec. 4, 2022) [<https://perma.cc/EQ4N-BZCZ>].

119. *Id.*

120. See *Social Media and Mental Health: Understanding the Risks and Protecting Your Teen, Thrive Training and Consulting*, THRIVE TRAINING & CONSULTING (Jan. 17, 2023), <https://www.thrivetrainingconsulting.com/social-media-and-mental-health-understanding-the-risks-and-protecting-your-teen/> [<https://perma.cc/G4XW-5YPP>].

121. *Id.*

122. *Teens and Social Media Use: What’s the impact?*, *supra* note 118.

123. Christina Vogt, *Under Pressure: Are the Stresses of Social Media Too Much for Teens and Young Adults?*, EVERYDAY HEALTH (Sept. 1, 2021), <https://www.everydayhealth.com/emotional-health/under-pressure/are-the-stresses-of-social-media-too-much-for-teens-and-young-adults/> [<https://perma.cc/YBW3-WXDL>].

124. *Id.*

125. *Id.*

126. *Id.*

As social media has expanded, the need to fit in with our peers has become more relevant than ever, and much of that has to do with clothing.¹²⁷ Whether worn as a status symbol, an indication of trendiness, or likens an individual to a famous social media influencer, the clothing we wear influences how we view ourselves—and how others view us.¹²⁸

Because fast fashion brands are aware of this phenomenon, they capitalize on the idea of needing specific clothing items to fit in with our peers.¹²⁹ As a result, these brands are only fueling the desire to buy, buy, buy, and do so by appealing to customers through influencers, haul videos, and microtrends.

b. Influencers

Social media influencers play a monumental role in promoting fashion trends through sponsored posts and product placement.¹³⁰ Occasionally influencers will also collaborate with corporations on product lines, advertising campaigns, and promotional posts.¹³¹ As celebrities, influencers are essentially spokesmodels for brands and use their social media platforms to act as liaisons between brands and consumers.¹³² By leveraging their large followings and personal brands, they drive demand and boost sales for the industry.¹³³ Influencer marketing allows brands to bypass traditional forms of advertising, such as TV commercials and print ads. This effectively reaches a target audience and promotes their clothing in a more personal and authentic way¹³⁴ through platforms consumers use and trust the most, such as Instagram and YouTube.¹³⁵

Consumers are also more likely to be swayed by influencer promotions, and according to the 2017 Edelman Trust Barometer, an annual global survey of trust and credibility, 55% of respondents say “[i]ndividuals are more believable than institutions, and a company’s social media page is more believable than advertising.”¹³⁶ This may be attributable to the often strong connection social media influencers have with their followers, who view them as friends or peers, rather than as traditional celebrities.¹³⁷ This relationship can lead to higher engagement and conversion rates compared to other forms of advertising.¹³⁸

127. *See id.*

128. *Social Media “Influence” Accelerates Fast Fashion Culture*, *supra* note 57.

129. David Oliver, *The Kardashians, Body Image And Social Media: Why Parents Should Stop Filtering Their Photos*, USA TODAY (Oct. 23, 2022, 6:21 pm), <https://apple.news/AVo1mTHR9SOChiOdEXr2SZA>.

130. *Social Media “Influence” Accelerates Fast Fashion Culture*, *supra* note 57.

131. *See id.*

132. *See id.*

133. *See id.*

134. *See id.*

135. *Id.*

136. Jonathan Crossfield, *Full Disclosure: The Murky World of Influencer Marketing*, CCO (Nov. 2017), <https://contentmarketinginstitute.com/cco-digital/april-2019/influencer-marketing-non-disclosure/> [<https://perma.cc/6ZBX-T6CB>].

137. *Social Media “Influence” Accelerates Fast Fashion Culture*, *supra* note 57.

138. *Id.*

By showcasing the latest fashion trends and outfits on platforms, like Instagram, YouTube, and TikTok, influencers have a significant impact on consumer behavior and drive demand for fast-fashion items.¹³⁹ When an influencer wears sponsored clothing, fast fashion companies are essentially saying to their consumer base that these specific individuals wear our style of clothing and therefore you should too.¹⁴⁰ This is especially true for younger generations who often look to influencers as style icons and sources of inspiration.¹⁴¹

For example, “former *Game of Thrones* actress, Maisie Williams, . . . described . . . as a symbol for her generation and a vital voice within female empowerment, sustainability, and diversity,”¹⁴² recently partnered with H&M to promote their new sustainable fashion line.¹⁴³ By using Williams as their spokesmodel, H&M is attempting to imply that if you want to be like Williams, you should buy their clothes.¹⁴⁴

The issue with this form of advertising is many of the influencers have not done their due diligence on the brands they are supporting.¹⁴⁵ Take the above partnership between H&M and Williams for instance.¹⁴⁶ When the partnership was forged, H&M was promoting its intention to manufacture 100% recycled clothing by the year 2030.¹⁴⁷ However, there is no real methodology provided by the company as to how this will occur.¹⁴⁸ Without understanding the authenticity behind their claims, Williams is promoting a brand that could be engaging in fraudulent greenwashing practices.¹⁴⁹ This practice is a common phenomenon where influencers are hired to promote “brands that greenwash, thereby building trust in a brand that’s actively lying to and misleading its customers,” but were unaware of the deceitful practices.¹⁵⁰

Not only have they not done their due diligence, but many influencers promote clothing products they do not wear, nor have any desire to wear.¹⁵¹ Although some influencers engage in fact-checking practices and authentically promote brands they like, many others do it for the big paycheck. Every brand deal differs and a “prominent influencer such as Maisie Williams, with a following of 10.4 million,

139. See Crossfield, *supra* note 136.

140. See Emma Morgan, *How Influencers Accelerate the Growth of Fast Fashion and Greenwashing*, ECO-STYLIST (Apr. 11, 2022), <https://www.eco-stylist.com/how-influencers-accelerate-the-growth-of-fast-fashion-and-greenwashing/> [<https://perma.cc/D2QL-Y297>].

141. Blake Droesch, *Influencers More Likely to Inspire Gen Zer and Millennial Purchases*, INSIDER INTELLIGENCE (Feb. 13, 2020), <https://www.insiderintelligence.com/content/influencers-more-likely-to-inspire-gen-zer-and-millennial-purchases> [<https://perma.cc/E2LT-FVC2>].

142. Morgan, *supra* note 140.

143. *Id.*

144. *See id.*

145. See Kati Chitrakorn, *The Big Influencer Trust Issue — and the Beauty Brands Trying to Save It*, VOGUE BUSINESS (Feb. 23, 2022), <https://www.voguebusiness.com/beauty/the-big-influencer-trust-issue-and-the-beauty-brands-trying-to-save-it>.

146. Morgan, *supra* note 140.

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. See Chitrakorn, *supra* note 145.

makes in the range of 28 to 56 thousand dollars per post.”¹⁵² Serious money like that can cloud the judgment of influencers and encourage them to blindly promote their clothing.¹⁵³

The promotion of fast fashion by social media stars contributes to mass overconsumption and only perpetuates the damaging effects resulting from the industry.¹⁵⁴ By partnering with fast-fashion brands and promoting their products, influencers contribute to the fast-paced and disposable nature of the industry, often encouraging followers to purchase new outfits frequently rather than investing in higher quality, longer-lasting clothing.¹⁵⁵ This promotion of fast fashion brands and clothing items is part of a larger trend of influencer culture where appearance and consumption are highly valued and constantly monitored.¹⁵⁶

c. Hauls

Another social media phenomenon that has promoted fast fashion purchasing is the posting of haul videos.¹⁵⁷ A haul video is when a content creator records themselves opening a package, or packages, and showing viewers what they received.¹⁵⁸ The items can be those purchased by the content creator, or free products sent from the fast-fashion brands. The videos are usually conducted after receiving packages in the mail or after a shopping trip, with the number of pieces reviewed ranging from a few to over a hundred.¹⁵⁹ Upon opening, influencers will hold up the items to the camera and express their interest or disinterest in the items.¹⁶⁰ These Haul videos have become increasingly popular in recent years and can be found on most social media platforms, such as YouTube, TikTok, and Instagram.¹⁶¹

When influencers create videos showing the various items they bought, viewers are encouraged to purchase the same items, shop from the same stores, and purchase the same volume of clothing.¹⁶² The fear of missing out, also known as FOMO, keeps viewers buying more and more.¹⁶³ It shows that many

[v]iewers feel compelled to buy the products that the influencers proudly showcase. It is difficult to resist, and the young generation especially feels the need to buy these clothes to fit in. Many youngsters even undertake hauls of their own and put them up on social media to show off. This puts further pressure on their peers to undertake such hauls and creates a feedback loop. *Earthy Route*.

152. Morgan, *supra* note 140.

153. *See id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *What Are Fast Fashion Hauls And Why Are They Dangerous For You And The Planet?*, EARTHY ROUTE (June 29, 2022), <https://earthyroute.com/blogs/slow-fashion-series/what-are-fast-fashion-hauls-and-why-are-they-dangerous-for-you-and-the-planet> [<https://perma.cc/DK63-KA6W>].

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

The introduction of haul videos on social media has added to the mindless consumerism and glorification of fast fashion this generation engages in.¹⁶⁴ By promoting and producing hauls, influencers are normalizing shopping in large quantities and for as cheap as possible.¹⁶⁵ In fact, many videos grab viewers' attention by using headlines such as: "All of this for under \$500" or "Cheap Shein Fall Essentials."¹⁶⁶

d. Micro Trends

As well as posting what they have bought, many influencers will also post their outfits of the day, promoting different styles, in addition to specific pieces.¹⁶⁷ This has created what is known as a "micro trend."¹⁶⁸ "Microtrends take what you know about trends and accelerate the process: these trends rise to popularity quicker and then leave the trend cycle faster. While traditional fashion trends typically last a few years, micro trends' life spans are shorter, with some lasting less than one season."¹⁶⁹ In previous years, fashion lines were devised with the four seasons of the year in mind.¹⁷⁰ However, with the boom of the retail clothing market, there are currently 52 fashion seasons per year.¹⁷¹ The sheer magnitude of styles and trends is what drives fast fashion.¹⁷²

Microtrends are truly the crux of fast fashion because they only perpetuate the idea of needing clothing items to fit in.¹⁷³ In a recent social commentary by Vogue's Sarah Spelling, she discusses Gen-Z fashion trends and calls them "algorithmically influenced."¹⁷⁴ Specifically, Spelling comments on the HBO character, Portia, from the hit series *The White Lotus*.¹⁷⁵ She characterizes Portia as the embodiment of Gen-Z fashion, and that her outfits often consist of multiple trends put together.¹⁷⁶ The question behind Spelling's commentary, and circulating on X, formerly known as Twitter, is whether these outfits are good or bad, i.e., fashionable, or unfashionable.¹⁷⁷ Many signs point to the latter, which only

164. *Id.*

165. *Id.*

166. Tori D'Amico, *Influencers Need to Stop Fast Fashion Hauls*, NO KILL MAGAZINE, <https://www.nokillmag.com/articles/influencers-need-to-stop-fast-fashion-hauls/> (last visited Dec. 4, 2022) [<https://perma.cc/GSN4-HVMV>].

167. See Maggie Zhou, *Micro Trends*, GOOD ON YOU (July 29, 2022), <https://goodonyou.eco/micro-trends/> (last visited Dec. 4, 2022) [<https://perma.cc/6EAS-X6J5>].

168. *Id.*

169. *Id.*

170. *Unsustainable Consumption of Fashion*, COLLECTIVE FASHION JUSTICE, <https://www.collectivefashionjustice.org/mass-consumerism> (last visited Dec. 4, 2022) [<https://perma.cc/MT9H-CTHA>].

171. *Id.*

172. See Potempa, *supra* note 11.

173. Zhou, *supra* note 167.

174. See Spelling, *supra* note 15.

175. See *id.*

176. See *id.*

177. See *id.*

solidifies the idea that individuals, those akin to Portia, are dressing per social media's influence.¹⁷⁸

IV. CURRENT REGULATIONS OF FASHION BRANDS' SOCIAL MEDIA MARKETING

As mentioned, many apparel companies turn to social media for marketing efforts and to increase brand awareness. This is because social media platforms provide a unique “interactive channel of mass communication” that aids in “amplify[ing] marketing strategy” for said brands.¹⁷⁹ Companies can now “individualize messages, target specific groups, interact in real-time with potential consumers, and reap the potential benefits of instantaneous referrals among trusted individuals and/or groups.”¹⁸⁰ All in all, social media advertising is not unlike other forms of advertising, in that it is subject to the same rules and regulations as its counterparts.¹⁸¹ The bottom line is when using any form of advertising, “brands must tell the truth, not exaggerate any claims, and be transparent through disclosures and disclaimers.”¹⁸²

a. Disclosure Requirements

One way in which brands attempt to pique potential customers' interests is through the use of social media influencers.¹⁸³ When making promotional posts, influencers are required to let their potential audience know their affiliation with the brand.¹⁸⁴ However, failures to disclose said partnerships are a regular phenomenon in the social media world.¹⁸⁵ To put it in perspective, a 2017 study conducted by the Content Marketing Institute, found that a whopping “93% of sponsored content posted by A-list influencers on Instagram did not adequately disclose the paid brand relationship.”¹⁸⁶

Failing to disclose brand partnerships presents a large problem for platform users, as an overwhelming number of account holders' purchases are based on

178. *See id.*

179. Shu-Chuan Chuaand & Yoo-Kyoung Seock, *The Power of Social Media IN Fashion Advertising*, 20 J. OF INTERACTIVE ADVERT. 2, 93–94 (2020), <https://doi.org/10.1080/15252019.2020.1802955>; *see also Internet and Social Media: The Legal Implications of Social Media Marketing & Advertising*, PILLSBURY WINTHROP SHAW PITTMAN LLP, <https://www.pillsburylaw.com/images/content/1/0/v2/102362/FACTSHEET-SocialMediaMarketingAdvert.pdf> (last visited May 8, 2024) [<https://perma.cc/P2H8-DATX>].

180. *Id.*

181. Holland & Knight, *Advertising on Social Media Regulation: Comments from an FTC Official*, JDSUPRA (Feb. 24, 2021), <https://www.jdsupra.com/legalnews/advertising-on-social-media-regulation-1638406/> [<https://perma.cc/M5US-W7AG>].

182. *Id.*

183. *See Social Media “Influence” Accelerates Fast Fashion Culture*, *supra* note 57.

184. *See Disclosures 101 for Social Media Influencers*, FTC, <https://www.ftc.gov/business-guidance/resources/disclosures-101-social-media-influencers> (last visited Apr. 18, 2023) [<https://perma.cc/47F9-ECB9>]; *see also* Lauren Wolfe, *Undisclosed Advertising Is A Growing Problem In Social Media*, TRAVELERS UNITED, <https://www.travelersunited.org/paid-influencers-are-not-disclosing-their-partnerships> (last visited Apr. 19, 2023) [<https://perma.cc/TGQ3-XYUY>].

185. *See* Crossfield, *supra* note 136.

186. *Id.*

influencer recommendations.¹⁸⁷ Intentionally or not, by failing to disclose the promotional qualities of posts, influencers are being deceitful.¹⁸⁸ Users are often blind to the fact they are seeing an advertisement, and “only when people recognize a persuasive attempt, such as an advertisement, can they use this knowledge to interpret, evaluate, and respond to this persuasion attempt.”¹⁸⁹ Otherwise, users are unable to make informed and intelligent decisions when purchasing items seen on these platforms.¹⁹⁰

With the increase in content across platforms, government entities have started clamping down on unethical marketing practices.¹⁹¹ Organizations, including social media platforms, have dictated minimum standards for marketing practices and content creation, including disclosure requirements.¹⁹² The U.S. Federal Trade Commission (FTC) is among the leading agencies to release guidelines mandating proper disclosures.¹⁹³

The FTC’s purpose is to protect American consumers, and in doing so, it has devoted significant efforts to curtail deceptive advertising practices.¹⁹⁴ Regarding social media specifically, the Commission has released information on recommended practices for social media influencers and expected disclosures.¹⁹⁵ The published literature, titled *Disclosures 101 for Social Media Influencers*, provides parameters for when and how social media influencers must disclose endorsements, stating that disclosure must occur when an individual has any “financial, employment, personal, or family relationship with a brand.”¹⁹⁶ Additionally, a simple disclosure is not sufficient; influencers must also ensure viewers can both see and understand the disclosure.¹⁹⁷ To ensure followers are aware of brand partnerships and advertisements, information regarding the like should be obvious.¹⁹⁸

Despite these efforts from the FTC, a recent study presented that approximately 93% of A-list influencers’ sponsored content did not adequately disclose their relationship to the brand.¹⁹⁹ Full disclosure thus, remains an apparent problem within the industry.

187. See *Social Media “Influence” Accelerates Fast Fashion Culture*, *supra* note 57.

188. See *Disclosures 101 for Social Media Influencers*, *supra* note 184.

189. Sophie C. Boerman, *The Effects Of The Standardized Instagram Disclosure For Micro- And Meso-Influencers*, 103 *COMPUTS. IN HUM. BEHAV.* 199, 200 (2020).

190. See *id.*

191. See *Internet and Social Media: The Legal Implications of Social Media Marketing & Advertising*, *supra* note 179.

192. *Influencer Marketing: A Research Guide: Regulations*, LIBR. OF CONG., <https://guides.loc.gov/influencer-marketing/regulations> (last visited Apr. 18, 2023) [<https://perma.cc/27YP-TLMY>].

193. *Id.*

194. *Disclosures 101 for Social Media Influencers*, *supra* note 184.

195. See *id.*

196. *Id.*

197. *Id.*

198. *Id.* at 3–5.

199. Crossfield, *supra* note 136.

b. *Solicitation and Suppression of Customer Reviews*

In addition to providing guidelines for disclosure of partnership deals, the FTC has prohibited the practices of soliciting reviews and attempts to proactively suppress or remove negative reviews.²⁰⁰ To discourage brands from engaging in these practices, the Commission has published guidelines that must be followed when publishing reviews.²⁰¹ The Commission's literature states that "writing or procuring fake reviews or by paying supposedly independent websites for good rankings" is not only misleading to customers, but also misrepresents the quality, reputation, and popularity of their products.²⁰²

One situation in particular that gained notable publicity, due to the prevalence of the brand, happened just last year. In January 2022, the Commission filed a complaint against the large online retailer and fast-fashion brand, Fashion Nova.²⁰³ It was alleged that Fashion Nova used a third-party review agency to actively hide reviews in which customers gave less than 4 out of 5 stars.²⁰⁴ The reviewing company would automatically post reviews submitted of 4 stars or higher and would hold lower reviews for assessment by the company. However, beginning as early as 2015, the company never published negative reviews, essentially letting them sit in the queue indefinitely.²⁰⁵

The FTC concluded that by failing to disclose the more negative reviews, Fashion Nova was ultimately "cheat[ing] consumers, undercut[ing] honest businesses, and pollut[ing] online commerce."²⁰⁶ The suit ended with the parties settling, and Fashion Nova was required to pay \$4.2 million for its indiscretions.²⁰⁷ With over \$1 billion in sales annually, the amount Fashion Nova was required to pony up was borderline insignificant.²⁰⁸

Online reviews prove to be easy to manipulate and some companies are not particularly motivated to change their deceitful practices.²⁰⁹ The settlement serves as a reminder to other fast fashion brands that government agencies are tightening up when it comes to deceitful social media practices, but there is still a lack of

200. See *Soliciting and Paying for Online Reviews: A Guide for Marketers*, FTC (Jan. 2022), <https://www.ftc.gov/business-guidance/resources/soliciting-paying-online-reviews-guide-marketers> [<https://perma.cc/S2HB-87U5>]; Sapna Maheshwari, *A Fashion Brand Agrees to Pay \$4.2 Million After F.T.C. Says it Suppressed Negative Reviews Online*, N.Y. TIMES (Jan. 27, 2023), <https://www.nytimes.com/2022/01/25/business/fashion-nova-reviews.html>.

201. *Id.*

202. *Id.*

203. Complaint at 1, *In re Fashion Nova, LLC*, No. 192-3138 (2022).

204. *Fashion Nova Will Pay \$4.2 Million as Part of Settlement of FTC Allegations it Blocked Negative Reviews of Products*, FTC (Jan. 25, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/fashion-nova-will-pay-42-million-part-settlement-ftc-allegations-it-blocked-negative-reviews> [<https://perma.cc/4GMJ-BGNR>].

205. *Id.*

206. *Id.*

207. *Id.*

208. Lauren Debter, *Fashion Nova's Founder Has Spun A Billion-Dollar Fortune From Fast Fashion*, FORBES (Mar. 8, 2022), <https://www.forbes.com/sites/laurendebter/2022/03/08/fashion-novas-founder-has-spun-a-billion-dollar-fortune-from-fast-fashion/>.

209. Sapna Maheshwari, *When Is a Star Not Always a Star? When It's an Online Review*, N.Y. TIMES (Nov. 28, 2019), <https://www.nytimes.com/2019/11/28/business/online-reviews-fake.html>.

enforcement. The Fashion Nova case is one example of the FTC attempting to curtail fraudulent marketing practices, but is simply not enough.²¹⁰ This was actually the first attempt the FTC made to pursue legal action against an entity engaging in faulty review practices online.²¹¹ Kay Dean, the creator of YouTube channel *Fake Reviews Watch*, where she provides advice for determining the validity of reviews, explains there are really no penalties to these practices.²¹² Essentially, “[c]heating is rewarded in the current online environment.”²¹³

c. Brand Transparency

In terms of corporate accountability, it is important for brands to not only share the positive features of their brands, but their shortfalls, as well.²¹⁴ The lack of transparency that exists with social media advertising is astounding.²¹⁵ In fact, the majority of “companies do not engage and make their reporting efforts available through social-media channels.”²¹⁶ This proves to be a large problem for those engaging in social commerce, as these practices are deceitful and borderline malevolent.²¹⁷

For example, consider sustainability efforts. Some clothing brands genuinely consider the need for environmentally savvy production methods and prove this commitment by looking to organizations that recognize their green efforts.²¹⁸ These organizations, such as B Lab, NSF International, and the Sustainable Apparel Coalition, have made it their mission to promote the clean production of apparel and reward brands by issuing “sustainability certificates.”²¹⁹ Certificates are awarded to companies with sustainable methods of production and supply chains, focusing on varying elements of production, such as “fibre standards, chemical control, labour rights, circular standards[,] and fair trade.”²²⁰ Being awarded a sustainability certificate is coveted in the fashion world: not only does it speak to a

210. *Fashion Nova will Pay \$4.2 Million as part of Settlement of FTC Allegations it Blocked Negative Reviews of Products*, *supra* note 204; *see also* Maheshwari, *supra* note 200.

211. Maheshwari, *supra* note 200.

212. Megan McCluskey, *Inside the War on Fake Consumer Reviews*, TIME (July 6, 2022), <https://time.com/6192933/fake-reviews-regulation/>.

213. *Id.*

214. *See The Sad Reality of Sustainable Fashion: Exaggerated, False, or Deceptive*, INPUT (Mar. 23, 2021), <https://www.inverse.com/input/style/sustainable-fashion-greenwashing-buzzword-sustainability-influencers-instagram-social-media> [<https://perma.cc/WE3R-F6KS>].

215. *See* Tim McCorkindale & Marcia W. DiStaso, *The State of Social Media Research: Where Are We Now, Where We Were and What It Means for Public Relations*, 1 RSCH J. INST. FOR PUB. REL. 1, 8-9 (2014); *see generally* *Fashion Transparency Index*, FASHION REVOLUTION (2020), https://issuu.com/fashionrevolution/docs/fr_fashiontransparencyindex2020 [<https://perma.cc/GQX7-LL6U>].

216. Leigh Ann Johnston, *Connecting Sustainability Reporting and Social Media*, NAT'L PROVISIONER (Jan. 19, 2014), <https://www.provisioneronline.com/articles/99985-connecting-sustainability-reporting-and-social-media>.

217. *See The Sad Reality of Sustainable Fashion: Exaggerated, False, or Deceptive*, *supra* note 214.

218. *See generally* *Sustainability Certification Organizations in the Fashion Industry*, *supra* note 51.

219. *Id.*; *see also* Kayti Christian, *Sustainability Certificates: What Do They Actually Mean?*, THE GOOD TRADE (Apr. 15, 2022), <https://www.thegoodtrade.com/features/sustainable-certifications-and-standards> [<https://perma.cc/2AF6-C7ZC>].

220. *Sustainability Certification Organizations in the Fashion Industry*, *supra* note 51.

company's ethical means of manufacturing, but also showcases company transparency.²²¹

Despite the efforts of some brands to adopt environmentally friendly methods, others are continuing to skirt around the issue.²²² Whether this is done by fabricating the truth or materially omitting important information about their practices, brands are misleading customers by “advertise[ing] themselves as more environmentally friendly than they actually are.”²²³ This phenomenon is called “greenwashing.”²²⁴

A play on the term whitewashing,²²⁵ greenwashing occurs when “an organization spends more time and money on marketing itself as environmentally friendly than on actually minimizing its environmental impact.”²²⁶ To put it plainly, the practice is “a deceitful marketing gimmick . . . intended to mislead consumers who prefer to buy goods and services from environmentally conscious brands” and is achieved through the promotion of sustainable decoys.²²⁷ Decoys are ways corporations convey their uses of green practices. For instance, some decoys state that brands use raw or recycled materials for their clothes when in actuality, only a small percentage of these materials are recyclable.²²⁸

There is also a mass public unappreciation for sustainable brands.²²⁹ Approximately 15% of consumers stated they would continue to shop for brands that did not live up to sustainability standards.²³⁰ Additionally, about 50% of consumers said they are willing to continue shopping at those brands accused of greenwashing.²³¹

V. LEGAL INTERVENTION IS A CRUCIAL STEP TOWARDS REDUCING THE POPULARITY OF FAST-FASHION BRANDS

Social media is extremely difficult to regulate because it is incredibly unique from other forms of news media.²³² As opposed to traditional forms of media, social media can “offer essentially infinite bandwidth, with millions of accounts that can each target much narrower audiences[,] is produced with little ‘editorial oversight[,]’ and users have almost no control over the content they see” due to the

221. *Id.*

222. See Carlyann Edwards, *What Is Greenwashing?*, BUS. NEWS DAILY (Feb. 21, 2023), <https://www.businessnewsdaily.com/10946-greenwashing.html> [<https://perma.cc/RV4K-VXA6>].

223. Christian, *supra* note 219.

224. Edwards, *supra* note 222.

225. *Id.* (explaining that “whitewashing” occurs when a corporation attempts to cover up scandalous information by presenting a one-sided view of the facts).

226. *Id.*

227. *Id.*; see also Christian, *supra* note 219.

228. See Edwards, *supra* note 222.

229. Isabel Cameron, *50% Of Consumers Won't Shop With Retailers Who Greenwash Environmental Commitments*, CHARGED (Mar. 9, 2022), <https://www.chargedetail.co.uk/2022/03/09/retailers-who-greenwash-environmental-commitments/> [<https://perma.cc/BA9K-WRAK>].

230. *Id.*

231. *Id.*

232. Dipayan Ghosh, *Are We Entering a New Era of Social Media Regulation?*, HARV. BUS. REV. (Jan. 14, 2021), <https://hbr.org/2021/01/are-we-entering-a-new-era-of-social-media-regulation> [<https://perma.cc/8U2M-YDTL>].

complex algorithms employed by platforms.²³³ The Biden Administration has briefly danced around the idea of examining social media regulation in hopes “to better protect the public from harmful content,” but it has proven difficult for any legislation to gain traction.²³⁴

Proposed regulations of social media have been met with strong opposition, creating yet another hurdle for policymakers to jump over.²³⁵ The argument against regulation of content is many users say it is infringing upon their First Amendment rights of freedom of speech.²³⁶

The Cato Institute expands on this notion of deregulation, pointing out that “[m]ultiple conservative congresspeople have proposed laws that would define social media platforms as common carriers, treating them like telephone and utility companies that operate ‘dumb’ pipes and must allow any and all content to flow through unimpeded.”²³⁷ For example, Florida Governor Ron DeSantis has been actively working to prevent social media regulation; he recently proposed acts to prevent platforms from being able to control users’ posts.²³⁸ Proponents behind this act believe that “social-media platforms ‘have unfairly censored, shadow banned, deplatformed [sic], and applied post-prioritization algorithms to Floridians’ and . . . ‘[t]he state has a substantial interest in protecting its residents from inconsistent and unfair actions’ by the platforms.”²³⁹ But Mr. DeSantis is not alone—there are many more advocating for leaving social media with essentially free reign.²⁴⁰

Additionally, the fashion industry thrives as one of little regulation. Because of “the short life expectancy of fashion designs, as well as their functional purpose as clothing [there are] . . . significant obstacles in applying the various tenants of U.S. IP law—namely, trademark, patent, and copyright—to the fashion industry.”²⁴¹ As a result, “copying of couture fashion has left most designers with few legal remedies,”²⁴² even if the “copy is virtually indistinguishable from the original.”²⁴³

Consequentially, fast fashion is not going anywhere.²⁴⁴ Just recently it was estimated by McKinsey and the World Economic Forum that “the number of garments produced each year has at least doubled since 2000.”²⁴⁵ Despite the

233. *Id.*

234. *Id.*

235. Samples, *supra* note 101.

236. See Ghosh, *supra* note 232.

237. Paul Matzko, *Biden’s Misguided Call for Internet Regulation*, CATO INST. (Feb. 1, 2023), <https://www.cato.org/commentary/bidens-misguided-call-internet-regulation> [https://perma.cc/UP4X-MQJE].

238. Brian Fung, *Florida governor DeSantis signs bill targeting social media platforms*, CNN BUSINESS (May 25, 2021), <https://www.cnn.com/2021/05/24/tech/desantis-big-tech-anti-censorship/index.html> [https://perma.cc/3C6Z-VDSJ].

239. *Id.*

240. Samples, *supra* note 101.

241. Aya Eguchi, *Curtailing Copycat Couture: The Merits of the Innovative Design Protection and Piracy Prevention Act and a Licensing Scheme for the Fashion Industry*, 97 CORNELL L. REV. 130, 136 (2011).

242. See *id.* at 132–33.

243. *Id.*

244. Dottle, *supra* note 55.

245. *Id.*

obvious issues with the fashion industry, and reasons for leaning towards or away from regulation, many policymakers would rather not address the issue than potentially risk the aftermath that these new laws would create.²⁴⁶

With policymakers either unable– or outright refusing– to place certain restrictions on social media platforms and on fashion independently, there is even less urgency when the two industries intertwine. Currently, there is no regulation regarding how social media users can promote fashion brands, and more specifically, fast fashion brands, despite no signs of this type of promotion slowing down anytime soon.²⁴⁷

a. *How Can Fashion Brands' Corporate Use of Social Media Platforms Be Regulated?*

The most proactive way to restrain social media's continuous promotion of fast fashion is by making corporations' advertising abilities contingent on compliance with sustainability standards. As previously mentioned, fashion brands are not as transparent as they should be when it comes to how sustainable their business practices are.²⁴⁸ The sustainability of businesses' economic and social practices are equally as important.²⁴⁹

To combat deceptive advertising practices within the industry, as consistent with the missions of the Federal Trade Commission, I propose a law that enforces the application of a sustainability compliance program. Compliance would be mandatory for all fast fashion corporations engaging in social media advertising and will not only require upholding the minimum acceptable standards of sustainability practices but will also require the publication of said business methods.

Due to the history of disclosure practices, it has proven difficult for customers to recognize what sustainable practices look like, let alone know whether their favorite brands engage in sustainable practices. To combat this issue, the sustainability compliance program will first outline acceptable practices, focusing on those within the economic, environmental, and social realms of the industry. Setting minimum standards within these areas will allow consumers to understand what sustainability looks like and determine which brands fall short.²⁵⁰ Standards for the industry could include minimum wage requirements, safety standards for manufacturing sites, and limitations on pollution output.

The breakdown of the industry into these three sectors is inspired by the fashion law textbook, *Green Fashion Retail*, which names “people, profit, and planet” as the three key factors in determining brand sustainability.²⁵¹ Each sector

246. Majure, *supra* note 101.

247. Johnson, *supra* note 33.

248. Edwards, *supra* note 222.

249. See Andrew J. Hoffman, *The Next Phase of Business Sustainability*, STAN. INNOVATIVE SOC. REV. (Spring 2018), https://ssir.org/articles/entry/the_next_phase_of_business_sustainability [<https://perma.cc/8UZS-BJST>].

250. See Katherine White et al., *The Elusive Green Consumer*, HARV. BUS. REV. (July–Aug., 2019), <https://hbr.org/2019/07/the-elusive-green-consumer> [<https://perma.cc/Z4TD-HMWU>].

251. J. Strähle, GREEN FASHION RETAIL 10 (Springer, 2d ed. 2017).

would be further broken down into five parts, to ensure full disclosure of all pertinent business practices. The subsections are described as the most important determinates within each sector of the industry and are as follows.²⁵²

i. economic

The first sector in the sustainability compliance program will require brands to publish information on five factors regarding economic measures within the industry.²⁵³ The factors that brands will be required to make accessible to consumers include (1) reports on sales, profits, and ROI, (2) taxes paid, (3) monetary flows, (4) jobs created, and (5) supplier relations.²⁵⁴

ii. social

The second sector in the sustainability compliance program will require brands to publish information on the above factors regarding social measures within the industry.²⁵⁵ The factors that brands will be required to make accessible to consumers include information on health and safety records, community impacts, human rights, privacy, product responsibility, and employee relations.²⁵⁶

iii. environmental

The third and final sector in the sustainability compliance program will require brands to publish information on factors regarding environmental measures within the industry.²⁵⁷ These factors will include pollutants emitted, carbon footprint, recycling and reuse, water and energy use, and product impacts.²⁵⁸

The sustainability compliance program will also require mandatory publication of findings to consumers, as this is the best practice to ensure customers are properly informed on all business practices. When Corporations are required to comply with the sustainability compliance program, consumers will not only be exposed to the true business practices of their beloved brands, but enforcement of ethical standards will become much easier, as fast fashion brands will have no choice but to be transparent. The implementation of this program will instigate self-reflection amongst both brands and customers.

b. Investigation

In determining whether corporations are compliant with the program requirements, the program should adopt a similar, if not identical, methodology to the investigative process used by the Food and Drug Administration (FDA). The FDA works extremely diligently to promote ethical advertising of both food and

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.*

prescription drugs by implementing ethical requirements across these industries. In determining whether baseline requirements have been met, the FDA engages in a “rigorous conformity assessment.”²⁵⁹

A conformity assessment is described as demonstrating “whether directly or indirectly, that specified requirements relating to a product, process, system, person, or body are fulfilled, [and is considered] an integral part of a strong regulatory framework.”²⁶⁰ This process, which may consist of “sampling and testing, inspection, supplier’s declaration of conformity, certification, management system assessment and registration . . . [and] accreditation of the competence of those activities,” allows the Administration to vehemently ensure corporations are engaging in ethical practices and control the quality of products disseminated into the marketplace.²⁶¹

c. Enforcement

The law enforcing the application of the sustainability compliance program will also provide the government with the authority to pursue legal action against brands that fail to disclose all required practices and those that fail to disclose accurate information. Legal action will include fines, revocation of social media advertisement privileges, and potential termination of business licensure, depending on the severity of non-compliance.

VI. CONCLUSION

Fast fashion brands look to social media platforms to promote their products and increase their customer base. They achieve this through their use of promotional advertisements, influencers, hauls, microtrends, and the like.²⁶² However, social media has played an impactful part in the popularization of fast fashion, by promoting mass consumption of low-quality goods.²⁶³

To enact change, the first step is to implore our representatives to enact the proposed Sustainability Compliance Program. This program will be revolutionary in curtailing the harmful effects of fast fashion and social media’s perpetuation of fast fashion by enforcing industry-wide standards and ensuring a fully informed customer base. In addition to urging the enactment of vital legislation, there are several ways we, as individuals, can aid in preventing further devastating effects of fast fashion, starting with changing the trends to quality over quantity.

259. *Standards and Conformity Assessment Program*, F.D.A., <https://www.fda.gov/medical-devices/premarket-submissions-selecting-and-preparing-correct-submission/standards-and-conformity-assessment-program> (last visited May 8, 2024); Upasana Marwah, Dana Huettenmoser, & Sheetal Patel, *Prescription Drug Advertising and Promotion Regulations and Enforcement in Select Global Markets*, FOOD AND DRUG LAW INST., <https://www.fdli.org/2017/08/prescription-drug-advertising-promotion-regulations-enforcement-select-global-markets/> (last visited Feb 24, 2024) [<https://perma.cc/G2T6-CFJQ>].

260. *Standards and Conformity Assessment Program*, *supra* note 259.

261. *Id.*

262. *See generally* Elram, *supra* note 7.

263. *Id.*

