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INTERNATIONAL FASHION TRENDS: THE BUSINESS OF INTERNATIONAL FASHION LAW

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I. PANEL ONE: ACHIEVING COMPLIANCE

A. *Opening Remarks*

MS. JESSICA BLUMERT: Good morning and thank you for joining us today at the *Cardozo Journal of International and Comparative Law* Symposium, which is being co-sponsored by the *Intellectual Property Law Society* and the *IP Practice Group*. My name is Jessica Blumert, and I am the Symposium Editor of the CJICL and the President of IPLS.

¹ The content of this transcript is a textual representation of the panel discussions that took place on February 28, 2013 at the CARDOZO JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW symposium, *International Fashion Trends: The Business of International Fashion Law*. While best efforts were made to provide an accurate transcription, there may be errors, omissions, or inaccuracies in the reporting of the substance of the panel discussions.

Before we begin, I would like to thank Shane Martins, the CJICL Assistant Symposium Editor, and Alexandra Simmerson, the Fashion Law Chair of IPLS, for helping us create the event. This event would not have been possible without their time and effort.

Today's symposium will cover various issues in international fashion law, including compliance, international trade, international fashion modeling, and sustainability. Each of these panels will explore the economic and strategic implications of fashion law. Following the symposium, there will be a mixer with the IP practice group.

Each panel will be an hour long. If there is any time remaining, we will allow for questions from the audience. Following each panel will be a short break before the next panel begins.

The moderator for today's event—who needs no introduction but will receive one anyway—is Barbara Kolsun, the Executive Vice President and General Counsel of Stuart Weitzman LLC, a luxury shoe design manufacturing and retail company. A global brand with nearly one-hundred retail stores.

Barbara is also an adjunct professor of fashion law here at Benjamin N. Cardozo School of Law. With Guillermo Jimenez, she is the co-editor and co-author of the first textbook on fashion law, the second edition of which is in the process of editing for 2013 publication.

Prior to her time at Stuart Weitzman, Barbara was the general counsel to several other fashion houses, including Kate Spade, Seven For All Mankind and also in-house counsel at Calvin Klein jeans and Westpoint Stevens, the home textile company. Additionally, Barbara has spoken and been published widely on fashion law throughout the world, from Vietnam to Istanbul.

She is also a 1982 graduate of Cardozo. It is my pleasure to introduce Barbara Kolsun.

MS. BARBARA KOLSUN: Thank you.

AUDIENCE: [Applause].

MS. KOLSUN: Well, I taught fashion law drafting this morning at Cardozo and my esteemed colleague Lee Sporn, who will be speaking later this morning, is teaching—thanks to Jeff Goldfarb, one of our speakers in the first panel—the first FIT Cardozo joint course—Lee, what's the name of it?

MR. LEE SPORN: [Interposing] Fashion law practicum.

MS. KOLSUN: —fashion law practicum . . . [S]o we're really

building a fashion law practice here at Cardozo. Many of my students, our students, are sitting in the room.

When the students approached me about my thoughts on this symposium, I said let's skip [intellectual property]. Everybody's heard IP in fashion to death. Let's talk about all the other issues related to working in the fashion business that those of us—and there are many Cardozo grads who are in the fashion business—that those of us deal with on a day-to-day basis.

I am, as Jessica said, the General Counsel at Stuart Weitzman. IP is about ten percent of my practice. I deal with getting goods in and out of the country, classifying those goods; lots and lots of employment matters, which we're going to talk about; lots and lots of corporate matters. My company was recently acquired by the Jones Group, which is one of the big holding companies. I've actually worked for companies that have been acquired by almost every single major holding company. I seem to be the death threat—when I arrive at companies we immediately get sold—or the life threat.

We deal with many issues and we're going to talk about three of those categories today starting with compliance and then talk about navigating international trade: again, getting goods in and out of the country. Then, we're going to talk about modeling this afternoon and sustainability, which is a very hot issue that we're all dealing with whether we like it or not.

B. Discussion

MS. KOLSUN: I'm going to let the speakers introduce themselves but I will just start by introducing Jeff Goldfarb, who is the Director of Business Development at G-III Apparel Group. He is a graduate of Cardozo and in the business end at G-III. Jeff, would you tell us first a little bit about what G-III is, what you do there, and how you ended up there?

MR. JEFF GOLDFARB: Okay, good morning. At G-III Apparel we design, distribute, and manufacture a variety of apparel. We have major fashion licenses with Calvin Klein, Kenneth Cole, Guess, the NFL, and the NBA. We have about twenty-five different licenses and we're kind of the brand behind the brand, so the designers, the merchandisers, they're all part of G-III.

And if you walk into [the G-III] showroom, you would think that you were actually in a Calvin Klein showroom or a Guess

showroom. You wouldn't really think about G-III. The biggest part of our business is licenses.

We also do private label where an Abercrombie or a JCPenney comes in, and they say "hey, can you make outerwear for us?" and we will make them coats or dresses. That is another part of our business.

We also have about two hundred retail stores. The biggest chain that we have is Wilson's Leather, which is primarily an outlet chain. We are located in Minnesota for that. The rest is here in New York. And then we have a large overseas office that does compliance and sourcing and audits and checks on all the factors and finds new factories and new facilities.

And we have two brands that we own besides licensing. One is Vilebrequin and one is Andrew Marc. What we try to do is: we buy these brands and we put them on our platform and we expand their product. So in the case of Andrew Marc, it was a coat brand and we are going to make dresses and sportswear, as we do for the rest of the world; and for Vilebrequin, we'll do the same thing.

My job within the company has been a variety of different things. While I was at Cardozo, I started at G-III, which was founded by my grandfather. My father is now the CEO and it is a public company.

But during the summers I worked in China and I worked in the factories loading containers and worked online and worked with management in finding new factories, doing all the things that we do in China. Then, after law school I worked in production, which is essentially the import department. So not being in China, I got to travel there (but not be based there) and work with Customs and work with customers to get products into the U.S.

I ran a division after that which was more sales oriented. Now I do more M&A and operational work: finding new licenses, finding new companies, and finding ways to build our business either in the U.S. or overseas.

MS. KOLSUN: You wear the lawyer hat also?

MR. GOLDFARB: I guess you always wear the lawyer hat. Every deal I look at there's something in my mind that has to do with legal, but I don't necessarily only look at legal stuff. It's much more of a business universe.

MS. KOLSUN: For those of my students who listened to my first class on ethics, this is a lawyer wearing two hats example. Do you have in-house lawyers at the company?

MR. GOLDFARB: No, the companies run each division

because we have a lot of overlapping parts that actually compete with each other. So there are a lot of different companies and then a small management team at the top. I do a good amount of legal work but a lot of it is given to our outside counsel.

MS. KOLSUN: A second speaker, Greg Weisman, is with us on Skype. Is he on Skype yet, Greg?

MR. GREG WEISMAN: I'm here. Is the audio working?

MS. KOLSUN: I guess so. We can hear your voice. Can you tell us briefly where you are and what you do in connection with the fashion business?

MR. WEISMAN: I shall. Good morning, everybody, my name is Greg Weisman. I'm a Partner at Ritholz & Levy in Los Angeles. I launched the Los Angeles office of this law firm about a year ago and I've been practicing for eighteen years in Los Angeles predominantly with a very similar practice to you, Barbara, as outside general counsel for wholesale manufacturers and distributors of apparel, accessories, and footwear.

My clients are very L.A. centric: meaning, it's sportswear, outerwear, denim, juniors, action, sports, surf, skate. You can tell by the skateboards on the wall behind me in my office—Barbara, I don't think you can see the visual—but it's a very a L.A. centric office. And from a legal discipline standpoint, as outside general counsel it really sort of falls into three distinct categories, although you have to be nimble and navigate a lot.

It's going to be a lot of contract work, sales rep agreements, distribution agreements, license agreements, independent contractor, co-lab product branding, development, PR, you name it. The second discipline is corporate. I form entities for start-ups to help take them all the way through the last cycle of getting investors, doing a PPM and ultimately a liquidation or an exit strategy event. We're a smaller shop, so if it's too big and we get into a hard stubborn issue, we usually farm it out to a larger firm.

And the third discipline is intellectual property, which is where I started. I started out as an IP litigator, and as any good transactional lawyer will tell you, having a litigation background is very helpful, especially in the garment business where, conceivably, every contract that you enter into has some vested sort of dispute down the road at some point that you can navigate, and understanding kind of how that works, what the risks are, what the costs and exposures and opportunity cost loss for your client I think it's very helpful.

I grew up in San Diego and I went to school at Berkeley, so

I'm a fourth generation Californian [talking to you] about how we do things out here in crazy California.

MS. KOLSUN: Separate state of California. Lee and I always joke with our class about this: there's France and then there's California. When we talk about employment—

MR. WEISMAN: [Interposing] That's right.

MS. KOLSUN: —matters. And that's a good introduction to Howard Robbins, who is our third speaker, a partner at the Labor & Employment Department at Proskauer, which is a firm that many of us work with for various matters. A very, very, very fine employment firm.

We're talking about compliance in this first panel and a huge part of compliance is compliance with labor laws—not just in the U.S.—but worldwide, and they are different in every country. I remember that somebody recently asked me if we translated our employee manual into Italian and French, and I laughed said “no, because Italy and France are very, very different.” Their laws are very much governed by unions and there's really no such thing as at-will employment there, like there is here.

So Howard, tell us a little bit about your practice as it relates to labor and employment compliance.

MR. HOWARD ROBBINS: Sure. I am a labor and employment lawyer and a lot of what I do is in the sport sector. Actually, I do work for the NBA and Major League Soccer and the NHL but I also represent a number of employers in the what is called the fashion industry: Michael Kors and Barney's and (until they went bankrupt recently) HMX, and some others.

And it runs the gamut from collective bargaining where there are fairly heavily unionized operations, whether it's sales associates at Barney's or warehouses. There are wage and hour compliance issues. I'm going to talk about today is disability compliance issues involving new media. Just a very wide range of issues that really affect all employers.

One thing I joke about is people applying for jobs at the firm who often say “I want to be a sports lawyer” and they come to me and I say, “why you want to be a sports lawyer?” [and they say] “I love sports.” I say, “I have two bits of bad news for you. One is there's no such thing as sports law, okay, there's simply law as applied to certain industries, and the other is that you don't get close to the game. You don't get to bounce the ball just because you do this work,” and I think the same is probably true of fashion law.

Lee Sporn has yet to dress me up in any exciting clothing, but that's okay.

MS. KOLSUN: Lee and I never go into stores and we never go to fashion shows and we disappear on Fashion's Night Out.

MR. ROBBINS: So it's not about the fashion, which we all know, but it's certainly an industry that presents a very interesting range of issues. And I have been Proskauer for [almost] eighteen years now.

MS. KOLSUN: G-III has a lot of companies and a lot of manufacturing. Where are the countries where you manufacture or where you, as a licensee, manufacture?

MR. GOLDFARB: We always try to find the new low cost provider so we're always looking for a new place to produce but about seventy percent of our product is produced in China. We have a major footprint; and China, it isn't the low cost provider anymore, at one point it was.

Our company used to be mostly in Korea, and then, as China built the superstructure, went over to China with Korean management, and then, we really built our footprint there.

And it has the roads. It's stable. We like to be there. We kind of know what we're going to get but we're always looking for the next place to be, so now we're in Eastern Europe. We're in Indonesia. We're in Vietnam. We're in Bangladesh. We're in India. We're in Pakistan, China, Korea, Italy, and Bulgaria. We're pretty much all over the place.

MS. KOLSUN: Do you manufacture anything in the U.S. anymore?

MR. GOLDFARB: We do some contract embroidery and stuff like that. We're a quick response business: if the Yankees win the World Series, the next day you see a jacket that says "World Champions." Well, we will have blank store here who will embroider it up in the U.S. and can get it out really quickly but it's not a meaningful part of our business. And quite frankly, if you had any sort of labor issue or we had a union problem, we would probably just walk away from that place.

MS. KOLSUN: I assume you work with many factories in China?

MR. GOLDFARB: Yeah.

MS. KOLSUN: And how do you control human rights compliance? Let's start with the tough one.

MR. GOLDFARB: Yeah, I think it's almost impossible. I think we are in maybe five hundred different factories. The

answer is: you just [have] to keep auditing and for us, we're a public company so we have certain standards that we have to adhere to . . . but we're also using other people's brands.

So Calvin Klein is our biggest brand and PBH, which owns Calvin Klein, takes these matters very seriously, so it has standards that are tougher than local laws.

MS. KOLSUN: When you work with the factories, do you give them your corporate compliance guidebook? This is our corporate compliance guidebook. Actually, it's Jones Company's (that owns Stuart Weitzman now), with all sorts of pictures and lengthy discussion about chemical handling plans step-by-step, wages and benefits, and every conceivable [guideline] on freedom of association, pregnancy, etcetera. Does G-III have its own compliance guidebook, or do you give, for example, the Calvin Klein factories that are making Calvin Klein product the Calvin Klein compliance guidebooks?

MR. GOLDFARB: We use the Calvin Klein compliance [guidebook]. In our case, Calvin Klein and Nike are the two toughest. They're tougher than everybody else. They're tougher than what G-III normally would want to do because we will have Walmart, which isn't Calvin Klein or Nike, so we don't do the Walmart standards for that business.

But for the most part, before we go into a factory, we'll try to [access] the Calvin bins. We pre-audit them to make sure that, even before we price anything out, they are going to be able to hit these standards and if they don't hit those standards, we help them get there. And Calvin Klein, they are okay. If you explain to people and you communicate that the factory is almost there, they will help you because they want every factory to kind of be brought up, so they will help you give them orders to kind of invest in it.

But the way to police the human rights stuff is just to consistently be there. We have two hundred and fifty people there. They have to keep going to those factories and checking on them. And when you give that factory an order, you have to make sure that they didn't just take the order and then give it to a factory up the street and make a little bit of money on the difference.

You just have to keep going back and back and kind of staying on them, and after a while, you create something that's pretty special. A compliant factory is a good thing for an area that's pretty depressed . . . [b]ut our biggest problem would be

there really is no [check and balance] beyond what we're going to do to make sure that they're actually being compliant with human rights standards. The local governments usually don't do it. They really don't care.

In China, you can't work more than sixty hours a week but if I give a factory an order and it's going to take them more than sixty hours a week to get it done, they're not going to say no to it. They're going to figure out a way to get it done because otherwise that might go to the factory next door because it isn't really compliant.

So they keep two sets of books and audit those two sets of books. We have to be on it. You have to go back to the factory no matter what it is. China's a big place. Just keep going back and keep policing and making sure that they're doing what they said they were going to do.

MS. KOLSUN: Are your auditors your employees or, I'll say, consultants?

MR. GOLDFARB: They're ours. We have our auditors but there are third-party auditors that you can hire. So in the case of JC Penney, it will do it's own factory audit inspections. So our auditors know their auditors and we have to make sure that our auditors get there before JC Penney's auditors get there to make sure that it's done the right way.

You have to police the auditors sometimes. You have to make sure you're hiring somebody in China that doesn't make that much money and could be paid off by the factory, so you have to just consistently work it and be on it and check it out and get on a plane and make sure your stuff is being made where you think it's being made.

MS. KOLSUN: We've seen a lot of press recently about the fires in Bangladesh and lots of commentary about exporting jobs to countries that have not experienced the triangle shirt factor type of tragedy which led to labor unions and higher standards for workers. How do you deal with that kind of criticism as a company that pretty much sources all of your goods?

MR. GOLDFARB: It's a race to the bottom: every store wants a better price and every customer wants to buy a coat or a dress cheaper and you want to get value. So it's a dirty game. You have to go and find the cheapest place to do business.

The criticism in Bangladesh is [that] nobody is policing anybody, so we don't do much in Bangladesh. I mean, anything that I'll do in Bangladesh I'm on top of. Our people there will

make sure that it is the right factory.

But it is the next frontier also, so you can't ignore it. You can't say that because there was a big fire and it's getting a lot of negative press, we shouldn't be there. I doubt business in Bangladesh is down that much. They're getting the orders [and] people are still going there. So to point out the criticism of it, there really is no way, except it sounds kind of backwards—but investing more in it gives the local government more of a reason to fix it, right?

So if they see that we're going to come there and we're going to police it, they'll get behind it... [t]hey'll take care of their people. I think it'll make it a better place actually with more business there.

MS. KOLSUN: Greg, how do you advise your smaller, more entrepreneurial clients who are manufacturing in or outside the U.S. in setting up these kinds of compliance program? I assume most of them are privately held companies.

MR. GREG WEISMAN: They are. Well, we have some public companies in Los Angeles but as you suggested, we have a lot of entrepreneurial privately held companies. Jeff was very honest just now about this race to the bottom. The idea that the retailer is demanding such price consideration on these goods and it is so competitive. And if you're a private company trying to compete with a billion dollar public company who can sometimes take back goods or give different terms or better terms at retail, it's an even more difficult challenge.

To tell you an interesting story that's California specific: California had a huge garment-manufacturing base within Southern California. At a time in the mid-90s there were over a one hundred thousand people employed in the garment business in the state of California.

It was large employer. It contributed to the economy: a lot of jobs, a lot of upward mobility. Say what you want about Doug Charney and some of the news he's gotten into but he was an advocate especially in the late 90s of taking immigrant labor and saying listen this is our ability to take these people and give them that American dream. And it was working, and it was robust.

And into the mid-90s, really before [the] El Monte sweatshop raid of 1995, and a lot of legislative changes at the state level, you had a ton of garment manufacturing going on here. People manufactured domestically because, as Jeff suggested, in the fast fashion business or quick turn or imprintables, it's easy. It was

cheap getting goods in three or four weeks instead of three months on the boat and sometimes, it was even cheaper or as cheap.

And then, a lot of different sort of tragic things happened. We had the El Monte sweatshop raid in 1995 where [over seventy] Thai immigrant workers were found handcuffed to sewing machines with barbed wire fences. It was the worst sort of tragedy and travesty of [public relations] really harkening back to the 19th century. Most of the labor advocates in California said, "look, it's the mid-90s, and this is still happening here."

The garment industry in California is plagued by its own legacy and it's done some of its own damage to itself with things like this, and so they enacted some very heavy garment specific registrations, which we can talk about in a little bit.

MR. WEISMAN: And so there was a lot of manufacturing here, and then, in the mid-90s when the U.S. changed and globalization opened up first Mexico, through NAFTA and then Asia, those jobs are all gone. And we shipped them overseas never to come back really. Although I see some optimism that it might actually come back in drips and drabs.

But to answer your question, it's very difficult. It's very delicate. It is retail driven, meaning: if the retail demands compliance, you have to do it. I will tell you some of these guys don't do it. They will represent and warrant to their retailers that these goods are compliant without much compliance at all.

Supply chain management is expensive. It's expensive to have boots on the ground in Asia. People use third-party garment sourcing people and I will tell you that it is not as well regulated and managed, as it should be.

MS. KOLSUN: I worked for Seven For All Mankind in the early 2000s and we manufactured, for the three years that I was there, everything in California in downtown Vernon (which is downtown L.A.) and I was the first in-house lawyer for the company. And the first thing that I focused on was hiring a human resources director. Would you believe we didn't have a human resources director?

And obviously, everybody who worked in that factory was Spanish speaking, so we cut a deal with Immigration to do an audit and the rules were set going forward and not going backward. And I think the company still does a great deal of manufacturing in California, but that's rare. It's rare but Vernon is still, I think, relatively robust.

In addition to the compliance that we've talked about—

human rights compliance—there's also California. You mentioned things, Prop 65 California regulation related to transparency and supplies act, another recent California compliance statute. How do you deal with those with your clients? I mean Prop 65 is a nightmare for a small company.

[Crosstalk]

MR. WEISMAN: [Interposing] It is a nightmare, so Prop 65 for those in New York that don't know what it is, it's the Safe Drinking Water Toxic Enforcement Act of 1986, which by its title would suggest it's something sort of more municipal water related, but the reality is any consumer that you bring in any retail store you probably have to post an ambiguous sign noting that "chemicals" which are known to cause cancer or reproductive birth defects may be present in the product that you're selling. It becomes a warning label.

Generally, a warning label is all that's required, but we have some very litigious, very aggressive plaintiffs lawyers running around California using the private attorney general statutes to sue people seeking really attorneys' fees under class actions, looking for discrepancies.

MS. KOLSUN: Bonanza for class action lawyers Prop 65. Every one of our companies is involved in Prop 65. Jeff, are you guys involved in Prop 65 claims?

MR. GOLDFARB: It changes all the time. Wilson's with us, we have retail stores there but it kinds of rears its head all the time.

MR. WEISMAN: And there's a comic element to this. I know it's serious but the claims are so ludicrous. We've had cases involving products where the claim will come in that the brass buckle was processed using something or other as though you'd be licking it.

MS. KOLSUN: I always describe it as the "are you going to let your child suck on the red patent leather shoe in your closet?" because that's really the only way the kid could possibly get cancer from the patent leather shoe. And, of course, the options for those of us in the business are: you either saddle up with one of these class action lawyers or you post on all of your beautiful luxury boxes "this product could be detrimental to your health," which your marketing people will shoot you for doing. So that's the real issue.

The second law, the California regulation related to transparency and supply act, was something that came into effect

in January of 2012 wherein we all had to post something on our websites that said that human trafficking was not anywhere in our supply chains, which you can imagine is very difficult to swear to. Howard did you have to counsel any of your clients on those postings?

MR. ROBBINS: Yes.

MR. WEISMAN: And the list goes on. There's lead paint issues relating to accessories, belt buckles as it was mentioned, which has been difficult because as that particular statute comes into effect, it sets different standards for children products and defining what are children's products versus adult products.

MS. KOLSUN: And your wonderful plastic bag laws. Don't you have one in San Diego? I know you have a whole ten-page chart on plastic bags in California.

MR. WEISMAN: Right. Each municipality is going through its own legislation on plastic bags. Santa Monica, for example, outlawed them. I forgot [which] municipalities. Within the county of L.A., I think West Hollywood is close. We have different minimum wage laws, sometimes city by city. Navigating out here, definitely not schilling for myself, but you need local counsel: someone around in California to advise, especially if you have a retail presence.

I mean we're talking to New York manufacturers. New York manufacturers get scared off by the garment registration statutes that we have out here, which require garment manufacturers or even wholesalers out of state who contract with domestic in-state contractors very broadly and loosely to find to be registered as a garment manufacturer. So that's one issue that causes trepidation, I think, for out of state people.

The second being some of these consumer based statutes and all of this stuff becomes more profound at the retail level. At the wholesale level, selling goods into California, while we sometimes sound we're a foreign entity, we're still a state within the United States. We have crazy laws but again, that's more for operational things that are within California: they're entrusting commerce and especially, that retail presence.

MS. KOLSUN: Howard, can you talk to us about some of the key issues that people and the companies in the fashion business have to think about in the employment world. I know we've got wage and hour, discrimination and also the differences that arise from the fact that we have fifty states and many countries in which we do business.

MR. ROBBINS: Sure. So plaintiffs lawyers are not unlike retail shoppers. They are always looking for the best and easiest deal, the lowest cost to extract the best value, and that trend plays out in the types of claims that we see increasingly.

So while the discrimination cases are alive and well, those are complicated for plaintiffs lawyers because they require proof of intent generally. It's always easier to find a strict liability statute. That's, by the way, one of the nice things for plaintiffs lawyers about this Prop 65 stuff. Because once you have the toxic product, that fact is there, and you're done in a way, and then it's just a matter of the price.

So the wage and hour claims we've seen have been plaintiffs lawyers' option of choice: their favorite place to shop, in part, because most employers are guilty in some way or other. Wage and hour law is really antiquated. It's very difficult to comply with, and it's a very gray area in terms of exemptions from overtime requirements and the use of interns, which is increasingly being challenged. This is an industry where the use of unpaid interns is common and the question of whether somebody really should have been compensated; there are increasingly a number of claims like that.

Barbara, as you know, around the world you have a whole different set of employment laws . . . We find that it's important to have a network of local counsel because there are truly local issues.

In China, while we have a Beijing and Hong Kong office, we find we really need to have PRC lawyers in each locality. I don't know if that's your experience as well, but so much in China is really still local. There is a labor law in China that was passed in 2008. I think it is still largely theoretical in a way and there's enormous evolution happening in China in terms of the legal landscape. And there's a lot of labor unrest I think more than is really being reported.

Some of it you see in the news but we hear stuff about more labor disruption than I think you're hearing about . . . so we find navigating other countries requires us to maintain a network of local counsel.

MS. KOLSUN: What are the key issues that you're seeing in EEOC claims that are coming? Most of us, our labor employment issues arrive at our desks in the form of EEOC complaints from employees that we've terminated, and as you know the U.S. is at will for the most part. So these are your basic retail employees

who we've terminated for various incendiary reasons, but what is the majority of the claims that you see?

MR. ROBBINS: Some of this ebbs and flows with whether you're doing layoffs or not. The recession certainly prompted waves of layoffs and so we saw a lot of age claims arising out of those. The fashion industry is particularly sensitive to [such claims]. [A]nd there was a famous Abercrombie & Fitch case where there was an *image*. Supposedly, the company was alleged to have been trying to achieve a young, white image. Claims that relate to a company often trying to achieve a young image and supposedly exiting older employees in connection, that's the argument anyway. So we saw a lot of those—

MS. KOLSUN: [Interposing] Can I ask you—because we talk about this in our class—can you require a dress code? Can you, in fact, require that your employees look a certain way, and if so, what are the parameters?

MR. ROBBINS: We've actually had claims exactly about that issue and the short answer is: you can have a dress code. The longer answer is: it cannot be a code that is discriminatory in the sense that it excludes people of certain backgrounds because they're unable to achieve that look. So some of it is an issue of religious compliance and you have to be careful about that. There have been claims in that area where people want to wear head coverings.

And by the way, interestingly, under Title VII an employer has a much lesser burden to say, "we don't need to comply with someone's religious observance" than [an employer] does [under] New York law. New York City actually has a relatively new law requiring the same sort of standard as in disability discrimination, that there has to be an undue burden to avoid allowing someone to comply with their religious observance.

MS. KOLSUN: So if an Orthodox Jewish employee does not want to work on a Saturday and the employer can prove that not working on a Saturday would cause an undue burden to the business?

MR. ROBBINS: Actually, curiously you say that because the New York City law has a remarkable carve out [for the Sabbath observance] that I think has yet to be litigated but I think is an impossible standard. It cannot be alleged to be an undue burden to let somebody observe the Sabbath. That's the feature of this New York City law.

MS. KOLSUN: So I think the key takeaway here is that you,

obviously with these employment claims, have to start with Title VII and various other [federal laws], the Equal Pay Act, Americans with Disabilities Act, Age Discrimination in Employment Act, et cetera, but you also have to look at the state law—

MR. ROBBINS: [Interposing] And local law in some cases.

MS. KOLSUN: —and local law—

MR. ROBBINS: [Interposing] Right.

MS. KOLSUN: —absolutely.

MR. ROBBINS: So it's very dicey.

The EEOC has had its resources cut over the years so it's always trying to justify its existence and it's looking for systemic issues. The hot button things are where the EEOC will actually take action—or issues that have a broader implication. So for them, the Abercrombie & Fitch case was an attractive kind of case. It was a broad, industry-wide sort of issue. Pregnancy discrimination has been a focus of theirs.

It's recently announced an initiative where it's going to be focusing on the use of criminal background checks as a code for racial discrimination because of the impact of the use of criminal convictions to screen out applicants. So I think you're going to expect to see cases in that area.

MR. KOLSUN: Also, just to give you some statistics—for those of you who don't know understand why we spend such an inordinate amount of time on these cases—the EEOC received almost one hundred thousand charges of harassment, discrimination, and retaliation against private sector employees between October 1, 2010 and September 30, 2011. And that number increased the following year. The EEOC recently disclosed that it secured more than 365.4 million dollars from private employers in 2012, a record for monetary benefits collected that represents a \$700,000 increase over the last year.

I learned yesterday in connection with a couple of cases we have that the EEOC has been given a bigger budget to do fact investigation. A case that we have in Texas—which is, I think, unbelievably silly in terms of facts and the kind of thing that I thought would've been dismissed very quickly—is now going to be the subject of a fact investigation, which requires flying three employees down to Texas. We spend a lot of money on this kind of thing. Jeff, do you have these kinds of problems in your world, or is it more of a retail problem?

MR. GOLDFARB: For me, I don't see this [very often] but

there's one thing I want to kind of go back to when we talking about California, and it made me think about—I don't mean to change topics—but it made me think about an issue that I am having with Dodd-Frank. Because we're a public company, we have these Dodd-Frank requirements and they want to know where we get certain minerals that will be in our product. So whether it's tin or nickel or certain things that might come from the Congo.

And I make a jacket, and I buy the zippers here, and I buy the buttons there, and I buy them in China, and I put them altogether. I don't know where the guy was making the snaps or the buttons. He's buying it from a smelter somewhere in China, who's buying those raw materials from somebody. You're so far up the supply chain that it's: how do I stay compliant?

I ask these people where they get everything and I think they're telling me the truth but it's hard to kind of police that and be in compliance with it. And to me, it's pretty interesting how I think the government is trying to regulate—through a public company, through Dodd-Frank—the conduit, where we can and cannot get raw materials. And it's tough.

And being in compliance with that, which I guess is a human rights issue, it's tough to police. It's tough to be in compliance and we always to make [note of this] in our public files.

MS. KOLSUN: When I was at Westpoint Stevens, which is a home textile company, we had an issue related to Egyptian cotton, from which we made Egyptian cotton sheets and towels. And the question was—it was kind of driven by UNITE, a U.S. Labor organization—is any of that cotton from family farms, in other words, farms where children might have worked? And if you know anything about the way these things work, it's the wine industry. People who sell grapes who cooperatives, and were any of those grapes picked by family by kids, and family farms children often work during the summer.

And I'm not defending this, but how do you, as a public company, certify that the cotton in your Egyptian cotton sheets, which came from Egypt, and was sold to a cooperative from a little farm, was never touched by children? You simply cannot do that. You wouldn't even know how to begin to get that information, so I think it's a very similar issue.

MR. GOLDFARB: It's nearly impossible—but the question is how far up the supply chain do you force a public company to go to really stand behind what they're doing? I mean, a factory, I

understand labor issues, that all makes sense. I don't know, I always buy raw material. I'll nominate the raw materials and the factory will actually buy it and I'll buy that finished product for the factory.

So I could regulate the factory. I could regulate where they're getting the raw material, but how far up do I have to go it's something that we struggle with all the time.

MR. WEISMAN: Barbara, can I add a couple?

MS. KOLSUN: Sure.

MR. WEISMAN: So to follow up on what Jeff just talked about, we had a case a couple of years ago where people were seeking to invalidate "Made in the USA" claims . . . [T]here's a—I forgot whether it's a 9th Circuit out of Oregon or in California—terrible decision that basically says if any component part—and that could be the smallest [part] on a garment, some sort of founding or trim element—is not created or made or smelted in the United States, you are not permitted to say "Made in the USA" on your product. And they were going after accessories manufacturers thinking that it was just a snatch-and-grab by plaintiffs lawyers seeking a few dollars from each of these defendants but it just shows that sort of the legislative intent might be noble. But the practical reality on the enforcement side is they are impossible for suppliers, even thoughtful ones, to try and manage. And then, if I could follow up on the comment . . . on the apparel side in California, the wage and hour side rather: California is at the forefront of the most aggressive wage and hour class action lawsuits. We are trying to deathly defend every single one of our clients all day long from some type of appointment.

I went to a CLE the other day just on 2013 changes in the labor law and that was three hours. So even if you're a small resource, don't have in-house counsel, you don't have dedicated employment counsel, and your HR director isn't enough because the law is ever changing; it's a disaster trying to figure out exempt, non-exempt, the meal and rest break issues, which change seemingly on a case by case basis . . . I will tell you the garment industry and the entertainment industry out in California are both terrible at policing a couple of different areas.

Again, a troubled one is independent contractor versus employee misclassifications. There's a law providing a very strong penalty and new extension of the independent contractor misclassification in California. It happened this year where there's actually a scarlet letter requirement that if you get busted, you

have to post it on your website that you were in trouble for misclassifying.

There are personal liability elements to the nature of the claims and the damages against officers who ratify this misconduct and even third-party consultants, so if you have an HR consultant come in to advise on whether these people are independent contractors or employees, and you get that wrong, you can be personally liable as that consultant. So I dare say that's not going to be a terrific place for those consultants to be assessing their own liability.

The goal for these smaller brands is: we try and get to rent and buy EPLI insurance, which is Employment Practices Liability Insurance. It does not, to date, cover wage and hour claims but it's going to get you at least some basic coverage on sexual harassment, discrimination, the tort-related employment claims, but you just need to have good employment counsel guiding you, especially if you have any kind of base of operations here.

MS. KOLSUN: And small companies have also done this; for example, the three companies where I arrived and there was no human resources director and no employee manual and no training. When I was at Seven For All Mankind, we used the California Chamber of Commerce sexual harassment training, which was very good and cheap, and it was the quickest, dirtiest way to be able to certify that all our employees were trained.

Howard, would you like to just sum up anything that we haven't covered on the employment compliance?

MR. ROBBINS: Just as a curious footnote, a new wave thing that we've seen is a lot of lawsuits about website accessibility, the expansion of disability laws, and companies getting sued for not being compliant both as to their physical space but also as to their digital space. And what's challenging about that is that, it's currently just unknown as to what companies really need to do to be compliant and there's an international flavor to this that really exists more here than other areas.

The Web Accessibility Initiative is really an international effort, and the guidelines that they're using, the WCAG (Web Content Accessibility Guidelines) look like they're being adopted internationally. The Department of Justice considers that to be their benchmark and so that's a compliance issue that I think a lot of companies have yet to focus on but should be. And it's one of the more difficult compliance issues, with respect to physical space, because building codes vary in every locality and the laws on

disability compliance vary in every locality, and so we do a lot of public accommodation work. And it's very challenging just because it varies from site to site.

So we're seeing a lot of that and that's low hanging fruit for plaintiffs lawyers because it's a kind of strict liability thing. They find a violation and you're cooked. There's no issue of intent and so that's one more thing we've seen.

MS. KOLSUN: Jeff, anything else you want to add before we ask for questions?

MR. GOLDFARB: Nothing comes to the top of my mind. I'd like to hear some questions.

MS. KOLSUN: Greg, anything?

MR. WEISMAN: I had one, which we didn't talk about the joint liability issues we have out there with AB 633. I'll just summarize for you in quick second: so we have a manufacturer joint liability of contractor wage violations in California. I don't know whether New York has it or not.

MS. KOLSUN: Only California. It just defies belief, the things they think of.

MR. WEISMAN: So it runs so counter to any intuitive idea of how businesses should run. You have wholesale manufactures that subcontract out with garment contractors or wholly owned separate business with their own administration and their own staff, their own hours. We don't have anything to do with it, okay. It's no different than hiring a plumber that manufactures our goods.

But if those people fail these very, very difficult to navigate employment laws—and they're highly regulated and inspected quite a bit—the manufacturers who have goods on the floor that week are jointly and severally liable and since the contractors have no money, ultimately they pick up the bill for those wage violations. And we have no control and no oversight over these absolute third-party companies with whom we do business.

So it was a very aggressive step taken in the mid-90s. It was one of the things that caused all that work to go overseas.

MS. KOLSUN: Thank you. Let's take some questions from the audience. As you can see, this is very complex: we spend a lot of time dealing with compliance issues in our business and just when we think we've finished one thing, there's something new that's enacted. The consultant versus employee issue is: lots of companies, in order to save money in the beginning of their business, engage people as consultants to avoid employment-type

obligations. We're now seeing this in Europe where countries such as Spain and Italy are searching for revenue and there's no better revenue than an American company who's hired a lot of Italian consultants who really should be employees paying their thirty-three and a half percent social benefit. So this is going to be haunting us in Europe soon.

Questions? Yes? A little louder.

MR. GOLDFARB: [Responding to an inaudible audience question] Right. Well, in a lot of cases when you're bigger, you're a bigger target, so people would have come after G-III because we have larger brands and they want to prove a point. So there's a certain amount of leeway you're going to get as a smaller business, not that that's the answer or the way to do it, but there are certain practical issues that you're not going to be able to figure out, where that cotton is from and how it was picked. Even we can't do that, so you just try to do business in the best place with partners that you have a history with.

Usually, you get in trouble with the new guys, the people that are trying to get in to your business because they have the lowest price, and they're going to come to G-III with the best price. And we're going to make the best margin. When it seems too good to be true, it is too good to be true, so you've got to check those guys out. You have to find out where they're getting the products, and where they're getting their labor and check their books.

You have to stay on top of that, and in many cases, that's kind of why we'll nominate supplies to the factory, so I might not buy that raw material. But I know where that raw material was made and it's good—not great—so I'll send it to five different factories, which I also trust for a different reason. I wouldn't let those five factories go out and try to find that same cotton because I can't police all the places that are going to get it.

So you just try to make it as manageable as possible and then just stay on them. I mean you have to take it seriously and stay on it, and it's not cheap, and at the end of the day, it eats into your margins. And shareholders don't like that, right, so you have to figure out a way to do it in a cost effective way.

MS. KOLSUN: Questions? Thank you very much to our three speakers, oh, sorry.

MR. MARC LIEBERSTEIN:² Over here.

² Marc Lieberstein serves as Brand Licensing Partner at Kilpatrick Townsend &

MS. KOLSUN: Oh, hi, Marc.

MR. LIEBERSTEIN: A quick question for Jeff with respect to California and being so different from, I think, every other state, are you forcing essentially all the people you work with to comply with, so essentially, the California's laws are now the law for all fifty states?

In other words, with compliance, with the supply chain up and down, I know they've passed some really wacky laws that—

MR. GOLDFARB: [Interposing] Yeah, in California if you take what was it Prop 65—

MS. KOLSUN: [Interposing] Prop 65.

MR. GOLDFARB: —so that's usually an issue for us in Wilson's, so we're able to kind of localize it.

MR. LIEBERSTEIN: Okay.

MR. GOLDFARB: And Wilson's, because they have stores, there they'll be compliant in that way. I can't say that we ship everywhere in the U.S. is completely - -.

MR. LIEBERSTEIN: So you're actually able to divide out sort of California market and just—

MR. GOLDFARB: [Interposing] Yes.

MR. LIEBERSTEIN: —you're capable of doing that?

MR. GOLDFARB: Yeah—

MR. LIEBERSTEIN: [Interposing] On retail.

MR. GOLDFARB: —on the retail side we can do that. I do not do that when I ship to Nordstrom's in California. On the wholesale side, we ship it to them. They know that it's properly labeled, and I guess it's on them, but on our own retail, we do ship out. We do separate it.

MR. LIEBERSTEIN: And sort of a correlated question to that is are you finding that the company is doing more auditing of its supply chain, in other words, going out to the factories a little bit more often? I know everyone out there I'm sure has read about Apple's report on all its suppliers. Now it's a big thing. Do you find that you increased your auditing?

MR. GOLDFARB: Yeah, it's non-stop, and I think that was kind of our advantage to grow as well as we did. We were one of the first companies that got overseas and got our hands dirty, and it is dirty business, right, and we were able to grow. And as we grew, more problems, so we had to do more audits, and we had to

hire more people.

Today I think it's maybe two hundred and fifty people. Overseas I think five years it was maybe sixty, so we're investing in it, but you have to.

MR. LIEBERSTEIN: By the way, for the person in the back, auditing is one way it's a little expensive, but you probably can make one trip to sort of make sure your supplier is in compliance.

MR. GOLDFARB: It's multiple trips.

MR. LIEBERSTEIN: I'm sure it is.

MR. GOLDFARB: Well, first I think that the problem isn't getting the laws. The problem is enforcing the laws so China's going to go out and say, hey, there's a lot of smog in Beijing, right, so let's change the environmental standards. But they're not going to do anything about it, right, and so it's going to be it's on us to do it. It's going to become more expensive. Well, it is becoming more expensive.

So I think that as China realizes that they have to enforce it, that maybe it'll be less of a burden for me, if they actually do it, and I hope I'm wrong. But I don't think that these manufacturing jobs in industries fashion [due to] the low margin are going to come back to the U.S. because of auditing and apportionment costs.

MS. KOLSUN: We never even talked about the minimum wage here, but that's certainly a factor, our conversations about raising the minimum wage here. Well, I think we have no more time. Our next panel starts in five minutes, and it is on the topic of the international trade. Thank you so much speakers. This was terrific.

II. PANEL TWO: NAVIGATING INTERNATIONAL TRADE

MS. KOLSUN: Our second panel is on the topic of international trade. As you heard from Jeff on the first panel, many companies do most of their manufacturing far away and we spend a great deal, those of us who work in-house, of time dealing with getting goods in and out of the country. I spent about two hours yesterday dealing with a pair of shoes, a pair of Jellies, that we manufactured in Italy and then sent them to China to have a bauble put on them. And those shoes were then sent back to Spain to our distribution center and then off to various points of sales.

And are those shoes "Made in Italy" or "Made in China"?

The shoe is made in Italy—but that took an opinion from somebody that Frances [Hadfield] referred us to in France, an EU labeling lawyer, and now we have to convince the Chinese, who want to mark them “Made in China,” that they’re really made in Italy. So you’re dealing with labeling laws of two different countries, at least, and that is a big chunk of our glamorous fashion lawyer days.

So our three speakers, who I will let introduce themselves in more depth, include Lee Sporn who is a Adjunct Professor at Cardozo. Lee and I started teaching fashion law here two years ago, three years ago. This semester I’m teaching Fashion Law Drafting and Lee is teaching the Fashion Law Practicum—which is the first practicum, I think, in the country involving a fashion school, FIT, and a law school and maybe he can tell you a little bit about that.

Professor Guillermo Jimenez, who I have the privilege of having asked me to work with him on the fashion law book and so we together put together a syllabus and a book, which is going into its second edition with Fairchild Publications. Guillermo is a professor at FIT and with a vast background in international trade law. And also Frances Hadfield, who wrote the chapter in our book on import/export and basic trade law related to getting goods in and out of the country, Customs law, and she will be talking about basically dealing with that issue.

Actually, let’s each give a little introduction to who we are and what you do at work, and then, I think we’ll start with Frances.

MS. FRANCES HADFIELD: So my name is Frances Hadfield. I work for Grunfeld, Desiderio and my day is spent helping fashion companies get their goods released from Customs and disclosing to Customs when [companies] have things go wrong.

MR. LEE SPORN: I’m Lee Sporn. I’m Senior Vice President of Business Affairs and General Counsel at Michael Kors. I’m responsible for our legal department, as well as our human resources, facilities, operations, store design, and construction departments, and I don’t know what I’m doing half of the day.

[Laughter]

MR. GUILLERMO JIMENEZ: Okay, I’m Guillermo Jimenez. I’m a Professor of International Trade and Marketing at FIT and I’m also an attorney and, with Barbara, created the first fashion law committee, I think in the world, back in around 2005. And we ended up doing the first American book on fashion law in

2010. It's now going into its second edition and Frances and Lee are both writing chapters for us in that book.

MS. KOLSUN: Okay, we're going to start with Frances who will walk us through a very complicated area, which I always [tell] any of my students who are interested in, that it's kind of being a tax lawyer. It's just the ultimate detail oriented piece of our business, which in my next life I will do.

MS. HADFIELD: So I sat in a little bit on the last panel and there were some really great questions and one of the questions [was] whether or not manufacturing is coming back to the United States. And I'll tell you by way of background that, back in 1996, I was working for an apparel company before I became an attorney, and it's not coming back.

We closed down factories across Alabama and North Carolina where we were having products manufactured. It's just expensive to make goods in the United States, so whatever your political leanings on this, however you feel about it, manufacturing is gone. It's out of the United States. It's not coming back.

So the important thing to remember when you're an apparel company is that importing goods in the United States is a privilege and it's not a right. You do not have the right to bring your product into the United States—and apparel is one of the most highly regulated aspects of imported goods coming into the United States. I'd say the other highly regulated area is actually exports, goods leaving the United States, and technology transfers.

But as for fashion, typically—and correct me if I'm wrong Lee—you're planning what you're going to be bringing in for the winter about right now?

MR. SPORN: Depending on the product category, anywhere from six to eighteen months in advance.

MS. HADFIELD: Okay. So you have a real long lead time, as far as what's going on far in the future, and then, it happens to be the case that a product isn't manufactured until maybe a month or two before it's actually due. And you have a contract for delivery with Nordstrom or with Target or with Walmart and—the way these companies structure their contracts—if you fail to deliver on time, the contract's canceled.

So it's absolutely necessary that when your goods arrive, when that ship arrives at a port—and there are hundreds of ports across the United States; ports include both a ship via sea or a port can

sometimes just be a location across [the] Canadian border; JFK³ is considered a port—that those goods are immediately released. And where apparel companies go wrong so often is that they haven't taken into account exactly what [goods] they have.

So branching off from what they were talking about in the prior panel, one of the things that was mentioned is: we don't know where our zippers are from. It's a problem, especially in California, as they mentioned. Why is it a problem in California? Well, they have these rules regarding new lead, so a lot of your competitors will be running around with a little device to see whether or not the zipper you have on your goods has lead in it.

And guess what? If you've got lead in that product, all of a sudden [Customs] sees, is going to make you call and say you've got a bad product. You have to recall that because it's dangerous.

So what I'm going to start to do is take you through the import process. We're going to start from the beginning. Who are the players in this, what you are going to do to get your goods into the country, and what are the problems that you should know and you should ask.

It's not that you're going to have the answer. You're not going to have the answer to the question. It's that you can issue spot and say this is a potential problem or this could be a potential problem for my client.

So the big overarching player in this is U.S. Customs and Border Protection. They are assigned the enforcement element of importing goods from the United States and all of the other agencies deal through them. The best analogy I can make to you is that U.S. Customs and Boarder Protection (CBP) is the IRS, okay. They want their money and they're going to enforce the laws.

You typically use an accountant to file your taxes if you're not doing them yourself. We have in the import world something called a Customs broker, and if you think that bar exam is hard to pass, the Customs broker license has an eighty five percent fail rate.

MS. KOLSUN: Frances is a Customs broker.

MS. HADFIELD: Most of the people who take this test fail and they do that on purpose. All of the deck is stacked against you. It's not [that] they're working to facilitate things. They're

³ John F. Kennedy International Airport (JFK) is located in Jamaica, New York and serves the greater New York area.

working on making it harder. That's just the honest truth.

So the first thing that you need to know when you're bringing goods to the United States is: what do you have? You don't want to have the lead zipper. You've got to know exactly what your product is and there's a compendium called the Harmonized Tariff Schedule for the United States. It has ninety-nine chapters and the last time I checked there were 645 pages of notes and rules at the beginning.

Everything you bring in the United States, whether it's a pig or a jet engine, has to be classified. Sometimes that classification will result in a duty free tax on it, and it's called a tariff. Sometimes it will not, and apparel has an average tax rate of sixteen percent, so if you just want to think about what you're wearing right now—whether it's your tie, your suit, your shoes, anything you're wearing—the average tax on apparel is sixteen percent. That's every piece of clothing.

And if you start thinking about how to pay taxes, you want to make sure that you can take advantage of anything to reduce that cost, so one of the things that we do is called "tariff engineering," where we help companies change their product just a little bit or we advocate to Customs to say we want this product to be X routed and why.

So I've brought in, as an example, these two little items that I have in front of me—and it's a classic example of how an importer went wrong and how CBP is being difficult. The first thing you would have to think about is: what is this product? You'll notice I didn't call it anything.



Figure 1: Costume (left) and Dress (right)

One of them is considered a costume by Customs and one of them is considered a dress. The dress has a sixteen percent duty rate. The costume is duty free, so it makes a difference what your article is.

This is also true of handbags or tote bags. Depending on the restrictions on handbags and tote bags, you can cut your duty rate by half by making your product a tote bag and not a handbag.

So on the front end of developing products, you want to know what exactly you have, and as you can see from this example, it's not easy. Just looking at this, I could ask for hands and half of the room would say the one on the right is a dress and half of the room would say the one on the left is a dress. And it happens every time I ask.

And the thing that Customs says is: if it's significantly flimsy, it's a costume. And then, it has all sorts of factors for determining what's flimsy. But in a practical world, all of us when we look at these articles—for those of you have children—are any of you going to put your little girl in this thing and send her to school or temple or church? No, of course not. Halloween, playing with it at home, but you're out into the world in this.

But yet, Customs makes a decision as far as what your product is and one of the ways that you can play it safe and protect

your company is by getting a ruling from Customs ahead of time. Go out and ask Customs, “hey, what have I got?” because sometimes it’s really not clear what you have and Customs can come back and surprise you about what you really do have.

About over a year ago, I litigated a case for Victoria’s Secret and New York & Company before the Court of International Trade—and that’s the only place you can litigate import cases in the United States, here in New York—and the question was whether or not those tank tops that have a built-in brassiere got classified under Chapter 62 with brassieres or whether it got classified under Chapter 61 with tank tops.

And the spread and duty on that was over ten percent. I don’t have a result from the court yet on that but these are the types of things that I do on a daily basis. Is it a bra? Is it not a bra? Is it a tank top? Is it not a tank top? Is it a dress? Is it not a costume?

It’s a little bit silly when you talk about it that way but functionally, you need to know what you’re bringing into the United States. One of the mistakes that a lot of importers make is that they don’t respond to Customs when Customs has a question, so Customs will send to you what’s called a Customs Form 28. And it’s a request for information. It says: tell us what you have, tell us where it’s from, tell us whether or not you have a lead zipper. We want to know about your trim because we’re concerned about all of these issues.

And you better know everything you have and you better be able to respond to Customs on these things—and audits are one of the ways that apparel companies keep track of what they have. The easiest thing to do is to follow the money, so if you want to know what’s in your product, well, somewhere along the line you’ve got a purchase order, and then, someone had to confirm it.

And then, someone had to pay for it, and you have receipts on the far side. You have a bank transaction, and then, that thing somehow got on someone’s general ledger somewhere. So by following the money, a lot of times we can help companies determine what they’ve got, where it came from, and how it all broke down.

Where you really get into trouble with Customs is when you get a notice of action, CF29. That’s when Customs says “you know what? You didn’t respond to me, or I didn’t like your response, and now I’m mad.” And when you get a notice of action from Customs, it says “you know what? You might’ve said that you had a costume but I think it’s a dress and I’m going to rate advance

your product to a tune of sixteen percent.”

So let's say—and I'm quite sure where apparel companies are nowadays on profit—but let's say you have an eight percent profit on your product and you order in a million pieces worth of costumes to sell throughout the United States in Target and Walmart and they cost you say, ten dollars a piece to manufacture, and you thought they were duty free. And now suddenly you have a sixteen percent duty rate applied to all of them and so you just lost—if your profit margin's usually eight percent and you would have to suddenly pay a sixteen percent tax on it—well, you just [went] in the negative. So it really makes a difference [to know] what your product is before you import.

Let's say you don't like Customs' answer. Customs says to you “it's a dress” and you say “no, that's a costume.” Anybody in [his or her] right mind, other than Customs, would know that that's not a costume. You can protest Customs' decision and say “for all the following reasons, because this is flimsy, because it is whatever, it's not a dress it's a costume.”

If the agency comes back to you and says “tough luck it's a dress”—that's when you litigate before the Court of International Trade and most of what I do is I tend to be on the litigation end.

In fact, I was dealing with a temporary restraining order this week that we're filing. We have to file an opposition for our clients for [an] increase of duties, so in addition to classification, you always have country of origin issues. So going back to where your product is from and free trade agreements: it doesn't really matter how you feel about free trade agreements, the fact of the matter is we have them.

There are rules to consider, like treaties. Here in the United States, we don't consider executive agreements. A lot of apparel companies take advantage of free trade agreements in order to get rid of their duties. By their very nature, free trade agreements obviated [many duties] . . .

Where do I see apparel companies go wrong? When they try to take advantage of NAFTA or CAFTA or DR CAFTA now—but the Dominican Republic is part of it, they don't strictly comply—so there's the case of the million-pocket fabric. One of the rules with CAFTA when you manufacture a suit is that the little bag inside [the pocket] has to be of originating fabric. And they were talking about “how do we know where the cotton came from?” And that they were ultimately milled in the fabric, well, through the purchase orders.

And if you don't have the pocket fabric, which is on page 500 or something of the 645 pages worth of rule, where it says if your pocket fabric isn't originating in your suit then you don't qualify for duty free treatment, which takes your tariff up to seventeen to twenty-seven percent, and that's how a company went out of business because Customs sent them a notice requesting information. And being the good company that they were, and it was a family business, they responded and said "our designer decided that they wanted pink instead of purple" or lime green was the color of the season—and so they changed it. It was a one-cent change.

It's pocket fabric. They got it from China. By making that one-cent change, that designer put that company out business and into bankruptcy, and you can't get out of those duties. If you owe the government money for duties, you have to pay.

I can negotiate you down, out of a penalty. If you get a penalty for doing something wrong [which] leads to a negligence, gross negligence, or fraud [claim], I can now negotiate with government. I can't get you out of the duties you owe. You owe them.

Another thing that companies typically fail at when they're importing goods is: they don't do the required testing and Customs will get you every time. One of the things is a lower duty rate for water resistant products, so I always emphasize testing, testing, testing. Did you test? Do you know whether that product really is water resistant?

Because of the decreased duties, Customs runs an algorithm, and they're looking for implications under that tariff classification, so that they can get you. They want to get you and they want the higher duty rates, so they're looking for it. And so if you import goods under [the] water resistant [classification], did you bother to test to see if the fabric really was water resistant? Do you know?

Reducing duties . . . All I'm talking about is money, money, money, money, money, but that's the bottom line for us. Sometimes you can help your company by changing how it's structured.

I went over to a German [company] that was a family owned business that had been manufacturing glass bottles since, I think it was sometime or not, the 1700s or 1800s, and sometimes by just physically drawing a line on the floor of the factory and moving some of their costs, their desk across the line, I can change the dutiable elements. I can create a paper structure of divisions that

moves the things that are typically dutiable over to the non-dutiable side. So that's some of what I do.

Penalties. Penalties when things [spawn] negligence, gross negligence, [and] fraud. If you deliberately try to deceive Customs, as far as what your product is, they're going to go after you for fraud eight times the value of your imported product. Nobody wants that and nobody wants a public case where they're saying you cheated.

Most companies end up settling up. Unfortunately, sometimes you can't settle out because the amount is too great. I litigated a case for Ford Motor Company back in 2004, I think, and the Court of International Trade hit them with an eight million dollar penalty. Nobody wants that large of a penalty.

Here are some of the things I had to say were final little points where fashion companies should think about what the product company is, what they're actually bringing in, and what isn't always obvious. U.S. Fish and Wildlife requirements, so they're [from] the convention on the International Trade of Endangered Species, and you can't bring in that leopard pelt. You better know what kind of fur you have. If you have just a little fur that's on the lapel or just a little poof that's on the tip of the shoe, you better know what kind of fur that is and make sure that it's not an endangered species and that you have all your permits.

Not only is that regulated on a national level but it's also regulated by states, so different states have different requirements, and of course, as you've heard, California is the most stringent of all, but I can tell you that Wisconsin laws are different. So every state has different laws on fur.

MS. KOLSUN: Just one thing I would add there, Frances, which is that your company may have some kind of a settlement with something like PETA. When Stuart Weitzman became part of the Jones Group, we learned that because of their settlement with PETA, pursuant to a lawsuit earlier on, we could no longer make boots that used rabbit, and my boss almost had a meltdown.

We make most of our products in Spain and he said "we eat rabbit in Spain" and I said "well, yeah, you can keep eating rabbit in Spain but you can't use rabbit fur anymore"—which was a big, big deal.

MS. HADFIELD: Um-hum.

Protected plants. We had a client get in trouble over a wood button because they didn't know what the wood button was and what type of wood that was that was on the bag. You have to

know what's in your trim.

You have to know every little piece of what you're bringing into the country and then, we had a case where pallets were infested with worms or something. They even regulate pallets that your products are being brought in on and you to certify that your wood pallets aren't infested, so that you kill off the trees in the U.S.

Children's apparel is an especially dangerous area because you have all the normal regulations and then, on top of it, you have all the concerns about dangers to kids. You've seen some cases, probably, in the news about necklaces that had lead in them. Kids put things in their mouths. You and I aren't going to chew on our zippers but if a kid can get it in its mouth, kids are going to chew on it. So there are higher standards for children's apparel.

There were some fatalities from your little hoodie and the strings in them that now require that hoodies can't have strings in them, so the [Consumer Product Safety Commission] is looking at that. I think you guys heard about marking and labeling from the prior panel—so I'm not going to go into that other than to say your label better be right too because Customs is going to look at your label, as well. And these aren't the most educated of people, they're going to make mistakes.

I had a call on a Friday where someone at JFK was looking at a label, and it was spelled P-O-L-I-S-T-E-R, which is the Spanish way that you spell polyester, and he thought that it was counterfeit good because it had Spanish on the label. This stuff happens, and if you have a tight deadline where you have to get product released, your label better be right because you don't have time to have all of your product, and this has happened too, taken to a warehouse, have a whole bunch of workers sitting there cutting out the labels, have a whole new set of labels made, and sewn in. And that's what can happen—but Customs will make you do it.

And then, out of left field, you have some fashion articles . . . prescription sunglasses and non-prescription sunglasses: they're a class one medical device, and they are regulated by the Food and Drug Administration. You don't want that glass breaking, so the FDA does a drop ball test on your sunglasses.

So we have FDA. We have Fish and Wildlife. We have CPSC. We have FTC. We have U.S. Agriculture Department for wooden buttons. And then you have all the state for licensing on top of all the federal, so there are a lot of players that are involved in the fashion industry.

And I hope this little survey that I've done shows that there are issues out there and that [you have to know your] product. That's the best advice I can give to an importer. Know what you have because it's not knowing the details, the devil is in the details, that will sink you.

MS. KOLSUN: I think the key takeaway here is that in this area of law, you really need outside counsel. This is not one you can wing. You need a Customs broker and you need good outside counsel. Thank you Frances. Guillermo, why don't you talk to us about the kind of basics of international trade law and give us a little bit of your background which is international commercial practice.

MR. JIMENEZ: Well, just to segue on from what Frances has been talking about, it's funny, I used to travel for the International Chamber of Commerce (ICC). I was based in Paris and traveled to probably more than thirty countries for the ICC talking about things [such as contract] terms and letters of credit and international arbitration, and in the question and answer period, a lot of times the importers would practically start having fights with the Customs officials.

And I figured it out after a while: importers don't like the Customs officials. My god, they really clash, you can see a little bit why. I think that is universal everywhere in the world.

In the United States, our government used to make most of its money—before 1912, when they started the income tax—[from] Customs, so they take it very seriously. They do try and extract money from you, but I think the happy ending is that people like Frances can get you out of trouble—

MS. HADFIELD: [Interposing] Sometimes.

MR. JIMENEZ: —sometimes, not always, not a promise, not a guarantee.

But sometimes they come to us at FIT because they want experts. We had a case that we mentioned in the book where Customs is arguing with an importer “was it a coat or was it a jacket?” and Customs is saying “these are coats” and the importer was saying “these are jackets.” They asked for an FIT expert and they believed the FIT expert because the judge didn't obviously know [the difference] between a coat and a jacket, and so some professor from FIT said “well, a jacket is this and a coat is this.”

MS. HADFIELD: I'll tell you, I just hired an expert witness [from FIT] for the trial that I mentioned before . . . [t]hese are great experts. When you need an expert witness to tell you about

what a product is, FIT is the place to go. This is where you're going to find the experts that have all the information that you need.

MR. JIMENEZ: But a lot of these Customs are as Frances describes, they sound kind of philosophical: is it a coat? What's a coat?

My favorite one is Star Trek action figures were being imported to the U.K., and they let in the Captain Kirk and the Scotty but they blocked Spock. And they said [it was] because they had a different duty or they had a different classification for non-human action figures.

MS. HADFIELD: It's a doll.

MR. JIMENEZ: And they said, yeah. The funny thing is, the Trekkies, they took this very seriously.

[Laughter]

MR. JIMENEZ: And they were saying Spock is half human. His mother was human, and so there was this philosophical debate: is Spock human or not human?

But anyway that kind of stuff tends to not be that well covered, I think, in law schools, and so I think it's good to know a little about international trade. And I think the reason why we don't cover it that well in law school—I studied in law school, I went to Berkeley, one of my colleagues here earlier and I took course in international law—professors in law school, they love case law because it's a great way to teach law.

But [for] a lot of international trade, there's no case law. A lot of transactions are too small to generate case law and there's a lot of practice, so it's easy to graduate from law school and not know the basics of exporting and importing.

So usually when I'm at these seminars, the first thing I do is hold up the purple book, which is the fashion law book that me and Barbara did with Frances. So I hold up my other book, which is [an] ICC Guide to Export and Import, and the last edition just came out last year, and you can find it online. They sell it here in New York to U.S. Counsel for International Business.

And it goes over the basics, which I really don't have that much time [for], but if I was going to give the ten minute class: I'd say four basic things that you should know about international trade practice that you may not learn in your international

business transactions law classes. One is Incoterms,⁴ another is letters of credit, another is CISG⁵—which is what I call the Vienna Convention on the International Sale of Goods, it's kind of a UCC book for international trade—and international commercial arbitration.

So I don't know how far I'll get—but just very, very quickly first in terms of Incoterms—Incoterms, [the way I introduce them is] I say, if someone offers you a price of \$10,000 dollars per container, what does it cost you? And the short answer is: you don't know. You think you know but the answer is: it depends where they deliver it. Because, if they deliver the container in Uzbekistan and you need it in New Jersey, \$10,000 container, you have to go get in Uzbekistan and [it will] cost you another \$10,000 dollars to get it here. Whereas, if they deliver it for \$10,000 dollars in New Jersey then it cost you \$10,000 dollars. So it means all the difference in the world to know where and how they're delivering it and how much risk and cost is embedded—now people say baked into it, for some reason—baked into the price.

And so the way people tell you that is with an Incoterm—and the best-known ones in the fashion industry are FOB and LDP. FOB means Free on Board; it's usually delivered in a port and it means the seller takes all the risk up the ship. And LDP means Landed Duty Paid; it means the seller takes all the cost and risk all the way to your premises.

Now, actually, LDP is the most widespread Incoterm term in the fashion business. It's not a real Incoterm. I always hate to tell them that but it's [Delivered Duty Paid] in Incoterms. So if you use Landed Duty Paid, you're actually using a non-official term; probably, you'll get away with it. The industry should go to DDP. I don't know why. Someday we'll talk about that.

But every day gets by with LDP. You should recognize LDP and DDP are probably the same but don't quote me on that.

But just to give you an example of the importance: one case that came at FIT was what I call “the case of the stinky shirt.” And what it was, I think I mentioned this to Frances before, a law firm from Toronto called FIT and said, “we need an expert on how shirts are packaged.” And they had got to me, got to some other

⁴ Incoterms are International Commercial terms published by the International Chamber of Commerce (ICC).

⁵ Referring to the United Nations Convention on Contracts for the International Sale of Goods.

people then ended up taking an answer from an expert on shirts. I think they probably should have listened to me, I arrived too late.

And what happened in this case was that it was a container of very beautiful Italian shirts. They're \$100 wholesale, so the kind of shirts Michael Kors designs and very beautiful shirts and I think a thousand of them. And they arrive in Toronto, and they're stinky, and the reason they're stinky is they were consolidated in a container with Italian spices.

So I don't know if it was oregano or garlic, whatever. You ended up smelling like a pizza.

AUDIENCE: [Laughter].

MR. JIMENEZ: So your date would be hungry; but usually if you're spending \$200 dollars on a shirt, you don't want to smell like marinara sauce. And so the buyers didn't want the shirts and they put them on hangers to air them out but I guess that didn't work. So they called and said, "you shouldn't have packaged these shirts individually"—and actually, that could be.

But a very difficult issue in international trade is: how do you sue? Who's your legal beef with? Is it with the seller, or is it with the carrier, or do you have to pursue insurance? And people never get this right.

So there's a chain of events: the first thing you have to figure out is between you and the seller, who's responsible; then when you figure that out you decide, well, do I have to pursue the carrier or the insurer? And Incoterms determine whether it's FOB or LDP—and that makes all the difference.

Now sometimes people settle with another Incoterms, which is called Ex Works, which you go all the way to factory to pick up. If it's Ex Works and you buy Ex Works and the shirts get stinky somewhere on the way, that's your problem as the buyer.

If it's Landed Duty Paid, that's the seller problem. You have to pay for those goods.

MS. HADFIELD: And I'll interject right there.

MR. JIMENEZ: Um-hum.

MS. HADFIELD: You probably paid duty on that remember the sixteen percent I said?

MR. JIMENEZ: Um-hum.

MS. HADFIELD: You can actually go back to Customs and get a refund on it and a lot of the companies don't. They're defective. It wasn't what you contracted for.

MR. JIMENEZ: Um-hum.

MS. HADFIELD: And so typically, I can get about ninety-

nine percent of the duties back and I end up negotiating maybe seventy-five percent of the duties back on whatever you paid. You end up selling it to Filene's Basement or something else because you can't sell your \$200 dollar silk shirt; you can get duties back on that.

MR. JIMENEZ: That's good to know. See, I always learn something on these panels. I didn't know that.

Okay, well, I have to move along quickly, so the thing I'm going to mention is letters of credit. Letters of credit is a classic international form of payment. I teach at FIT. I have textbooks that I use . . . they'll say the way you do payment in international trade letters of credit.

And that shows that the typical textbook author doesn't know what they're talking about because actually letters of credit have been diminishing enormously over the past forty to fifty years because they're incredibly complicated and a pain in the neck to use. People don't like to use them. Despite that, several hundred billion dollars, if not trillions of dollars, of business go under every year, so we still have to talk about it.

I think they're very good to understand because they're the most complicated form of international trade transaction and if you understand the letter of credit, you understand all of the machinery of the international trade transaction because they use it in the bill of lading [and] use it in inspection certificate. Often you'll have the commercial etcetera and some other documents, and so letter of credit is good training and they're still used.

And American lawyers don't get them. When I was fresh out of law school, I had a letter of credit case, I tried to apply to UCC, and it turns out UCC does cover letters of credit. But internationally, no one uses it. Everyone uses a different ICC rules called the UCP, [the] Uniform Customs and Practice.

So I actually twenty years later I realized my memo was wrong but last time, I've been paid.

MS. HADFIELD: I, one time, tried to get a TRO against a letter of credit. That doesn't work either.

MR. JIMENEZ: Yeah, it's hard. You can do it but only under extremely narrow, narrow, narrow grounds, but that's something that people don't understand. Importers don't understand and lawyers don't understand; especially, exporters screw this up.

And so, a case I worked on last year goes like this, very quickly: it was two million dollars of rebar, which is construction

material, iron bars, shipped from Turkey to the United States. And when they arrived, the importer said “we’re not taking them” and the exporter was very unhappy [and said] “you’re weaseling out of the deal,” and they had to sell them for about one million dollars. They used us [to get] the remaining million.

Now, actually, they were wrong and their lawyer was obviously badly informed to bring the lawsuit. Not only did they lose, but, we got eighty thousand dollars in attorney’s fees against them and they wasted a lot of time. And the export manager was fired and they’re not going to use that law firm ever again because that’s why you should know letter of credit. It was very stupid.

Here’s why: what happened was, this all happened in August, September, October of 2008. Now when you read cases, you have got to pay attention to those dates. You guys remember what happened in those months? Does that ring a bell? It was a global financial collapse.

Lehman Brothers closed and it was this chain reaction. Everybody stopped buying stuff. It was the months after 9/11 back in 2001, and so whenever that happens, two years later the Courts are backlogged with the lawsuits that all that generates. And so what happened, obviously, the buyer bought at a high price and by the time the rebar was delivered, the rebar was probably half price on the world market.

So the buyer has every incentive to weasel out of the contract if they can because they can’t sell that now. They could go under if they take the shipment—and [for] that particular shipment, the seller had screwed up all the documentation required for the letter of credit, which is incredibly common, it happens it all the time.

They didn’t get the inspection certificate signed. The bill of lading was inaccurate and so they went to the bank and the bank rejected the documents. And so the exporter said, “call the importer, will you please adjust?” But they did it late and then [the importer] said “but we fixed it—we fixed the inspection certificate, we fixed the bill of lading.” And they thought that would be good enough to get paid.

But that’s not the rule in letters of credit. The rule in letters of credit—it is called strict compliance—and it means you have to be creditable to your word on time or you don’t get paid. Now, Frances was giving some ridiculous examples: there are millions of those.

Here’s one example: I thought was a California case, I think it was actually. People [are] talking about crazy California law—it

was a letter of credit [stating that] the exporter had to deliver raisins and the bill of lading, for whatever reason, said dried grapes. And they never got paid because they went to the bank, and the bank said, "well, I'm sorry, they're different."

And the exporter [argued that] raisins are dried grapes. That's what raisins are. The bank said, "we don't know that, that's not our job, we're not raisin experts." And that's what happens.

There has been a letter of credit rejected because it called for sugar and then the bill of lading said one hundred percent sugar. The bank said, "I don't know, looks different to me," and so for letters of credit, you have to obey exactly to the tee, or you don't get paid.

MS. KOLSUN: By the way, we actually use letters of credit with international distributors, particularly in countries that are not Europe.

MR. JIMENEZ: Right. They're still used a lot for financing because they allow the importer to raise finances; so, yes a question?

MR. JIMENEZ: [Responding to an inaudible audience question] Right. Well, the classic case in the whole world on that is in New York. It's a 1941 case, *Sztejn v. Schroeder*,⁶ that established that, and the rule is: if you can prove fraud to the court before your bank pays, you can get a TRO. That's a very narrow exception because usually the credits are paid and it could be just preventing your bank for paying.

So a lot of times your bank doesn't want to pay because you have \$10 million dollars in the bank already; with Michael Kors, it's even more and so you call and [instruct them not] to pay. The bank says "we have got to pay" and so sometimes they'll say "if there's fraud, go get a TRO against us."

MR. JIMENEZ: [Responding to an inaudible audience question] Now CISG is the UCC for international sales. It's the Vienna Convention on the international sale of goods. I'm basically out of time so all I will say is: you should know it. It covers supplies to seventy-eight countries and it applies whenever the exporter and importer, which often the case, don't want to think about these trivial things, like choice of law.

Often times, on an invoice on the Pro Forma of the purchase

⁶ *Sztejn v. J. Henry Schroder Banking Corp.*, 177 Misc. 719, 31 N.Y.S.2d 631 (Sup. Ct. N.Y. Cnty. 1941).

order, they don't include this stuff and so then there's a dispute: what's the law? American law? Russian law? Spanish law? Very often they forget it's going to be this international UCC—which is CISG.

And it's very easy to understand and it's actually not bad law. American corporations used to routinely exclude it, which you can do. You don't have to use CISG. You can put in your contract "we'll use American UCC instead." But a little point that American lawyers always get wrong is they want to exclude CISG, and they'll say, "instead of CISG we'll use the law of the United States or New York law." But actually, New York is part of the United States, and the United States signed CISG. So by trying to exclude by saying American law, you just reapply CISG, and then, you're face-to-face with CISG.

The final thing is arbitration. International business contracts—you usually don't want to litigate them—you want to arbitrate them, so international commercial arbitration is very, very important in international business transactions.

The example I just want to tell everybody briefly is: I was lecturing in Columbia and this Mexican female attorney came up and spoke to me afterwards and she said, "oh, your lecture, you're talking about all these problems, it reminded me of a story. You're telling all these stories—it reminded me the first time I had to bribe a Judge"—

AUDIENCE: [Laughter].

MR. JIMENEZ: —real casual like.

And I sat down with her. I said "I want to hear about this," and she said, "yeah, yeah, I was a young rookie attorney in Mexico and I had to go bribe the Judge. It was so embarrassing and the Judge was horrendously offended, just shocked and stunned. And I thought I was going to jail, and the Judge told me, he said, 'young lady he said these kinds of matters are not discussed with a woman.' And that it wasn't that he was honest, it's that he was sexist."

He just didn't accept bribes from women and so she had to go back to her office and send a male partner the next day to bribe the Judge. Now believe it or not these kinds of things happen all over the world—even in Brooklyn—and so you don't trust hometown justice that much.

I don't want to disrespect. I made these jokes once and... there were judges in the audience. Oh, they got so offended. A judge stood up and chewed me out but the truth is, it happens.

And so international commercial arbitration it really can't happen because of ICC arbitration. If that happens, where I see arbitrator getting bribed, that's the end of ICC arbitration because you do it because you trust it. So actually, ICC and Triple AAA arbitration are pretty reliable compared to international litigation; and much faster.

My last example is a case I teach in my law classes all the time: *Dayan v. McDonald's*.⁷ It was the first franchisee in France, in the Paris region, and ran the dirtiest restaurants in the history of the world and the inspector said on a scale of A to Z it was worse than Z.

The French fry all was black and, since it's getting close to lunch, I won't tell you the other stuff, but it's unbelievable, and McDonalds found out about this 1970. They ended the litigation somewhere in 1981 or 1982, firing this franchisee because the franchisee fought back in Paris, fought back in the United States, and Illinois. And litigation can last a long time, and so you're paying lawyers for eleven years.

So the lawyers are happy—they send their kids to college, to law school—but your arbitration and even a complex arbitration [runs] two or three years and you're done. So that's why we go to arbitration. That's a little brief overview, the rest is in the book.

MS. KOLSUN: Thank you, Guillermo.

MR. SPORN: We can't listen to Guillermo's story without, at least, saying FCPA⁸ once I think.

MR. JIMENEZ: Yeah.

MR. SPORN: It's very important that we make sure that none of our legal fees to international counsel are being used to bribe foreign officials. Somebody will go to prison for that here.

MR. JIMENEZ: Actually, no, you can bribe private parties. That's the little detail people [miss about the] FCPA. You can't bribe government officials.

MR. SPORN: Yeah, except that if you're a public company and you have a code of ethics that you're bound by, that would be a very bad tactic.

MR. JIMENEZ: You'll violate the foreign law—but you won't violate the FCPA.

MS. KOLSUN: Okay, Lee is going to talk to us about the way

⁷ *Dayan v. McDonald's Corp.*, 125 Ill. App. 3d 972, 466 N.E.2d 958 (1984).

⁸ Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1, *et seq.* (1977).

you all shop—you youngsters—which is on e-commerce, and he's going to talk to us on international trade global e-commerce.

MR. SPORN: I'm going to make just a couple of points because we want to leave time for questions. One, just to go back to something Barbara said, Barbara and I are fond of saying that, between the two of us, we have been in-house counsel exclusively to fashion companies in the aggregate for over sixty years now. And when you get to a certain point, you begin to believe that your experience and your intuition and your judgment begin to count for something—not in this area, never in this area.

Experience, intuition, and judgment get you nowhere. You need a whackadoodle who thinks this stuff is cool and lives it and breathes it every day because you can't intuit what's a purse, what's a handbag, what's a tote bag. You can't intuit what's a jacket, what's a coat. There are a lot of words that get thrown at it and somebody who does this has to navigate it.

Most kinds of administrative law and this, in particular, is an area where things are very complicated and it's dynamic. What you're looking at as the rule today isn't what you're looking at as the rule six months from now. So again, outside counsel and outside expertise working with the in-house team is absolutely essential all the time. You'll never find an in-house counsel who is willing to deal with this in a complete fashion. We'll always go and get help.

The other thing I just wanted to say is: most of this sounds terrible and at every turn there's a liability, which is true, but there are tremendous opportunities for cost saving and margin building—if you live in-house and you invest in and understand this stuff, and get proper advice.

If you walk into a Michael Kors store, and most of our stores are seventy percent accessories, there is a reason that no matter how small the store is you will see a tote bag wall. It is a big presentation and they're fancy, well-designed tote bags. There is a reason for that.

The margin in a tote bag is always going to be better than a margin in a handbag because the duty rate is wildly different, so the more business we can do there, the better it is for us. There are lots of examples of tariff engineering and people who are in business to sell products at margins know how to drive business to those high margin items. Stores get designed that way.

Go into any fashion oriented retail store [and] just look at what you're seeing first. I guarantee the best presentations are

going to the highest margin profit. It's the nature of the beast.

Barbara mentioned e-commerce and we really don't have time to get into it but one of the things we're involved in—and it's becoming more and more important—is international e-commerce, which is becoming interesting in so many ways.

If you're selling in the United States and your merchandise is going to be through the United States in an international website, you've got to be able to, first of all, figure out how to tell (confidentially) your customer in London what their delivered pay price is for what they're buying from you. And then if they get it, and they don't like it, and they want it to come back, who's going to pay for that? How do you make sure you're not going to pay duty again when it comes back into the United States?

MS. HADFIELD: It's called drawback.

MR. SPORN: All possible but all a little bit technically intricate, so planning it out in advance, working with your international trade counsel is vital. Similarly, you've got compliance issues. All the labeling requirements if you're going to ship products from the United States everywhere, that's some tall labeling challenge. If it's going to be regional then regional labeling laws have to be complied with but if you're trying to run an international commercial business, you've got to at least address the risk that you're going to have one product that you want to be able to move pretty much anywhere. How are you going to do that? And I think we can leave time for questions.

MS. KOLSUN: I want to add a couple more things.

MR. SPORN: Okay.

MS. KOLSUN: One is: when you're running an international e-commerce business you have to think about privacy laws and the laws in different countries related [to your business]. We haven't even begun to [discuss] Song Beverly,⁹ that wonderful California law about sharing customer information, and the battle between your marketing people and your legal people in terms of what you can ask for.

I mean, this is another just ripe area and it's not just in California. It's all over the world. I had a question [regarding] our e-commerce site about sweepstakes and they wanted to take our kind of U.S. sweepstakes contest out into the world. We sent a quick email to Freshfields in London. I said, "don't spend more

⁹ Song Beverly Consumer Warranty Act, CAL. CIV. CODE § 1.7, arts. 1-3.

than an hour of time on this but it's five countries, each of which [is] a nightmare," and we basically decided we're going to do it in U.S. and Canada. And that's all we [could] afford and we ultimately hired a consultant who manages [e-prizes] for you.

E-commerce people are young and they have great ideas, and they're entrepreneurial, and it's what drives the company. But they're a nightmare, particularly for me because I am old—and I just I don't tweet. I don't text. I mean it's hard to get your arms around the new world that is now e-retailing.

MR. JIMENEZ: Yeah, if I could just add, I think what Lee has pointed out is: it has emerged as the classic problem in international e-commerce, you have to calculate duties in every country where you sell. Otherwise, you can't sell DDP and the customers they don't want anything other than DDP. They don't want to calculate the duty. They see something on your website, that's the price they pay.

Now for a big company like Michael Kors, you can pay consultants and you can hire software programmers that will calculate the duties but if you're just a little tiny start-up and you want to do e-commerce for the whole world, that's very hard for you.

MR. SPORN: I would say it's impossible, can't be done.

MR. JIMENEZ: Yeah, fortunately there are . . . a bunch of consultants that will help you, so there're a lot of American firms that specialize in bringing small e-commerce outfits global. And you can find them. The Department of Commerce publishes a publication about this, so there is help, but you do need to figure that if you want to global e-commerce.

MS. KOLSUN: And one last point before we take questions. I totally agree with Guillermo on the importance of fighting to get arbitration and the kinds of agreements we're talking about because there is no worse nightmare than litigating in Italy, let's just start there, and it's just something that you really, really want to fight for.

MS. HADFIELD: Yeah, we had a deposition in Italy where—instead of having a normal deposition where you get the court reporter, opposing counsel of the witness—they held it at the court room and the judge would, like, interject. The judge was there and would interject comments in the middle of a deposition. Have you tried with a translator and to go through all this and have a judge asking questions, who's not even a party in the case, just to make sure you were somehow not impacting their right of their citizen?

That's a mess.

MS. KOLSUN: And we had a case in Italy involving some real estate where the judge was a woman, and our outside counsel was an arrogant Italian man and we should've won that case. But we lost it because he was an arrogant Italian man.

[Laughter]

MS. KOLSUN: I have to say it gave me a little pleasure because he always treated me so badly. I hated losing it but I said to my boss, "see, I told you he treated me that way" and she was pissed because it took her a long time to get where she is in Italy, as you can well imagine.

Okay, any questions? This is hard stuff to formulate questions about, so don't be embarrassed but go ahead.

MR. JIMENEZ: [Responding to an inaudible audience question] When you agree to buy something by letter of credit, the seller has agreed to comply with that letter of credit. That's a fundamental element of the contract. If you put "time is of essence" in a contract then they have to deliver on time and if you don't put "time is of the essence," people deliver late. Maybe you can claim some damages but if you put "time is of the essence" you must deliver on time.

If you put in letter of credit: "you must comply with that letter of credit and here's why: I may want to resell the next day and I have the right to when I buy letter of credit, but if you didn't fulfill the letter of credit, I can't resell." In fact, I don't even know what the quality of the goods is until they arrive and by that time, you may have destroyed business. So you promise a letter you must fulfill and there's case law on that under CISG. It's a fundamental breach of the contract.

MS. KOLSUN: Other questions?

MR. SPORN: [Responding to an inaudible audience question] Now there is sometimes allowed a long negotiation before we get to you, sometimes.

MS. KOLSUN: And the more sophisticated the other side is, the more likely they are to fight and often, what you do is, you compromise. If you're dealing with a distributor in Qatar, you may negotiate an arbitration in London, which is perfectly fine with us.

MS. SPORN: Yes.

MR. JIMENEZ: I agree that the answer is yes. I mean, the reason you go to arbitration is because both sides don't trust each other and both sides have some negotiating leverage but if you're

the more powerful person, naturally, you're going to prefer your own home court.

MR. SPORN: I always want to be home.

MR. JIMENEZ: The Knicks—they play best in Madison Square Garden, right, so it's normal. You want to force the party from Uzbekistan, if they have a problem with you, to come to New York.

MR. SPORN: Particularly, what we're talking about is international trade. I want to be here, and I want to litigate because I'm the one who owes them money. I'm the buyer.

MR. JIMENEZ: Um-hum.

MR. SPORN: It's not the same in every context. If you ask me this in the context of licensing agreements, I may have a slightly different answer for you, but when I'm buying products from the international markets and I'm receiving them here, if there's going to be a fight, and I have the money, I'd like to do that at home thank you very much.

MS. KOLSUN: Other questions? Thank you to our illustrious panel. We now have a lunch break for about an hour and half. There is lunch, and this afternoon we have two panels. The first one modeling with some very distinguished individuals in this area and sustainability, which is a really interesting topic, so see you at 2:00.

MR. JIMENEZ: Thanks.

III. PANEL THREE: BACKSTAGE: THE LEGALITIES OF INTERNATIONAL FASHION MODELING

MS. KOLSUN: Thank you. Everybody welcome back. We started and ended this morning's program with, I think, a very good discussion on compliance issues, human rights compliance, and various corporate compliances in the state of California and Europe. We talked about employment issues and all of the pitfalls related to compliance.

And we're going to start this afternoon with Michael Wildes, who is another adjunct professor at Cardozo and also a graduate of Cardozo, right—

MR. MICHAEL WILDES: [Interposing] That's right.

MS. KOLSUN: —and where his father also taught, teaches still—

MR. WILDES: [Interposing] Taught.

MS. KOLSUN: —taught, and he's married to Cardozo grad.

And his specialty is immigration, and he handles the work for fashion companies, and he'll start by giving us some bullet points on the kinds of pitfalls that we talked about just very, very briefly at the end of the morning.

MR. WILDES: Wonderful, thank you. Good afternoon, everybody, pleasure to be here and to be in my wife's company, who actually joins us this afternoon, as well. I got more than I bargained for when I took immigration law with my father as my professor, only to meet my wife in the class. And twenty-two years and four children later, we're very proud.

I am very proud of the portfolio of fashion clients that we've developed. Our office is on 53rd and Madison. We have an office in New Jersey. We're looking to expand into Miami.

The world of immigration and modeling is what I was asked to speak on—but if I can pull the lens back in the world of fashion—you should know that the world of immigration encompasses not only cosmetologists and stylists and photographers, but all the wardrobe and the drapers and all the other accouchements that come in the world of fashion also.

We typically get work visas for individuals who are renowned or people with academic or experiential talent, and then, people in their entourage also have a mechanism by which they can also go into the system. The typical visas that we deal with—and I don't want to get too technical—is a carve out in the immigration law for fashion models, the H1B3, the legal standard requires us to demonstrate that you're not of national or international recognition in the field that you're in.

If you've reached a level of some achievement or extraordinary ability or outstanding achievements, you're permitted to then apply for an O visa. Typically, an O visa could be a pianist, but then, the O2, the O3 could be the spouse. It could be the wardrobe manager, the PR specialist and everybody else in that person's group.

The test that we have when clients in the fashion world, particularly in modeling, come to us is to look at two moving pieces at the same time. First, the H1B3—much like the H1B professional work visa—is only available in October of every year, and you have to apply for it in April before that.

So, lo and behold, Fashion Week just passed us in New York. We represent, thankfully, Lincoln Center, which is a host of Fashion Week. People cannot bring their models until after Fashion Week because of the way the schedule of visas are

available. This [works for] some sorts of immigration because they seem to get science, technology, engineering, and math applicants but when it comes to the wonderful world of fashion—and, for that matter, food, hospitality and other corridors of industry—these visas aren't available to meet the needs of that time.

The O visa is a common visa that we use for people who are outstanding in the arts. We represent, for example—and we have permission to talk publicly about it—the Miss Universe Organization, so a typical Ms. Venezuela, Ms. Argentina, Ms. Israel will be eligible to apply for an O visa, since they're outstanding in their field. The winner itself has a corresponding way to actually apply for a green card. It's the EB-1, Employment-Based First-Preference, which is a person who is extraordinary in their field.

So the winner of the Miss Universe pageant historically has been eligible to apply because they are above other people, so you use the O visa for the person who's outstanding, the lower the standard of the H1B3 for people who are runway models, people who have a lot of catalogue experience or work with top photographers, and then finally, you have the higher standard for the extraordinary ability.

Within all these parameters in the world of modeling and fashion, we have designers, editors, agents, jewelry designers, drapers and the like that go through all sorts of challenges, and in our world, there are multiple bites at the apple for a person to have good news, bad news, and sometimes ugly news—all in one day. "Good news for you is we got your visa approved. The bad news is now you have to go abroad and get a visa in the corresponding American embassy." The ugly news is they once stopped a person, despite everything, because of some little question that they have on the person when they come in.

The unavailability of visas, sometimes the double or triple check you have to go through with the alphabet agencies of the immigration authorities and the State Department is very, very daunting in the world of fashion. We also see it in the world of publications related to the fashion industry and, particularly, in the model world, it's not *Elle*, *Vogue*, or *Glamour*. We have, sometimes, for *Women's Wear Daily* and other very substantial periodicals had to show that they are actually authorities in this world when we're trying to substantiate a person's achievements in a calibrated way.

Immigration is always trying to judge each field with these

generic rules but you really do need a familiarity with the world of modeling and fashion in order to be able to put out a good product and that's the one that we see—and we're fortunate to be doing this for many years.

My dad was credited with having a hallmark case where you could only get O visas for people in the business, science, and athletics. He convinced the immigration authorities and it opened the world of O visas in the modeling industry with famous Ford model claiming that she commanded such high invoicing and such great acclaim that she should be treated as a person who was successful in business. So the O-1 visa evolved there into the world of modeling based on business acumen.

We know that beauty is, in many ways, a subjective decision but financial prowess or success can be calibrated on invoices and all kinds of other financial parameters. So we see that the government, over time, gets it but it's a very tedious world to be involved in.

The education of models on these different standards and the kind of challenges they have when English is, perhaps, a third or fourth language, and the time to get somebody into makeup and to get into a photo shoot or get to a third country, with all of these controls, can be very difficult. But that's the world that we never get, and when we have their trust, we try to work and earn it continually.

I am given great comfort when I meet models, male/female, from countries where they're highly educated, and they come to me, and I say beauty will run out at some point. But if it's your dream to stay in this nation, tell me about your academics. Tell me about what drives you. What are you interested in, and I've worked now—as I have gray hair and over a few years—with a lot of these individuals to see that they turn and try to develop a context.

So if you go to battle with a sword and the shield, that shield might be the O or H1B3 visa, but the sword is going to be something related to their academics. Or they may go into transitioning. If they marry somebody, it should be a legitimate marriage.

There's a push in the world of modeling, in the world of entertainment and hospitality and everything in the New York areas, particularly where there's a push to stay, "well I have a friend. I can get married." We won't do that. We won't even take a case. We won't even allow a person to have a conversation

without interrupting them and letting them know not only the ethical standards, but that they can legitimately do something. Or telling a model you have a visa, an H or an O, why don't you go to Parsons or FIT? Why don't you pursue the business side of the ledger, of what it is that interests you, so that you can do something to add greater value.

And, finally, just with a word on compliance—which seemed to be the lecture before me—we have written, and there some materials for you take home, extensively in the world of compliance. We have a practice where there are five areas. We do business immigration, family immigration. We deal with removal proceedings in federal government before immigration judges. We have a foreign consulate or practice where we deal with the U.S. Embassies worldwide, and finally, we have a compliance division. It's actually led by my wife Amy.

The onboarding of staff has been relegated by President Reagan in 1986 to be a responsibility of the employer. It was shifted from the government to employers in this form I-9 that everybody has to fill. The document is a document that identifies a person and their authority to work. Within three days—and if you're a restaurant and if you're fashion house and you're open all the time—you do it within three consecutive days. And the right documents and the right choices can land you before a judge if you discriminate improperly even to comply with it.

I had to fill out an I-9 when I taught as a professor here at Cardozo, much like everybody, other than my father, in our practice had to, unless they hailed before 1986. The world of compliance is a very a daunting world. We know a few years ago that there was a big—they like to call them edits but we like to call them raids—raid at American Apparel where they almost lost, or they did lose, about 1,500 out of 5,600 staff because of this I-9.

This President, with all of the talk and everything, has deported more people than any President in our country's history and if you look at the LGBT community and a lot of the very important policy considerations that are related not just to fashion but to all sorts of industries—when it comes to commerce, food, agriculture and so forth—has been disenfranchised. And there are fashion houses that we represent that have made their campaigns in foreign countries because of our myopic view of immigration, and that we don't move with the times, and in many ways to a community that heralds itself on art and creativity. And a nation that developed itself, the special DNA of immigration is not in

sync with the culture or fashion that we are seeing.

We hope and pray that Congress and our President will step up to the plate. There's a legacy now that they are each trying to write on this issue, and there's no greater playing than we see in the world of fashion and modeling, thank you.

MS. KOLSUN: Thank you very much. Let me introduce Ted Max, Partner at Sheppard Mullin. Ted and I actually do a lot of speaking together. He's an IP lawyer. He's a litigator. He represents many, many fashion companies including Louis Vuitton. If you Google him, you'll see his name in a lot of important decisions. Ted, what are the issues that you recently had with models, and I'm going to ask you this question to sort of kick off your remarks: we have just recently started having problems with counterfeits of the boots that I'm wearing today, and that Michael's wife is wearing today.

There's a website called Stuart Weitzman.org that you had recently taken back and our photographer is Mario Testino and our model is Kate Moss. Mario, as I understand it, doesn't register his copyrights, and god knows Kate Moss has right of publicity.

We notified them of the fact that the counterfeiters were using photographs from our website which really belonged to them. Do you deal with this kind of issue with your clients? And tell us what else you do in this world.

MR. THEODORE MAX: Well, yes, Barbara we dealt with that issue before. Often times because finding where the photograph came from, and whether there's permission, it gets a little problematic. We've had photo shoots for a retailer that were done and basically wholesale reprinted in magazines as a fashion shoot and editorial.

And it's sort of, what can you do there? And often times—especially if the materials went out for publicity purposes—you can't do anything. Obviously, with regard to a counterfeit, you can, but the laws with regard to the right of publicity and privacy in the U.S. vary state by state. So it's not as easy, for example, a trademark infringement action or a counterfeiting action, and what we often times will do with fashion design houses is make sure that, with regard to the copyright that have, either ownership of the copyright, which is difficult with somebody like Mario, or at least, the ability to enforce the copyright, and do it that way. So that is a big issue in terms of enforcing rights.

One of the things, in terms of what I was thinking about talking about today, was fashion—and Michael's presentation was

very, very useful in terms of segueing—fashion has changed greatly over the years, so if we go to let's say the 1960s, just before probably a number of you were even born, fashion modeling was a different world than it is today.

The 60s and the 70s, if you were a major fashion model, you became a celebrity because of that. In the 70s and 80s, you had supermodels and all of a sudden, models were very, very important, made a lot of money economically, and really could do a lot for a brand.

In the 80s to the 90s to 2000 and beyond, what happened was: celebrities all of sudden came on to the scene. So if you were to look at the cover of *Vogue* over the years, you would have models. And then, over time, you would start seeing celebrities being more and more on the cover. You'd still have models but celebrities became models for fashion designs and that has become more and more an issue. And it affects modeling, but it also affects ours laws, as well.

And so one thing is very significant—and it has come up in negotiating agreements that are international agreements for model/actress celebrities—is SAG and AFTRA. And how many people know what SAG and AFTRA are? Well, basically they're unions, and they're not unions for models, and that's a different issue. But they're really for actors.

And SAG and AFTRA joined together just recently. On Valentine's Day, there was a meeting and right now there are negotiations between SAG and AFTRA and the representative of the advertising. And why that is important is that affects the cost of advertising, and it affects the cost of advertising if somebody is a member of SAG or AFTRA.

So in some ways, it may affect that celebrity in the sense that if you have a model who is not a member of SAG and AFTRA, and there are issues that come out of the collective bargaining that is underway, it may change that balance. Currently, with a SAG-AFTRA member, you take fifteen and a half percent of the first million dollars—and there's a cap on it—and that goes to the benefits' program of SAG and AFTRA, and before there was a cap. Because, if you remember, in 2009 there was a strike and there were no advertisements being done.

Some people would go offshore and do advertisements, and there was a famous incident with Tiger Woods, who went to Canada and did an ad for—I think it was Buick—and SAG went after him because he was a SAG member, and basically, he had to

forfeit all the money—and it was quite substantial—that he had received to SAG under their agreement with him.

So that's a big issue right now affecting modeling, and it's a big thing that comes up in negotiations as to, one, whether someone is a member or not, and whether the photo shoot is a SAG-AFTRA photo shoot. And that goes back to what Michael was saying about offshore: SAG and AFTRA view the world as one world and so, if you're a SAG-AFTRA model and you're doing a photo shoot offshore, that should be considered a shoot that is affected by their rules, as was the case with Tiger Woods. There is some dispute on that and I'll leave it at that.

The other big issue that comes up is the content. The world of what advertisements are has radically changed since the 1960s—you might have print, you might have a television commercial. Most of the television commercials were done live as opposed to filming it. Today, you have hybrids.

So in the fashion world, Roman Polanski did an ad which was a mini film for Prada and Ben Kingsley was part of that ad, as was—I'm forgetting her name. She's married to the director who all does the very strange—

MS. KOLSUN: [Interposing] Quentin Tarantino.

MR. MAX: —no close but—

MS. KOLSUN: [Interposing] While you're thinking of it, James Franco did—

MR. MAX: —very good thank you—Helena Bonham Carter, so they did an advertisement for Prada. But it was mainly film, and so how would you see that?

You could see it as an ad if they buy time, you can see it online, and trade photos made from that shoot. Also part of photo shoots today are TVC, so it's the making—and that's part of the whole world of reality TV, which I'll get to—but the making of it is something that everybody's now very much interested in.

So that is also part of the capture of the rights of whether it's a performer or a model is, not only do we want to see the finished product but we want to see the making of it. So that's a big issue today with SAG and AFTRA.

MR. KOLSUN: Ted, you also deal with advertising standard issues.

MR. MAX: Sure.

MR. KOLSUN: With the recent Dakota Fanning photograph with the—

MR. MAX: [Interposing] Marc Jacobs.

MR. KOLSUN: —flower between her legs, which was—

MR. MAX: [Interposing] ASA.

MR. KOLSUN: Right.

MR. MAX: Yeah, that was the ASA. The ASA, in Great Britain, it's a separate slideshow really, but basically, in Great Britain—and we have it in the U.S., and there have been a number of advertisements dealing with wrinkles, and what is permitted as an advertiser to say, and not to say with regards to your product efficacy with regards to wrinkles, and what is permitted in terms of the touch-up. And so in the U.S. and much more so in Great Britain, there have been a number of actions taken by the ASA in Great Britain where ads have been banned. And one was a Lola ad with Dakota Fanning, another was the Marc Jacobs ad with Marc Jacobs, but there were a number of other ads featuring—

MS. KOLSUN: [Interposing] Julia Roberts.

MR. MAX: —Julia Roberts—

MS. KOLSUN: [Interposing] Christy Turlington.

MR. MAX: —Christy Turlington, yeah, and the woman that was in *Black Swan*—

AUDIENCE: [Interposing] —Natalie Portman.

MR. MAX: I'm sorry I am having problems with my names this afternoon. But there were a number of those ads, and so what happens is the ASA will ban the ad, and your ad is taken off. It was funny, Jane Fonda did an ad which they raised a question and they said, that's okay, because they showed enough of her wrinkles to make it permissible.

MR. SPORN: I'm sure she appreciated that.

MR. MAX: Yeah, well, it's kind of a mixed blessing.

The other thing I wanted to touch on was how reality shows have changed the world, as well. Because if we took this group and said, okay, we're going to sign an agreement, and you're all going to be in a reality show. If you look at those agreements, the typical agreement where we're not celebrities already provides that the producer will get a percentage of whatever happens after. So if we take somebody like Bethenny Frankel—and I'm sure everybody knows who she is—she was in a reality show, and she has parlayed that reality show into a very good business.

And so producers—and I doubt it happened for her because she goes back a few years—but they get a percentage, and actually, there was an issue with her sale of the *Skinnygirl* brand, as to whether her agent got a percentage of that, but it is happening more and more as well. Because, whether you're a model or a

celebrity or a celebrity model, that is part of the consideration, as well.

And also with models, models are now brands too. I mean look at Heidi Klum. That's a very good example of somebody who has gone from modeling to being not only a celebrity but much more than that: a business. So in that context, one has to be very careful from the model side to understand what they're getting into, understand what they're giving up.

Often times, people will approach people and say you know what, we'd like to do a master license with you, and a master license can be very successful. Another example of that is Jessica Simpson, who, again, has been a brand and expanded. A master license basically, though, is somebody saying "I will control you and bring opportunities to you"—so maybe an apparel deal, maybe a shoe deal, maybe eyeglasses, maybe umbrellas, everything from suits to knots—and "I will put that together for you, and you approve it." And depending on the negotiation of that agreement, it can be very restrictive on the part of the talent in terms of what they approve, or what they don't approve, or there will be clauses in those agreements which basically say "if I'm putting the money up for this, and I'm doing this, you really have to have a very, very, very good reason to say no." And, so basically, the talent is more along for the ride than controlling their choices. And part of that depends on the leverage, and the bargaining power of the different parties.

How am I doing with time?

MS. KOLSUN: Good.

MR. MAX: Another big issue is the Internet, and what is advertising because the Internet has changed that equation. You can have, on the Internet, little films that somebody does, and it's not done by Martin Scorsese for Chanel or Roman Polanski for Prada, but somebody just does a film. And it's "Michael, I want to include you in this. I'm coming out with a line of clothing. Will you do it?" And Michael says "hey, that's great. It's exposure. I'll do it." And if he signs something, depending on what he signs, it could be there forever. And that ad could be out there at infinitum—which depending on what it is, what it says, how it affects him, how it effects politics, is there a message with it—can be an important issue. And that's something especially in the modeling world both for brands and for talent that is critical because what you say about a product, or how it affects a product is often times a very, very big deal.

If we're talking about fragrance and beauty, being a face for Chanel or another fragrance brand, they generally don't want to take somebody if they've done it for somebody else, so they will look for a celebrity or model and say what have they done before. And if they've done nothing, but they're beautiful and attractive, and they're a great spokesperson, that's a great thing.

So what you do and what you don't do unfortunately is much more of a reality today and more of an issue today than it was when you were talking about a print ad, so controlling your brand and controlling your image is much more important today than it was.

Did you have a question?

MR. MAX: [Responding to an inaudible audience question] Well, the issue is: it depends. A good lawyer's answer, right? But for example with SAG-AFTRA, if you're involved in the creation of the product, the contribution to the fund is less. No, what you put in is less, so that's an important consideration, and you can't just say it. I mean Jessica Simpson, for example, how much does she design something? It's probably she's more involved in selecting things. Natalie Portman for Chanel, that's probably more Chanel driving that, but there have been celebrities who are involved in creating a brand or a sub-brand or mini-brand for companies.

And I just negotiated an agreement this past fall for a retailer, and somebody was involved, and basically, it was sustainable clothing and things like that. And there was an issue as to how to identify that person's role in the agreement. Was it going to be spokesperson, was it going to be more than a face, and that really is an important issue, and one of the issues was whether the person felt comfortable answering questions about sustainable products and things like that, which, if you can't do it or you don't feel comfortable about it, that's one thing. Also, the FTC has requirements today that if you're a spokesperson for something, you basically have to believe it.

But again, talking about fragrance, in any fragrance contract or any beauty contract, usually, you'll have a clause that says "you have to wear this, and you can't go on the Today show and say, yes, I'm a representative for Chanel. But my sister has this fragrance line that's really great, and I'm wearing it right now." What do you think Jay? You can't do that sort of thing.

MS. KOLSUN: And aren't there also issues, Ted, related to the behavior of the—

MR. MAX: [Interposing] Yes.

MS. KOLSUN: —celebrity model in terms of clauses related to the kind of repute or ill repute they bring upon the brand by bad behavior.

MR. MAX: Right. However you categorize those, morals clause is one way to put that, that is a big part of an agreement, and it's a big part of the deal. Again, what people put on a Facebook, for example, or Twitter or whatever, the world seems much more open today, and so what you do and how you do it is very, very, very important. Oftentimes, deals will be structured to withhold a certain amount of the consideration, if that's an issue. You also have clauses, which may deal with incapacity or things that aren't really moral, but they show up. Another is, generally the modeling agreement has a clause, and it says, "you know what you're going to show up, and you're not going to have your head shaven or scars" or, "we thought you weighed 120 pounds, and you're 250." Those kinds of things that's pretty standard.

Although, when you get into the celebrity realm, you'd be surprised what the push back is on that because often time they are who they are. You just got to deal with it. I even had deals that at 11th hour be tied over tattoos, and whether tattoos could be airbrushed out because the person, oh, that's part of their personality. This was a celebrity deal.

And I would think, in a modeling deal, it would be no problem but for the brand—and it was an international brand—we said, tattoos in certain cultures and countries have a really bad connotation, and that obviously would reflect poorly on the celebrity but also poorly on the brand. So you have certain choices in terms of approval rights with regard to the photographs, so if you say, "I don't like that photograph," you still have the right, in some agreements, to take the photograph.

But we were, this is important because, especially in certain cultures, tattoos are seen as really bad, and it was something that, well, we had to go back to the calendar to consider it. So those are all big issues, and especially, when you take the international aspect of things, how people do things. How people are represented varies greatly culture to culture, and so, sometimes a swimsuit shoot may be very limited if it's going to be in the movies, and sometimes people are covered up. And that becomes an issue in terms of what you can do.

Obviously, we touched on sort of airbrushing and things like that. Generally, the agreements have a certain degree you can't

materially change people, but the other aspect of Internet when get back to the SAG-AFTRA is residuals, and what is permitted. Often times the limitations on Internet are not as great as they would be for usage in print or in advertising, but more and more they are, and that's one of the issues in terms of SAG-AFTRA is the union will try to make inroads in terms of getting some compensation for the Internet.

I don't see that as happening. Also, from our labor people, we don't see a strike occurring but if there were a strike, that would obviously affect who's going to be representing brands, and that would be a good thing for models in the long run. So I think that's about it.

MS. KOLSUN: Doreen, I'm going to skip to you next. Doreen Small is probably the guru of modeling law. She was at Ford. She's currently counsel at Golenbock, Eiseman. She, with Ali Grace Marquart, teaches at Fordham, where I used to teach—

MS. DOREEN SMALL: [Interposing] Um-hum.

MS. KOLSUN: —before Cardozo and NYU. And Doreen, how has fashion modeling—because you've been around doing this as long as anybody I know—changed in your lifetime of representing models?

MS. SMALL: Well, fashion modeling is ever evolving, and I think it in some ways reflects the culture. As the world changed, so did advertising, and the models, the paradigms of beauty for a given era. I think, to Ted's point, the Internet and technology has had a huge impact on the modeling industry. Ali and I had a panel at Fordham Law School about walking into the future, and to a panelist, it was the Internet and technology that they picked up as the changes—not only in usage and image rights—but in avatars and robots and photo-shopping, and the use of models, where models fit into the landscape.

The other thing we've seen change is—and one thing I was going to touch upon—is labor and employment issues. On the model side, there had been a labor union in 2005 for the models, and many, many thousands of applicants signed up, but it didn't have much traction. There was enormous, I think, fear and resistance from the industry at large.

In the last year, we've seen the development of the Model Alliance founded by Sarah Zif, who is a model and filmmaker, and made a film documentary called *Picture Me*, which tracked her life on the runway here and abroad, with a push to give models a larger voice in the industry and improve working conditions.

Ali and I team our course at Fordham. It is thirteen weeks, twenty-six hours of fashion modeling law and one of the things we talk about are the labor employment issues that have changed over the course of time. The other thing that, I think, is interesting is the internationalization—and this is an international panel—of modeling. Although there are some similar standards around the world in terms of employment and labor, there are more changes, differences, for example, France. In the United States, models are independent contractors by and large. In France, they are both independent contractors and employees, and they have two sets of contracts, and here in the United States, they only have one contract.

But again, I think we've seen some changes. There's a case from 1944 which talks about some of the same difficult circumstances in the modeling industry that models still face today, that agencies still face today, clients still face today. So some things have changed and evolved. Some things have stayed the same.

MS. KOLSUN: Ali, what is the industry doing to prevent I guess use of underage models? How does the industry deal with these young girls that we've seen a lot of press on? Twelve-year olds, thirteen-year olds, parents lying about their kids' ages. How is the industry addressing that? How does Ford address it, I mean, Wilhelmina, where you work, address that?

MS. MARQUART: Well, I think that—as Doreen mentioned—we have seen some things change over the past, and you went back to 1960.

MR. MAX: Um-hum.

MS. MARQUART: Modeling really goes even further back than that, but it became really a profession, a career I think starting in about the 60s and for a twelve- or thirteen-year old girl to be considering a lifelong career in modeling at that age seems ridiculous to most people, but not always to the parents. And I think that there's a huge distinction for, hopefully models, but certainly for the agencies in children modeling as children and children modeling as adults.

So you've seen organizations like the CFDA, the Council of Fashion Designers of America, get together and create a set of guidelines. Now, they're not laws but they're guidelines for their members where they recommend that models under sixteen not be used. Now they've chosen sixteen. Anyone under eighteen is considered a minor here in New York and in most states, so

they've decided to go with sixteen, not something that we, at Wilhelmina, and many of the agencies have chosen to enforce.

It's not so much matter of checking IDs for us, but we know who we put together, for example, in a show package, so when Fashion Week rolls around, we're putting together a package of models to present to various casting designers or, sorry, casting directors, and designers.

We sign a letter that CFDA sends us saying that we will not submit anyone under sixteen, and many of those casting directors and designers, then, also take it upon themselves and take it one step further to actually check IDs at the casting as well. Again, this isn't a law, so not all agencies have decided to adhere to those guidelines. Not all designers have chosen to adhere to those guidelines, but I think that, that is absolutely a step in the right direction.

At Wilhelmina, this is a conversation that I have regularly, in particular, our women's division. Because, on the men's side, the careers can start later, and they tend to last longer, but on the women's side, we do see them starting quite a bit younger. And our women's director regularly points out that he actually prefers to work with models who are older. Eighteen and older would be his ideal. If designers and casting directors weren't requesting younger and younger models because, for the first thing: the contract actually means something.

If we sign a three-year agreement with a model who is over eighteen, they are bound to that agreement. If they're a minor and we don't have the contract approved by the court, then they can get out and repudiate, so it's easier for us to enforce an agreement with a model who's over eighteen.

Our women's director also has pointed out that they tend to take this more seriously as a job, as a career. This is something that they've chosen that they've given some thought to, not just "I am beautiful, I'm a teenager, and traveling the world sounds very interesting to me. I would love to be away from my parents." It's not a rebellious issue anymore. It's a career path.

They've chosen that. Modeling, at the moment, means more to them perhaps than going to college. They'd like to try it for a few years, what have you. Then, they've made that decision and tend to really consider it a job and want to take it very seriously.

MS. KOLSUN: Doreen, how about the issue of underweight models? That's been another—

MS. SMALL: [Interposing] That's interesting because the

issues of age and weight are very much tied together, and one of the reasons why that you see guidelines and rules about age is that—apart from the fact that it's the children working, and the problems and the issues with the children working—the older models, especially the female models, hormones start kicking in. They start taking birth control. It's much more difficult to keep models at the current aesthetic, the beauty standard, which is very, very, very thin, very lean, flat, no hips. So the issues of age and weight seem to be tied together.

On the issue of weight, taking the international approach, Israel has actually instituted a law: a body mass index guideline of eighteen and a half, which is the World Health Organization's standard for underweight. And any model working in Israel working in the runway or on advertisement has to have an up-to-date doctor's certificate that the body mass index is eighteen and a half.

There is that. That this is not the best barometer, the best gauge of health, well-being—it's easy to fudge, for example. It's also not necessarily indicative of a model's health and some models are naturally thin. Particularly the Hungarian ones, they're naturally thin. They haven't matured yet and some just have a very thin body structure. And they will be underweight but still healthy.

And other models will meet the BMI but will have struggled to get there and have eating disorders and all sorts of other issues attached to even maintain the eighteen and a half BMI. The Model Alliance had just this talk about weight issues. And Crystal Renn, who's a friend of ours and one of my clients, and famously was a straight size model and then became a plus size model and is now a straight model again, albeit not a ninety-five pound straight size model, wrote a book called *Hungry* about her experiences. Her suggestion is that the sample size change and that the designers that the "00" or the "0" sample size is punitive. It really it forces, even naturally skinny models, to get down to a very, very, very tiny frame.

What if the sample size was four or six? And the thin models, you pin them, but then it would allow for a great diversity on the runway to have the option. The designers will say—and again designers and clients are entitled to manifest their own aesthetic, their own vision—that they like a certain uniformity on the runway, or that the tall and thin is a better clothes hanger for the garments, and again, we talked about it over time, these aesthetics

change.

There have been skinny models in the past. I mean, there was Twiggy and there was Penelope Tree, so but there were the glamazons in the 80s who were size four or six and certainly not “00,” so I think weight is a complicated issue attached to age. I think that industry feels a little, in the U.S., more comfortable, addressing it in terms of age.

MS. KOLSUN: Um-hum.

MS. SMALL: In fact, there are labor regulations now being proposed to address certain issues about child performers. Those regulations, unfortunately, will not cover children working as adult models but I think there are some movements, and the tom-toms are beating a little bit about addressing the age issues in a really meaningful way.

MS. KOLSUN: Are there other issues—either Doreen or Ali—related to models with respect to financial transparency or prevention of sexual harassment that are being addressed in the industry?

MS. MARQUART: I think there are quite a few lawsuits ongoing at the moment. We’ve seen, in the past, probably three or so years of just an influx of litigation, mostly agency versus agency. Models break their contracts, they change agencies halfway through their agreement, and the agency that the model leaves is not likely to after the model. It’s bad for business. They’re likely to go after the new agency who may have been whispering backstage in the other model’s ear that they could get her much more, or that she wasn’t being properly served at current agency. So I think we’re seeing a lot there.

And what has been the most interesting, in maybe the last year, though—because that was, in fact, new—is that now we’re seeing the models participate in those, not agency versus model but model versus agency, fighting back and saying “if you’re going sue each other, fine, but let me also remind you that you haven’t paid me my money. That when I left or if I properly terminated, you owed me X, and you still have yet to pay, you have to give me a statement.” Things like that, so that’s where I think that the finances are coming up the most.

There are issues with financial transparency that have come out over time. Every agency handles things very differently there. For us, speaking for Wilhelmina, we’re in an interesting position because we’re publicly traded. We’re the only U.S. based modeling agency, I’ll say, the first U.S. based modeling agency to

do it. I don't know that will become a trend. It's an interesting industry and position that we're in to do that, but I think from what I understand from our models, from our agents, from other agencies, they like being able to see our financial statements. They can pull up things online. They know much more if they choose to read what's going on with us.

But Elite actually did it before we did, in Europe, so they're not publicly traded here, but they are public in Europe, so transparency—it continues to be an issue in the industry certainly. But I think that as the industry advanced, we're not seeing privately held agencies as much anymore, or if they're privately held, they're privately no longer by one or two individuals. It's not really a mom-and-pop shop as much anymore.

There's more and more interest from a corporate perspective. Their hedge funds are buying agencies and adding them to their portfolios, and I think we'll see an interesting change, for better or worse is yet to be determined.

MS. KOLSUN: Any other comments any of the panelists want to make based on what we've talked about so far?

MR. MAX: I think the other thing about agencies is agencies are our brand as well.

MS. MARQUART: Yes.

MR. MAX: And that's something that certainly is more recent than not in terms of—

MS. SMALL: [Interposing] Well, we've been a brand since the 1940s—

MS. MARQUART: [Interposing] Um-hum.

MS. SMALL: —so.

MR. MAX: Well, but I'm saying in terms of selling things, I mean we've talked to people about agencies—

MS. SMALL: [Interposing] What Elite does?

MR. MAX: —yeah, and getting product out.

MS. SMALL: Um-hum.

MR. MAX: So that you're advancing the model, but you're an agency, and you're creating a profit center above and beyond, so if somebody says what are you doing for me—

MS. MARQUART: [Interposing] Yep.

MR. MAX: —you say, hey, look, we're branding everything.

MS. SMALL: Well, Elite has a separate division. They run a worldwide modeling contest called the Elite Look, and the Elite Look products are branded and sold worldwide, licensed worldwide, so there's a total separate revenue stream.

And Ford tried to do that marketing hairdryers and other hair care products and make-up kits, and also sorts of things like that, and I think it would make sense to try to get back into that business.

MR. WILDES: Another interesting experience that I'm hearing, living in the world of immigration and modeling, is this issue of transparency. I have yet to see one model who has ever told me the truth about her age or his age, despite the fact that I'm holding their passport in my hand. The forms they actually will write down my business age is this, but my real age is that, and with a straight face say that.

Also, I see the competing culture and the pressure outside the realm of immigration too. We have peer group advisories that we need to have when we do O visas for individuals in the world of fashion and talent to make sure that their peers holds them up to a certain standard of achievement, as well.

The social media was a very interesting experience to see. Models now come in with a Facebook, and they have to friend you. There's privacy issues when a model comes in and friends you, particularly when you're married with twelve children, and you have to make sure that that's how you're getting the information. Then, you're opening yourself up to the fact that your friends and other clients now know that you're representing somebody.

We're always trying to get endorsements from our clients and get permission for our marketing purposes, but we have to be discreet at the same time. And, again, fraud is a very, very dangerous with all these competing issues whether it's age or weight or other pressures. The fact that people will take a visa and work from one agency and then travel, or they go and they search at a lot of these parlors and the meatpacking industry and everything, in the evenings, is very dangerous.

And we see immigration agents now actually asking models to look at their Blackberries and Facebooks, and they go online, and they actually search their bags, and if they see matchbook, and if they see menus, they'll then call. And they conduct many investigations at the airport to see that somebody's consistently being paid a prevailing wage at the right agency, and they're not doing anything else outside of the scope of what was allowed.

MS. SMALL: It's tough on models because it is such a fluid industry, and models do move from agency to agency, and the foreign models just have to get new visas because their sponsor has

changed. And in many changes, visa costs become part of the model's [financial calculus].

MR. WILDES: [Interposing] We're about to take an entertainment lawyer to rent space from us because a lot of the models will come in and say "could you review my contract." We do the immigration. We're often the first lawyer that they'll meet.

Now they get burned on a photo shoot by a light, or they don't know how to sign or if they should sign a contract, and often, I pull the reigns back no matter who sends the model in. And I think, what's the best interest? Now, there's a mother agency overseas that actually has a better relationship with our trust with this model, and the fact that there's no governing body with law and not just recommendations is a glaring omission in this realm.

MS. MARQUART: And so the last thing that I wanted to touch on—since this is a panel with an international focus—is just about monitoring international usage, and how challenging that can be. Much of my day is spent reviewing contracts and releases usually created by the ultimate client for models, so if they're performing for Calvin Klein, for example, or e-commerce for Nordstrom or what have you, then, I'm reviewing the agreements created by these clients.

And those agreements will contain a usage description, and another large part of my job, then, becomes helping agents try to monitor this usage and make sure that the scope of what we've agreed to has not been exceeded, and that can be very, very difficult on an international scale. And then, if it is exceeded, what law is going to apply? If they exceeded the scope, if it was supposed to be U.S. only, then, great. Then, we know we're here. Everything is good.

Then, we go overseas, and all of a sudden the model is usually the one to find it because he or she is out traveling, sees their image on a billboard in Mexico or Thailand or wherever and takes a picture and calls us and says I thought that, that was only for the U.S. or for New York only or whatever you have. And then we have to figure out do we need to even help them retain counsel. That's usually a right of publicity, right of privacy issue that we're talking about, so the agency doesn't hold those rights. That's the model's individual right.

And it can be very challenging to do that. The Internet in that way has been helpful. It is actually much easier to track, so as broad as the scope of use usually is now because it includes all of these technology social media and what have you, it is easier for us

to track it that way. But if it's not online, then, it can be very difficult.

MR. MAX: Well, and it has to be related to a brand that has brick and mortar.

MS. MARQUART: Right.

MR. MAX: So that you can sort of go after that person.

In terms of law, we do a lot of different things, and sometimes, we actually do things that are fun and help people out, and you sort of say, wow, that was great. A while ago, I had a situation where a model was an IT girl from the 60s. She was a Ford model. She was the muse of William Klein, for anybody who's a real photography buff, and she babysat.

Because although she was Ford model, she did not make gobs of money, and she did the modeling and got married and had children and then, unfortunately, got divorced and was sort of not really doing all that well but doing okay, and so she was babysitting for a colleague of mine. And she raised with him the fact that her photograph was used in Compare that was pretty much all over the place. It was on buses. It was in magazines and so forth.

And so one of the things that I did was we wrote to Compare. We swiftly, after threatening to sue them, negotiated a very favorable deal, which only included the past but going forward, and it gave her current dollars, as opposed to when she was a model, and it financed her going to NYU for the School of Social Work.

And she became a social worker, and it was one of those nicest things because she couldn't really a pay lot, so it was contingency type of thing. So it worked out well, but that's was an example of fortunately William Klein got paid for the ad, and that was part of the reason you did it. But also it was legitimate company that sort of stepped up and paid a fair wage for the use of her image.

Unfortunately, with the Internet you can't find anyone, so often times even if it's just using pictures to generate fifteen-year old boys coming to the site and seeing pretty models in bathing suits or something like that, that's where often times you don't get compensation.

MS. KOLSUN: Right, thank you. Any questions? None? Well, we'd like to thank our wonderful panel. We will pick up with our last panel on sustainability in about 15 minutes, and that'll be our afternoon.

IV. PANEL FOUR: THE LITTLE GREEN DRESS: SUSTAINABILITY IN THE FASHION INDUSTRY

MS. KOLSUN: Our final panel of the day is on the topic of the sustainability: a topic near and dear to my heart because it's a lot of work. Jones our parent company recently hired a consultant. One of those annoying consultants who sends you an email and asks you how many bags of garbage does your store in Milan generate every day, and how much electricity is that store using, and how many computers and blah, blah, blah, blah.

And often the person who's sitting in my chair gets stuck with the job because there's no one else to do it, and in fact, the consultant said to me—I actually turned in all of the information incredibly quickly because it's really about finding out who has the answers—and the consultant who would have done this but for you, since you do not have sustainability department at Stuart Weitzman. And I said I don't have a secretary at Stuart Weitzman or a paralegal, so I'm doing it because this is the office of last resort.

So despite the fact that it was an annoying project, it's an important project and a useful project. Tying this discussion into our conversation this morning and early this afternoon about China and sourcing, Frances Hadfield's comment that we can dream on about bringing jobs in our industry back home, but it ain't going to happen. So we've certainly seen lots and lots of press about obviously the lower cost of manufacturing in China and other countries, Bangladesh, et cetera, but the price of getting the goods back here, so that is another issue in terms of sustainability. The issues related to transport of goods.

So our panel is four people, Jeff Trexler, who is next to me. Jeff, why don't you give your brief bio—

MR. JEFF TREXLER: Great. I'll make it real brief. I'm an attorney. I have been one for a while. I've been an attorney in the do-gooder world my entire career, and in addition to being a do-gooder attorney and consultant—a very annoying consultant as well—I am also teaching the class in fashion, ethics, sustainability and development at the Fashion Institute at Fordham Law School.

MS. KOLSUN: Georgia Kalivas.

MS. GEORGIA KALIVAS: Hi, name is Georgia Kalivas, and I teach over at the Fashion Institute of Technology in the Textile Development and Marketing department, but my second job is: I am an auditor and U.S. representative for the Institute for

Marketecology. I go and I inspect different companies that wanted to be certified to the global organic textile standard known as GOTS and also their trade standards. We have one called Fair for Life.

MS. KOLSUN: Thank you. And Peter Fields.

MR. PETER FIELDS: Hi, I'm Peter Fields, a partner at the firm of Ritholz, Levy, Sanders, Chidekel & Fields, so who can repeat that name? You get a prize. We are a media and entertainment law firm, so we do a lot in the music business, television, publishing, and fashion is also a very big part of what we do.

We represent some well-known fashion brands, such as Nicole Miller, and some major upcoming designers Peter Som and Rafe Totengco, who we did a deal with the Jones Group a few years ago. Rafe's now over there. And my partner—

MS. KOLSUN: [Interposing] It said that on our website yesterday and I don't know the brand so it was interesting.

MR. FIELDS: Right, he's a handbag guy.

MS. KOLSUN: Yeah.

MR. FIELDS: He's fantastic. We did that deal about two years ago with Jones.

My partner, Greg Weisman, heads up our L.A. office. He was one of the panelists this morning and they had him in by Skype and I understand that was a lot of fun so I'm looking forward to participating in this panel.

MS. KOLSUN: And Natalie Nixon, who I met in Philadelphia during Philadelphia Fashion Week, which by the way is very robust. There is fashion in Philadelphia and I bought some of it.

MS. NATALIE NIXON: Hi everyone, my name is Natalie Nixon. I'm the Director of the Strategic Design MBA Program at Philadelphia University. If any of you would like to learn more about that I'd be happy to share more afterward.

I'm also an Associate Professor in the Fashion Merchandising and Management Program, also at Philadelphia University, and my background in the industry is an entrepreneurial hat designer. I also worked in global fashion sourcing for a division of the Limited Brands, lived abroad in Portugal working for mass industries and making lots of bras and panties for Victoria's Secret.

MS. KOLSUN: I've got to start with a question for the whole panel: how has the fashion trend of going green, eco chic, whatever you want to call it, expanded? And how do you think the fashion world has reacted to sustainability issues? Are we easy clients?

Are we hard clients? As annoyed as I sound—and I'm really not, because I am a do-gooder—it's just doing the work and making the changes. Jeff, I'll start with you.

MR. TREXLER: Okay, great. Now I would say that things are converging. For a while in the sustainability, eco fashion, corporate, social responsibilities space—as we like to say in our area, everything's a space—things went along the lines of what I would call refrigerator door fashion. That is to say, it was sustainable fashion that was celebrated in the same way a parent would celebrate their child's wonderful, artistic, amazing drawing, and just put it up on the refrigerator door. Maybe no one else would think it would be amazing and wonderful and artistic but, because it is your child, you praise it.

And for a long time, I think there's been that sense of eco fashion, sustainable fashion as occupying that same role. It's something if you're a do-gooder, you love it, it's amazing, but there weren't that many reasons to buy it other than the fact that it was sort of representing that particular value for you—if the value was important to you.

But in recent years—and in particular, we saw it in Fashion Week—things are converging and converging for a number of reasons. You have a major mainstream designers, like Maria Kaneohe, who have incorporated ecologically friendly techniques into their fashion, without really even calling attention to it. It's not branded eco fashion. It's just styling, cutting edge fashion.

And on the other side, you're seeing eco fashion designers coming in and saying, you know what, we are ecologically friendly, we're sustainable, we're trying to promote development internationally but we're also going to do really cutting edge stylish fashion and put fashion first.

A designer said to me: "I'm a designer, I put design, I put style first." That, I think, is the future of sustainable fashion: not something separate, but something blended.

MS. KOLSUN: Let me add another piece to that question—and then, each of you will address that as well—is fast fashion an enemy of sustainability? I mean, before the economy collapsed, we saw the rise of H&M and Forever 21 and we read a lot about fast fashion and how it's affecting IP rights. But it's also people buying a lot of stuff that they quickly discard. Is that an enemy of sustainability? I mean, as compared to the old days in France where you bought one beautiful skirt and you wore it three times a week.

MS. KALIVAS: Well, when you're talking about the cost of sustainable fashion—because this is one of the things that has been part of the problem—do people want to pay more money something; especially, people going to H&M fast fashion? It's either: we're going to sell a better quality garment that's sustainable and fashionable or are we going to do just a quick organic t-shirt and let's get it out there as quickly as possible but it's going to be so thin that you're going to see right through it?

What I found is it's important now—and you were just saying before—instead of just trying to sell crunchy granola, hippy type yoga clothes as sustainable fashion, to sell the fashion first, sell the style, and then, everything that's sustainable or eco-friendly about it is the fringe benefit. And then, everybody looks as if they are doing good and they're doing better by doing good.

MS. KOLSUN: Peter?

MR. FIELDS: I think an interesting question is—and perhaps you were going to ask this further down—what is the obligation of a fashion company to promote sustainable fashion? And if there is a responsibility to do that, does the fast fashion company or retailer like H&M—which promotes disposable fashion, “you bought this sweater last fall, forget that one and buy this one now,”—does that type of company have a greater obligation because they're promoting wasteful habits with the consumer? My own personal opinion is: I don't think the fashion industry has any greater responsibility than any other industry, so I don't think there's any special burden on the fashion industry in this area. The fact that the fashion industry is embracing [sustainability], I think that's a great thing. It's better for everybody.

And you get the same arguments in each industry. In the food industry, we would make healthier food but people don't want to eat it. So on the fashion side, we can make sustainable eco-friendly fashion products. Will people buy it because of that? I think the evidence is starting to show, yes, consumers like that and they feel good about buying something that was produced in a more eco-friendly manner. So I think it's a good trend but I think that's one of the important questions to ask.

MS. KOLSUN: Natalie?

MS. NIXON: Yeah, so I think that the fashion industry is a bit schizophrenic about this issue. There are obviously the big fast fashion retailers, H&M and Zara, but fast fashion retailer H&M also has its own little corner of green eco-fashion, notably the Garden Collection, so you have fast fashion. And alongside that,

this emergence of slow fashion brands of retailers.

In Philadelphia, from where I hail, there's a really exciting growth of slow fashion retailers—and I think we have to really be clear from the onset when defining sustainable fashion, so sustainability is about a triple bottom line agenda. And that triple bottom line includes environmental sustainability, fiscal sustainability, and social sustainability, so a fashion brand collection can strive to achieve accountability in all three of those areas. Most of the time, we only think of it in terms of the environmental sustainability.

I also think it's really interesting, in accordance with the second panel discussion today, all of the discussion on public policy in the fashion industry. We have this dynamic where we have a public policy climate that is about liberal trade policies, which is awesome for leveling the playing field and allowing emerging economies to have a lower barriers of entry to markets the United States and Europe.

On the other hand, as you pointed out earlier, Barbara, KAFTA, NAFTA, the upcoming possible Trans-Pacific public policy now means we're condoning shipping large quantities of product back and forth duty free, quota free, so those are examples of us being a bit schizophrenic from market demand and also from the policy side.

MR. TREXLER: May I illustrate something because I'd love to join in this conversation too—

MS. KOLSUN: [Interposing] Absolutely.

MR. TREXLER: —I'm not going to go through and give the whole presentation but there's a picture here that's right on point, if I can figure out how to get this one. Thank you so very much. This is the problem in using a MAC now all time is I'm completely Windows illiterate. My Windows self is gone.

MR. TREXLER: Okay, good. With regard to H&M, it's actually tied in with the mainstream of fashion and when they're designing clothes, I mean, there's the utilitarian cover-the-body part of it and there's also this utilitarian let's-save-the-environment part of it—but fashion is, in many ways, about identity. It's an expression of the designer and it's expression of the wearer. As Professor Susan Scafidi mentioned in her *Fashion as Intellectual Technology* article, they converge.

So just as sort of fashion design is very personal and the artist wants to put something artistic, it's also personal when it comes to our relation to transparency. So you see here: this is the Pearl

River in China and that is dye from a jeans factory polluting the Pearl River—and now why is this important? It's not important because we can see it and now we have the great transparency and so we can regulate it.

But as this sort of thing spreads out into general consciousness and our awareness of what our clothes are; you're actually wearing this. You're the fire in Bangladesh. You're wearing the pollution in the Pearl River. Greater transparency in the immediacy of photography and the Internet. All these things mean that when somebody is buying H&M, they're not just buying cheap clothes anymore, which is a social value of itself, they are wearing pollution. They are wearing death.

So it's not so much a question of obligation, in terms of, does H&M have an obligation to do this, it's a market of market survival because all of a sudden the brand is less valuable in the eyes of the consumer.

MS. KOLSUN: But who gets that message out? I mean, obviously, H&M isn't going to get that message out and you're certainly not going to discourage shoppers and the Bangladesh fires—those who work in the business were appalled by the Bangladesh fires. And most of us who are old enough to know what the triangle shirt fire was [know that] the current FDNY comes right out of the triangle shirt fire—and yet we have exported that disaster to two other countries.

In China, we've got a lot of pollution, and we in the fashion business and in women's wear know what's going on in terms of the horrors, and those of us that work for public companies have the obligation to fix this. But, the general public only hears about these kinds of issues when, for example, China hangs somebody in the public square . . . So how do we get that message that H&M is selling death?

I mean it's a powerful message and I'm sure you work with marketing people. How does that get sold to consumers?

MR. TREXLER: A part of it is just simply—Marshall McLuland talked about a sort of changes in news and one of the things he talked about with satellites and satellite broadcasting was that in the area of satellites, it creates a proscenium arch—the whole world becomes a theatre. And so when you have something that's spectacular, when someone creates a fantastic visual image, it's inclined to go viral.

Now I would say that the images of the fire actually spread beyond the World Wide Web. There were many mainstream news

sources. They were all over the Internet, the same thing with some of this pollution. Anything that can have a compelling image or a compelling sound is something that will grab attention and is likely to spread.

To paraphrase team America: it's the triangle fire times a thousand is what we're getting here because it's no longer just a big sort of issue in the United States. It's a global thing.

MS. KALIVAS: Yes, just how when China was doing the Olympics, that is when, all of a sudden, we kept hearing about the pollution in the rivers.

MR. TREXLER: Um-hum.

MS. KALIVAS: Before the picture wasn't there. We were here in the U.S., we didn't really care, but once we had the Olympics over there, we cared more. And it's not to say here in the States we've had a lot of laws in place already from many, many years, and because of that, there have been many changes and especially in the textile industry, which is really one of the biggest polluters in the industry today.

And because of that, we also had the unions. We've made sure that there are safe conditions for workers. And when you think about developing countries, they are going to be where we are now and it's going to happen a whole lot quicker than it did here in the U.S. So as you even see now in China, there's a lot of work being done in China, as far as waste board of management, and taking care of things because the world is small.

We've got the Internet, we can see everything, but I think part of this too is: we're trying to develop a conscious consumer. It's a consumer consciousness for what's going on and that's really what's going to bring sustainability over the top.

MS. KOLSUN: And we've certainly seen it on college campuses with students concerns over where our athletic jerseys are being made and lots of protests and conversation. I was a trustee at a college where that was a conversation we had with students.

MS. KALIVAS: Yeah, at FIT for the last seven years, we've been [discussing sustainability] more at business and design conferences and what I've noticed, even as time is going on, is the students I have now—it's almost as if it's cycle—are the Baby Boomers' grandchildren. And you can see they wear a lot of [similar fashions] as the Baby Boomer wore in the 1960s and 1970s '60s and care about making a difference, so it really is heartwarming.

MR. FIELDS: I think the comment about that the world is a theater is a great line. Maybe one can argue that everybody has always cared about unfair labor practices, about pollution—but weren't aware of it. So with media, we know where our shirt is manufactured and we see the conditions and that makes us concerned, so that's a great thing.

You look at smoking in the 30s, 40s, and 50s: nobody cared about smoking, everybody did it. Then, everybody became educated about it and stopped smoking. Same thing with the food industry with bad food, so maybe it's just a natural thing that happens in many industries, and now fashion. And, "wait a minute, look at the child labor issues, I feel bad now about that shirt I'm wearing"—I think that's a good thing.

MS. NIXON: I think that the picture can come in a much more tangible form not, just through digital media, the Internet, and viral imagery. It can come in the form of all of a sudden having more options and knowing that you have options to buy clothing. That is part of a slow fashion movement that's handcrafted.

When you have a consciousness that something you are buying can impact your local economy, can impact a small business development, and people who are being hired at fair wage, that makes a big difference on your consciousness. I mean the slow fashion movement came from Italy's slow food movement, so even the fact if you look at the parallel industry of food, we have the traditional supermarkets, and then, alongside that we have Whole Foods—overpriced as it may be, and then you also have the local markets that pop up kind of in the form of pop-up retail over weekends and weekdays.

There's a slow fashion designer in designer retailer in Philadelphia named Sarah Van Aken, her business is called Sa Va Fashion, and her goal is to use locally produced, regionally sourced fashion as a model of economic development, and she wants to scale that out.

I think that was people beginning to understand, "hmm, I could pop into Forever 21 or H&M or Zara and pick up something, I also could support and check out this slow fashion designer that I have." I mean, now part of that happening more is making sure that sources of funding for small business development are available so that more of these types of designers have a space and a place to sell their work.

When I talk to my students—again, this word schizophrenic

comes into mind—they're really split. Some of them are very complacent and happy with the fact they have the options of H&M, and others it's very much in the front of their minds, so I wouldn't say that is a generation that is gung ho about environmentalism and about sustainability. They have a lot of choices in front of them, and if they could make a living by building more of a sustainable slow fashion business model, and they had more of the support to do that, they would.

The other opportunity, again, in Philadelphia we have Urban Outfitters right in our town. If more of the big brands began to explore hybrid sourcing models and hybrid approaches to production, I know that would be interesting. I know AFA is helping a lot of their members to explore that, so that's just one other way to permeate more in the consciousness of consumers.

MS. KOLSUN: You think the economy has had a negative or a positive effect on sustainability?

MR. FIELDS: The trend towards becoming more sustainable has been growing steadily over the past couple of years as the economy has been in a recession, so I don't see any impact that the economy has had on that. I think the manufacturer and distributor of fashion, of course, looking to their bottom line, and I think those companies see a dual benefit of: if we're more socially responsible, our brand is going to be perceived better. That's good for the business.

So I think it's looked at as a good business development and I don't think it's been effected by the economy. I think companies have shown reading some materials about manufacturing methods—like Nike and what they're requiring among suppliers using less water and growing cotton—is actually lowering production costs. So maybe that's a good thing in a bad economy.

MR. TREXLER: Because that lowering production cost is key, and we have fortunately again, convergence, my word of the day. We have one sort of study in finding that there alternative ways that are cheaper. The technology to produce sustainable goods, also the cost of production is going down.

I also think there's been a fortunate kind of balance. Say several years ago, I've heard people talk about how about sustainability and, in fact, I used to talk about sustainability as a luxury good. Let's say five, ten years ago it was relatively more expensive to do something in a more local, environmentally friendly sort of economically sustainable fashion.

Essentially, maybe this is the end, but there are a couple of

other things going on besides the technological advancement and production model advancement. There's a sense, in the broader world, that fashion itself was a luxury good or frivolous, that it was not something that you were going to be spending money on, particularly the higher up you went, the more that feeling came into play.

So marketing sustainability, marketing ethics, marketing charitable tie-ins became a way to counteract, to make buying clothing, not simply self-indulgence, but an act of social virtue. And so that came into play as well.

MS. NIXON: There's a great article I recommend to everyone called *Fashion and Sustainability*, it's by Virginia Gross. And one of the things that [she] mapped out very well is that expanding our options and sustainable fashion, it's not only restricted to production but it's about reuse. It's about recycling. It's about a designers' part of the production cycle all the way early on to yarn engineering and fabric development, as well as production.

Students I teach, for example, they are a generation where they love vintage and vintage to them means thrift stores, so that's another approach to sustainable fashion. They are repurposing. They're reusing. They're not necessarily buying something new and that's a really creative approach to this issue.

MR. TREXLER: One thing you saw in Fashion Week this year was, in addition to the "this is the style," "this is when the model's coming down the runway wearing this," you also saw a number of designers describing the sourcing.

This is the fabric. It was produced by this technology. This is vintage. It's been repurposed. When they're doing it in their production notes, when they're trying to sell the fashion, it's a sign that something very interesting is going on.

MS. KALIVAS: No. And I have to agree with that because one of the things that I've noticed is: it used to be you go see a runway show, and you hear music, and you see fashion. And now it's more important, also, to hear about what's going into it.

One of the things I do with my fashion students, I have them develop an eco-friendly garment and part of that is sourcing everything.

MR. TREXLER: Um-hum.

MS. KALIVAS: And one way we can do that is if you're using companies that are certified to different standards, the Global Organic Textile Standard, it's a lot easier. There are quite a few other organizations out there one called Source for Style also helps

you to find different manufacturers.

The Global Organic Textile Standard is one where companies processing organic fiber, and what they will do is they will be sourced from NOP fiber, National Organic Program USDA Certified Fiber, and from there it goes to a yarn mill.

And what's going to happen at the yarn mill? The yarn mill has to be certified. From the yarn mill, it'll go to either weaving or knitting facilities to make fabric, which must also be certified. Then, you're going to cut and sew, okay. Once you get to cut and sew, we have to make sure that all the operators and everybody's, whatever materials they're using within the facilities, are approved.

When I say approved, meaning different chemical standards: they can't be toxic. There are chemicals that one may use and if it's not on the list, you can't use it, even all the way down to the labeling of the final textile product.

What's important here is: as people are looking for sources, I always tell them if you can go to the country where your garment is being made, go and see it, so that you know for yourself, but if not, then the next best thing is to be able to know that you're getting it from a trusted supplier, and by getting by from a trusted supplier, you can be guaranteed that a third-party certificate body has gone in, has seen everything. Transparency has been proven all the way through and the transparency is going to be all the way down from actually annual visits into the facility; but also, it's going to have to do with following the proper documentation, making sure that when somebody says something is organic, that it's truly organic.

You have to have the documentation, such as transaction certificates and company certificates that are valid and current.

MS. KOLSUN: Let me interrupt you with a quick question. One of the things Jeff from G-III mentioned this morning was the enormous number of components involved in the industry. And when you talk about this kind of procedure, all I can think about is: how about all those components.

You gave an example of a button or something that had something from the Congo and I gave an example of working in the textile industry and having been asked, even at night, to certify that our Egyptian cotton was not farmed from farms where children worked. And how impossible that is for a company to prove. I mean, I know it because I tried.

MS. NIXON: Yes, so we begin to enter the realm of green

washing, where it's a slippery slope to begin to just say slap some green on it, and we'll hope that it will slide into the realm of being sustainable. To source, design, manufacture an apparel garment is an incredibly complex system, so when we say that something is organic, are we talking about from the point of crop production? Are we talking about engineering of farm systems, and how in the wet processing of fiber and yarn and fabric, how is it released and admitted? How is the product shipped?

The same designer, Sara Van Aken, the entrepreneur retailer in Philadelphia who I mentioned earlier, gives a really hysterical example to say, "look, if I was going to be one hundred percent green, sustainable, I would dye everything from berries that are local. I would grow my cotton on the rooftop, and I would hand spin my yarns, and I'd only one want to deal with consumers who walked to my store."

So you could really stretch this to a ridiculous extent. So she's content, let's start, with employing local workers at a fair wage, safe conditions, at a healthy, happy environment to work in, regionally sourced and produced, and that right there is probably, at least, a fifty percent gain on what the current matrix looks like for a lot of major brands.

MS. KALIVAS: Yeah, I agree with you totally on that because sustainability is basically baby steps, and a lot of companies can't afford to do everything perfectly all at once, and economically, it's not feasible, truthfully. And so whenever anybody's doing something, especially nowadays there's a movement to go back to made in America, and consumers like this. I mean, my father was an immigrant and he was such a patriot. If it wasn't made in America, he wouldn't allow us to buy it, okay.

But he passed away ten years ago. He would be having a really hard time today.

I just want to show you this one thing on this. You can see it up on the screen. Anybody can go this website and can find, just by searching—you could even do it by company if you like—actually we're going to do it by country since we're here in the States today.

MS. NIXON: What is the website?

MS. KALIVAS: This is the GOTS working group website.

MS. KOLSUN: And basically what does it show?

MS. KALIVAS: It shows companies that are certified to different standards.

MS. KALIVAS: Right. So if you were looking for somebody who, perhaps, was doing organic cotton fabric, you could search organic cotton fabric, or if you wanted, somebody who was a screen printer that was certified, you can search it that way. What I just did today was, I just searched by companies that are in the U.S. that are certified. You find lots of companies for babies, okay, because baby products are very easy to sell to new mothers and new parents.

But this is one way of finding companies. Also, if you have a label, and on the label there would be the GOTS symbol, and what you could do is, there would be a license. So if you see somebody with a license number, you can actually just put in the license number and search that to find out if it's a real certification, okay.

So I'm just going to go away from this PowerPoint.

MR. FIELDS: Just a point here that I think is important is: what is the standard? And we talking about all these different standards; this company's doing this and this company's doing that. The FTC, I heard it mentioned in a prior panel, has issued green guidelines to help marketers, who are making environmental claims, make such claims and not make them in a deceptive or unfair manner. They didn't come up with a definition of sustainability and their research and the public commenting on the rules, and these guidelines were amended last year. There's no definition for sustainability because, what does that mean?

I think everybody seems to want to do good and be good, but what are the standards? And then, you'll see certain companies, as we're talking, are creating their own standards. The big retailers who have a lot of leverage over the suppliers—Walmart and Kmart and Nike—are creating their own standards in their own supply chain and either enforcing them or not because there is no law on that here, so I think that's an important point to raise.

MR. TREXLER: It's very important for you guys as well, in terms of whether you're in practice or going to be in practice, let's think a little bit about the green guides and also about industry self-regulation. With respect to the green guides, Peter's exactly right. We have so many competing standards out there in terms of what is sustainable, what is organic, what is eco-friendly, what is green, and so the government's taking the position, and I think wisely so, that it cannot necessarily regulate that one thing is eco-friendly and so on and so forth.

But it can say if you're going to make a claim, you better be able to back it up, or you better explain exactly why you're making

this particular claim. Do you have empirical evidence? Can you explain, exactly, what it is you're saying is ecologically friendly about your ecologically friendly item? So those two, they just shoot right through the green guides, and again and again, in a number of practical applications.

In the industry of self-regulation, one of the interesting things we're seeing right now is a standardization of standards. That is to say, you may have heard about the Sustainable Apparel Coalition and the HIG index. Part of the HIG index, if you get a copy of the spreadsheets, sort of how it's done, it's extremely granular: row after row and row on the spreadsheet are things you have to check. But on the consumer end, what they're going to see eventually is a number and so it's something that is granular in terms of inspection.

But it also has this very easy signaling value to the consumer, and they'll be able to compare how they rate on this particular scale, and they make a decision are they willing to pay more for something that's say that is higher rated. And I think those two things—if you look at Sustainable Apparel Coalition and the HIG index—you'll see where things are going, and also look at the principle of the green guide, you'll get a good handle on where the sort eco-regulation is going with the governmental and self-regulating standard.

MS. KOLSUN: Outside of the U.S. which countries are getting this and doing it right? I mean, who should we turn to for guidance?

MR. TREXLER: My first thought is to say in the United Kingdom you cannot sneeze without somebody coming and making sure you adhere to some sort of governor, your handkerchief, but here's some sort of government standard. I mean I know, practically speaking, they're somewhat obsessed with social entrepreneurship and standards, but other folks may have some other standards.

MS. KALIVAS: Germany, Switzerland.

MR. FIELDS: Well, the EU in general has a much more stringent regime in the environmental law area, and with respect to the manufacturing process, and in the advertising area. So as a general proposition, it is much more stringent over there. So if much more stringent means better, then, they're better.

MS. NIXON: But it's interesting that Kitty Dickerson talks about shifts and standards of production for apparel production, apparel sourcing. So we see these more stringent regulations to

help us, as a society, be more mindful about the environment in countries where production is no longer happening; in countries that became developed world countries after a history of going through an Industrial Revolution and having an agricultural economy and an industrial economy.

And so, we can't miss that piece of it. I mean, it wasn't too long ago in the United States we were an agricultural based economy. Cotton was the economic generator for the wealth of this country and slavery, so now we kind of stand up high and look amiss and look scolding on these other countries that, in fact, are doing what we once did. And what we did in order to get to the place of wealth where we are as a nation.

So it's a little easier to start setting up these policies of being socially minded when you don't have the same economic drivers to grow your economy.

MS. KOLSUN: And this is certainly an issue that's come up in the human rights compliance realm, which is: if we shut down that factory because it doesn't meet our standards, look at the people we're putting out of business. It's certainly something that's been discussed widely. Let me ask you all, how would you advise smaller companies to kind of start a sustainability program? I mean, we recently became part of a multi-billion dollar public company, so I was thrust on us with a consultant to help us.

So it made it a lot easier. Here's the list of what you have to do. Let's pick seven retail stores out of one hundred and answer these questions, and let's start there. But for a smaller company, a privately held seventy five million dollar company, where does one begin?

MS. KALIVAS: I think the best place to begin is to look at a standard, okay, because all these standards are available publicly. You can go to the GOTS website and find the standard. Just because somebody might not be certified, doesn't mean that they can't follow.

You'll find a lot of organic farmers who may not be NOP certified but follow all the NOP rules, and it's the same thing because you've got social criteria. You've got different rules as far as fair wages, child labor—and all of these things are covered in there, and environmental policies and goals and you have to relook at them every year because that's the important thing.

You get companies to say, okay, I'm going to do this. I'm doing good, I'm recycling. Well, okay, so you're recycling. What are you going to do next year? And so you set goals to begin to

look at how can I improve.

MR. TREXLER: Yeah, if I'm working with a small company—and I have to apologize, but this is coming to one of the things I've done in my career, which is teach entrepreneurship classes for business schools, so this is coming from talking to people who are running small businesses in their day. I've been trying to help them get these things started small clothing businesses, dry cleaning businesses, that sort of thing.

And you're talking to somebody, it's very easy for you to get a client. It is very easy for the client to get lost in the details, so I've found that there are three questions that can be very helpful to somebody who is just starting out and for whom all of this is very confusing. And one is: you have to ask yourself if you're an entrepreneur and you're starting a brand—and branding is key—who am I? What do I want? What am I comfortable with?

This product is an extension of you, so what are you comfortable having that product be? What are we comfortable having that product be? And then, who are your intended customers? What they are buying when they're buying your clothing, other than just a body covering?

And so those are two key questions. A third one: what's going to blow up? In other words, is there something along the line in your supply chain and your retail and that sort of thing that could put your company out of business in a single day?

Those three questions are a very good place to start. Then, there's a lot of granularity that comes when you're developing those questions but that's a new client, a small client they can get their head around [them] pretty quickly.

MR. FIELDS: If I'm advising client, the first thing I say is: you don't have to do anything, you're not required to do this. But if you want to do it, and you do impose standards on yourself, and you make those standards public, you better be careful and follow them. If you imposed standards and you impose them on your supply chain or whatever aspect of your business, people are going to hold you to that in the court of public opinion and the FTC.

If you're making claims that you're manufacturing in a certain way, or you're distributing in a certain way, and you don't do it, there's where the legal liability comes in.

MS. NIXON: I advise them to start with your user and to start with the market—and that really should be constant the feedback loop. Start with a user and your identified customer and everything else will follow.

There's a great principle something called the Golden Circle, which is the principle to start with. Why do you exist as a business? And generally, businesses start with the what-and-who-they-are, the functional aspect, but if it's truly values driven, that becomes a differentiator. And to be able to have a business model based on locally sourced, possibly going to local funded business plans, then that's something that really differentiates them.

MS. KALIVAS: I also think to also consider how you want to be perceived. What do you want the world to think about your company?

MS. KOLSUN: And selling this kind of thing, management is really a combination of doing the right thing and the risk of one bad act ruining your business, and we've seen this over and over in the press cycle. Any questions?

MR. WEISMAN: I mean one thing that we're finding is: in the U.S., the laws in California are equally stringent and, in some ways, more stringent than Europe. So part of it is: where you want to do business? And if you're somebody who's retailing throughout the United States, whether you're talking about Prop 65, which probably you should. There are other laws that tell you "who makes it."

MS. KOLSUN: Plastics bags, I have a whole chart of plastic bag—

MR. WEISMAN: [Interposing] We're talking about skin and selling very exotic skins, and even how you acquire information in terms of whether it's online information or information while you're purchasing. So the issue, then, is the lowest common denominator.

For a little company, it might be difficult, but it's sort of what you were saying Barbara . . . about just selling locally and having to comply with New York law. But if you have an international or a national company, well, then the facts become more complicated. So it is a big issue and I think that's the other aspect that Jeff was talking about, you want to be ahead of the curve with that. It's not just conservative style but also, in terms of branding and marketing, so sustainability, organic those are buzz words that people are willing to pay more for.

So Whole Foods, it is can of pop, that's club value. By the way, H&M is going for the sustainability, so they're getting the picture.

MR. TREXLER: And they've come under a lot of pressure recently over the chemicals used that sort of thing.

MR. WEISMAN: Some of the bamboo a lot of the U.S. companies use: you just have to see it.

MS. KALIVAS: H&M was also a part of the Better Cotton Initiative too, which if you can't do organic, you can do integrated pest management. So again, it's baby steps. And you do the best that you can do.

MS. KOLSUN: Are there questions? Great, thank you.

MR. FIELDS: I have a question for Georgia. When did you implement, in your curriculum, creating an eco-friendly product because—

MS. KALIVAS: [Interposing] 2007.

MR. FIELDS: —that's interesting, so what prompted your school to do that?

MS. KALIVAS: Well, I had just finished my masters and I did my thesis on sustainability in the textile industry, and basically, I just learned too much. And what happened was I had to share with everybody, including my students.

And I thought it was a great project for them to do because, instead of me spouting out facts to them, it forced them to start to sourcing and to start looking and going outside, going on the Internet, asking or calling companies to see what they could provide for them. And what I found, the feedback I got from that also was I've had students contact me two years later, they're in a foreign country, and they want to start doing their own branding.

MR. FIELDS: [Interposing] in 2007 you could make a generalization that the students said: why are we doing this? Why does it matter? Whereas, today they would say: yeah, I want to see that in my fashion class.

MS. KALIVAS: Actually, they were still as excited in 2007 as they were today, which was really nice, and I think part of it, in 2007, was that it was something for them to do.

MR. FIELDS: Um-hum.

MR. TREXLER: Yeah, students are easy marks.

MS. KALIVAS: Yeah.

[Laughter]

MS. KALIVAS: So, yeah, in that sense, they enjoyed the fact that they could do something that wasn't just having to put together a garment.

Okay, let's go back. Okay, let's see if this will work now, thank you, Jessica.

[Movie playing]

MS. KOLSUN: Wow, that wasn't fun.

MR. TREXLER: While she's working that through, I want to make an important point. We were talking about the students, one of the things that you see in the do-gooder realm for years and years is the students come to you with a lot of enthusiasm and it's very easy to get caught up in that when you're teaching. And it's fair to say, okay, well, they're so enthusiastic about doing good, Whitney Houston Children Are Our Future, flowers, sunshine, everything like that.

But I think what important is what Georgia's doing, what everybody's doing here, is why you're in school, to get the skills, so that you can perpetuate that after you've graduated. I want to build on something that was talked about earlier this morning. In fashion law, there's this temptation to see it all about air kisses and gushing over styles and that sort of thing, but as an attorney and as a consultant, you need to know it as well as or better than the designers themselves. So you can actually take this sustainability interest of yours—and of theirs—and make it sustainable for the long term.

MS. KOLSUN: Great, thanks.

[Movie playing]

MS. KALIVAS: And you can actually order that film if you want it. It's about a seventeen-minute film. You just saw the real fast version of it.

There was something that you mentioned before about the different standards. There are so many standards. This particular standard was meant to be the standard to end all standards, and it was for about a year until some other companies started to come out with more standards.

The thing that this standard has though that the other ones don't is the social and environmental criteria, okay. Some of them are just, okay, it's organic, and we're proving it's organic all the way through, and the fact that you couldn't plant organic cotton with conventional cotton. And you can't use any GMO fibers with this.

MS. KOLSUN: Thank you.

MS. KALIVAS: You're welcome.

MS. KOLSUN: I think if there are no more questions, our time is up. I want to thank the panel for their time. It was a great panel. And thank you all for coming.

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