

Fashion Law, Italian Style - Symposium

Towards an Italian Style of Fashion Law

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The articles in this Symposium critically examine specific instances of the relationship between law and fashion in an Italian perspective. Entitled ‘Fashion Law, Italian Style’ in English, in Italian we might translate the Symposium to ‘*Il diritto della moda, uno stile italiano*’. The importance of an Italian Style to legal disciplines of course is not new: more than fifty years ago, John Henry Merryman introduced the successful idea of an ‘Italian Style’ to comparative law in general.¹ As a word in English, fashion derives from the Latin *faction-*, *factio*, denoting an act of making, and from *facere*, to make.² In Italian, however, *moda* derives from another Latin word, *mōdu(m)* meaning ‘*modo, maniera*’, a way, a manner.³ Today fashion and *moda* are equated with each other in our contemporary lexicon. They are defined similarly as ‘the make or form of something; a distinctive or peculiar and often habitual manner or way; a prevailing custom, usage, or style’⁴ and ‘a custom which, becoming the prevailing taste, imposes itself on habits, ways of living, and forms of dress’⁵ respectively. But the etymological differences between the roots of fashion in an Anglo-American setting and the roots of *moda* in an Italian setting highlight the added value which a uniquely Italian perspective can provide for the

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¹ J.H. Merryman, ‘The Italian Style I: Doctrine’ 18 *Stanford Law Review*, 39 (1965); Id, ‘The Italian Style II: Law’ 18 *Stanford Law Review*, 396 (1966); Id, ‘The Italian Style III: Interpretation’ 18 *Stanford Law Review*, 583 (1966). The articles can also be found in M. Cappelletti et al, *The Italian Legal System: An Introduction* (Stanford: Stanford University Press, 1967).

² ‘Fashion’ *The Merriam-Webster Dictionary*, available at <https://tinyurl.com/yz1135> (last visited 20 September 2023).

³ ‘Moda’ *Garzanti Linguistica*, available at <https://tinyurl.com/yz5686> (last visited 20 September 2023).

⁴ n 2 above.

⁵ n 3 above.

relationship between fashion and the law. As a concept related to specific manners that would become societal codes and, later, encoded in laws, *moda* reveals an Italian identity of fashion rooted in an intimate connection between ways of dressing and societal roles and rules. As Eugenia Paulicelli has written,

‘Italy is the place where the first attempts are made to codify dress and habits (...) the tensional relationship that emerges with the convergence of *la moda* and *il modo* in early modern Italy creates the condition for the formation of fashion as a social institution of modernity’.⁶

In today’s economy of Made in Italy,⁷ we might even say that following the laws of fashion, innovating them, or even contesting them in certain cases, is a definitive part of the Italian identity. Examples of Italian designers and brands which have been and continue to be at the forefront of creativity in fashion while creating marketable products that meet functional needs and the aesthetic preferences of consumers support this. As just one example, the Italian fashion designer Alessandro Michele, Gucci’s former Creative Director, challenged our conception of self and individual identity with his *Twinsburg* show while incorporating Gucci house codes into shoes, bags, and clothing.⁸ With Italian innovation in fashion, and the brand and cultural codes it creates, comes the question of the role of law. How should law best support Italian innovation in the fashion industry? How should Italian law recognize the links between craftsmanship, tradition, and contemporary production in Italy? Is there a difference between craftsmanship and commerce as applied to fashion? If there is, should different standards of rules apply when fashion uses the images of Italian cultural property in its collections or as part of advertising campaigns? What happens when the Italian notion of family shapes the Italian fashion industry? How do we understand Italian fashion heritage between family history, brand heritage, and cultural heritage? Is cultural heritage in fashion related to sustainability policies or are there already unique Made in Italy practices that indicate sustainable practices embedded in fashion produced on the Italian territory? Are there uniquely Italian answers to these questions, or can we find common functions and issues across legal systems?

This last question brings the importance of comparative law to the fore when thinking of Italian fashion in the context of fashion as a global industry. As a comparative legal scholar myself, the benefits of entering into dialogue with other legal systems beyond the Italian one are readily apparent.⁹ As a comparative

⁶ E. Paulicelli, *Writing Fashion in Early Modern Italy: From Sprezzatura to Satire* (Farnham: Ashgate, 2014), 4-6.

⁷ E. Paulicelli, ‘Fashion: The Cultural Economy of *Made in Italy*’ 6(2) *Fashion Practice*, 155 (2015).

⁸ T. Blanks, ‘A Twinly Tour-de-Force at Gucci’ *The Business of Fashion*, available at <https://tinyurl.com/cy9855> (last visited 20 September 2023).

⁹ See, for example, V. Barsotti and V. Varano, *La tradizione giuridica occidentale: Testo e*

constitutional law scholar I have observed how the Italian Constitution's answers to particular questions differ from answers in other jurisdictions, reflecting specific cultural mores and values.¹⁰ And this reflection of cultural mores and values naturally leads to a consideration of culture proper - including art and fashion - as part of Italy's constitutional identity. According to Art 9 of the Italian Constitution,

‘(t)he Republic promotes the development of culture and of scientific and technical research. It safeguards natural landscape and the historical and artistic heritage of the Nation’.¹¹

Without a corollary in the United States Constitution, these public obligations and duties beg the question of how to promote the development of culture while safeguarding it at the same time. Contemporary cases in which Italian museums contest fashion designers' and fashion brands' use of Italian cultural properties reveal the timeliness of such a tension, and the difficulty of American law to, at times, even conceive of the issue at hand.¹² Gathering experts and students to entertain the specific Italianness of Fashion Law in these, and other similar, circumstances, has been a hallmark of the *corso di perfezionamento* which I direct at the University of Florence.¹³ And it is here that we return to the purpose of this Symposium, and its added value for an academic community of Italian legal scholars, and beyond.

Founded by Susan Scafidi at Fordham Law School in New York City in the early 21st century¹⁴, the field of Fashion Law encompasses intellectual property,

materiali per un confronto civil law common law (Torino: Giappichelli, 7th ed, 2021).

¹⁰ V. Barsotti et al, *Italian Constitutional Justice in Global Context* (Oxford: Oxford University Press, 2015).

¹¹ Costituzione della Repubblica Italiana, trans. Senato della Repubblica, available at <https://tinyurl.com/26s4evfn>.

¹² As one example, ‘Gli Uffizi fanno causa a Jean Paul Gaultier per l’immagine della Venere sui vestiti’ *Finistre sull’Arte*, available at <https://tinyurl.com/ty6576> (last visited 20 September 2023).

¹³ ‘Fashion Law. Diritto e cultura nella filiera della moda’ *Università degli Studi di Firenze*, available at <https://tinyurl.com/rs3454> (last visited 20 September 2023).

¹⁴ See S. Scafidi, ‘Intellectual Property and Fashion Design’, in P.K. Yu ed, *Intellectual Property and Information Wealth: Issues and Practices in the Digital Age* (Westport: Praeger Publishers, 2007), I, 116-117; S. Scafidi, ‘Fiat Fashion Law! The Launch of a Label – And a New Branch of Law’, in M. Silvanic ed, *Navigating Fashion Law: Leading Lawyers on Exploring the Trends, Cases, and Strategies of Fashion Law* (Boston: Aspatore, 2012), 8 (‘As long as there have been fashion houses- and almost as long as there have been people making clothes- there have been occasions to consult lawyers’). Often cited concurrently to Scafidi’s work is that of Guillermo Jiménez, who, with Barbara Kolsun, published the first edition of *Fashion Law: A Guide for Designers, Fashion Executives, and Attorneys* (New York: Fairchild Books, 2010). At the same time as Fashion Law was founded and took up the fight for increased copyright protection for American fashion designers, other legal scholarship explored the paradoxical benefit of copying to the American fashion industry, adding to the richness of an American style of Fashion Law. See K. Raustiala and C. Sprigman, ‘The Piracy Paradox: Innovation and Intellectual Property in Fashion Design’ 92 *Virginia Law Review*, 1687 (2006).

business and finance, international trade and government regulation, and consumer culture and civil rights.¹⁵ In her early conceptions of the field, Scafidi defined the discipline as ‘the field that embraces the legal substance of style, including the issues that may arise throughout the life of a garment, starting with the designer’s original idea and continuing all the way to the consumer’s closet’.¹⁶ Translated onto the Italian territory, the field of Fashion Law has inspired publications contemporaneous to Scafidi’s early work¹⁷ and more recent publications, such as Silvia Segnalini’s *Le leggi della moda*, Angelo Maietta’s *Il diritto della moda*,¹⁸ and Barbara Pozzo’s edited volume *Fashion Law: Le problematiche giuridiche della filiera della moda*¹⁹ as well as educational offerings²⁰ beyond the University of Florence. Within the spirit of this translation, a deeper consideration of what Italian identity can bring to Fashion Law is also needed. The Italian territory presents a historical appreciation for the relationship between manners and dress, society, and the law. It also presents a unique context for the business of fashion today: with a rich history of artisanship and a vast cultural heritage, dispersed capitals of fashion, and a strong tradition of small, medium enterprises, laws applicable to fashion in Italy naturally take account of aspects unique to the Italian identity. These aspects may include the need to facilitate the running of a small business that makes fashion design objects; the need to support and provide incentives to train artisans; and the recognition of the importance of empowering local organizations and governments to capitalize on the strengths of regional expertise. Italian fashion is also entering into dialogue with Italy’s rich cultural heritage in a way that is, perhaps, unprecedented, especially thanks to digitization and the role of technology. Italian law, we might go so far as to say, can provide as yet undervalued legal tools for Fashion Law to answer the present and future needs and initiatives of designers, brands, consumers, and communities.

¹⁵ See S. Scafidi, ‘Fiat Fashion Law!’ n 14 above; M.K. Brewer, ‘Fashion Law: More than Wigs, Gowns, and Intellectual Property’ 54 *San Diego Law Review*, 739, 742 (2017); ‘M.S.L. in Fashion Law’ *Fordham University School of Law*, available at <https://tinyurl.com/fl8787> (last visited 20 September 2023).

¹⁶ ‘So What Is Fashion Law?’ *Counterfeit Chic*, available at <https://tinyurl.com/cr88j42e>.

¹⁷ M.G. Antoci and A. Orciani, *Il diritto e la moda: Aspetti legali essenziali per operatori del settore* (Milano: FrancoAngeli, 2006).

¹⁸ S. Segnalini, *Le leggi della moda: Guida al diritto per il mondo della moda* (Milano: Skira, 2012); A. Maietta, *Il diritto della moda* (Torino: Giappichelli, 2018).

¹⁹ B. Pozzo and V. Jacometti, *Fashion Law: Le problematiche giuridiche della filiera della moda* (Milano: Giuffrè, 2017). See also B. Pozzo, ‘“Bello e Ben Fatto” —The Protection of Fashion “Made in Italy”’ 14 *Florida International University Law Review*, 545 (2021).

²⁰ Fashion Law courses are currently offered at Università degli Studi dell’Insubria, the Università Statale di Milano, and most recently Libera Università Internazionale degli Studi Sociali (LUISS) in Rome has begun a Masters in Fashion Law. The course at the *Università degli Studi dell’Insubria* is also mentioned in M.K. Brewer, n 15 above, 747, fn 55. See also ‘Corso di perfezionamento in Fashion Law - Le problematiche giuridiche della filiera della moda’ *Università degli Studi dell’Insubria*, available at <https://tinyurl.com/bdfy2fza> (last visited 20 September 2023); ‘The new master’s program in Fashion Law’ *LUISS*, available at <https://tinyurl.com/349prbyd> (last visited 20 September 2023).

In this Symposium, the authors modestly take up the challenge of identifying the ‘Italian Style’ of Fashion Law by exploring three areas in which Italian law might add the most value to Fashion Law as a field: sustainability practices that build on connections to historic textile practices in Italy; the Italian tradition of running fashion business as family businesses; the Italian penchant for founding extensive archives of fashion design objects that extend between a brand and the aforementioned fashion families; and how fashion designs’ uses of images of Italian cultural properties exist in a uniquely Italian space between copyright and cultural heritage law.

In *Sustainable Fashion...Italian Style!* Barbara Pozzo begins the Symposium by addressing a hot topic in the fashion industry: sustainability. Acknowledging the work that has been done to incentivize sustainable development at the supranational level, Pozzo presents the European Union (EU) framework for sustainable development and the relevant EU legislation for the textile and fashion industries. Highlighting registration and labeling norms, Pozzo also highlights the ethical codes of conducts that have been implemented by brands, luxury conglomerates, and industry associations, including the *Camera Nazionale della Moda*. Despite the laws currently in place and other encouraging steps, Pozzo highlights the continued prevalence of greenwashing and the importance of viewing sustainability policies from a three hundred and sixty degree angle, emphasizing how aspects from the design of a product to its presentation in marketing campaigns should be infused with independently variable information. Sustainable and circular textiles that are regulated provide an opportunity to put sustainability goals into practice, including through Ecodesign. With a history of creating textiles through processes that are closely linked to historic practices, traditions, and the environmental benefits of a specific territory, Italian fashion brands are offering, as Pozzo presents, innovative sustainable initiatives that can benefit the global fashion industry. Pozzo details a recent Italian draft decree that will require, in part, individual and collective management systems to manage recycling and recovery of waste from textile products and a national textile waste collection network, in addition to designing products that can be reused and repaired. The city of Como in Italy already embodies many of the best practices of sustainability, and Pozzo points out how, in the context of the continued importance of the traditional silk production model in the city’s economy, the fashion brands in Como have instituted a number of important initiatives and collaborations, from giving silk a second life to using yarn made from plastic bottles. Pozzo’s analysis concludes by offering an overview of a new draft law that valorizes, promotes, and protects *Made in Italy* products as part of a tradition of natural beauty, cultural heritage, and Italy’s cultural roots. And it is perhaps this last point that is most inspiring for the future of *Made in Italy* and an Italian style of Fashion Law: embracing the legacy of traditions and historic craftsmanship and building on it to meet the current environmental impact of the fashion

industry and our communities' wider environmental needs is perhaps the most sustainable, and inspiring, Italian style after all.

Just as Pozzo's contribution highlights the pressing need to address what sustainability truly means in the fashion industry (offering an inspiring Italian answer in the process) so *The Reproduction of Cultural Heritage and Artworks in Fashion* by Elena Varese, Carolina Battistella, and Valentina Mazza addresses a pressing issue at the frontier of Italian fashion's inclusion in Italy's cultural heritage: the relationship between the intangible facets of Italy's celebrated cultural properties and intangible fashion designs. In their article, Varese et al present a uniquely Italian answer to the prevalence of images of Italian cultural properties as part of fashion design inspiration, fashion designs themselves, and fashion advertising campaigns: the regulation of these images for reasons of public interest beyond the expiration of copyright law. Outlining the nuances of Italian copyright law and Italian cultural heritage law, and the places where these two legal regimes overlap and at times seem to replace each other, Varese et al present the Italian style of protecting cultural properties, from movable works of art to immovable buildings, and outline the difficulties of interpretation it poses, especially for identifying the scope of commercial purposes. Expanding on recent cases involving Michelangelo's David and Da Vinci's Vitruvian Man, Varese et al also explore adjacent rights to Italian copyright law and Italian cultural heritage law that can put a proverbial stick in the wheel of the promotion of fashion products, from tangible property rights to unfair competition and publicity rights. Animating Varese et al's analysis is the question of who owns Italian cultural heritage, including fashion. The commercial exploitation of cultural goods in Italy can quickly become complicated when the Italian State, brands, and the public compete for control over cultural messages, meanings, and their accompanying market share. While the example of laws regulating the reproductions of Italian cultural property that would otherwise be in the public domain is perhaps an unsatisfying Italian style, these laws also provide unique insight into the multitude of stakeholders that care about fashion when it cross-pollinates with cultural heritage and, as a result, offer future food for thought for Fashion Law, United States (US) style. The authors do end on an uplifting note by outlining how digital strategies and a potential embrace of non-fungible tokens (NFTs) and other digital cultural heritage by the Italian State may still provide a uniquely Italian style answer for fashion brands engaged in digital strategies and for fashion initiatives that include art and cultural heritage.

Varese et al's contribution brings us to the cultural heritage and fashion path uniquely present in the Italian fashion landscape, and the last two contributions of the Symposium embrace this path with Italian gusto. In *Heritage-Mashing and the Activated Archive: A Case Study of the Emilio Pucci Heritage Hub under Cultural Property Law and Copyright* Lucrezia Palandri and Felicia Caponigri take the notion of the cultural value of Italian fashion and its links with the law to

a logical conclusion: the creation of a fashion archive and its use beyond a fashion business setting. A common asset for an Italian heritage brand, the archive is typically either fully owned by a company as a business asset or contained within a separate foundation with not-for-profit and educational ends. At the same time, the legal status of the archive may be more complex, existing in the middle of this ownership spectrum. Family fashion firms are sold, and family members may distance themselves from fashion as a commercial product, coming to terms with their fashion heritage as a patrimony beyond the fashion industry. Coining a new term, ‘activated archive’, Palandri and Caponigri use the Pucci Archive and its re-invention as the Emilio Pucci Heritage Hub by Laudomia Pucci as a case study. Defining the ‘activated archive’ as a fashion heritage institute outside of a fashion business and outside of museum-like confines, Palandri and Caponigri explore how such an archive fits within Italian cultural property law. In doing so, they explore the benefits and drawbacks of the Italian cultural property law regime as applied to fashion archives. Ultimately, they conclude that an ‘activated archive’ is a poor fit for archives of cultural interest under the traditional terms of Italian cultural property law. The authors therefore explore other ways to recognize the cultural interest in an ‘activated fashion archive’ without compromising the space of de-regulation in which it may thrive on the Italian territory. Along with ‘activated archive’, Palandri and Caponigri also propose the term ‘heritage-mashing’. While ‘activated archive’ refers to the archive as a container, ‘heritage-mashing’ refers to the archive’s contents. The authors define ‘heritage-mashing’ as an ‘inspirational (process of) creation’ in which ‘older intellectual property rights and relatively newer intellectual property rights interact over time’. For activated archives and the brands to which they are connected, ‘heritage-mashing’ indicates a struggle to meet contemporary audiences’ and consumers’ desires for contemporary fashions while staying true to original meaning and aesthetics that are preserved and valorized in an archive.

Palandri and Caponigri’s contribution implies a uniquely Italian struggle between family and fashion in the business context. Whereas *Heritage-Mashing and the Activated Archive* explores this tension after a separation between family members and their family fashion brand, *Fashion Law and the Family Fashion Firm: Transatlantic Lessons from Multinational Italian Brands* by Jake Landreth and Felicia Caponigri explores this struggle during a family fashion firm’s heyday of business operations. Spotlighting ‘the unique ecosystem of multinational family fashion brands in Italy and the role that the law plays in preserving, frustrating, enabling and, at times, breaking the ecosystem where these brands operate as firms’, Landreth and Caponigri set up a triangle of family, fashion, and business grounded by brand and cultural heritage. The authors observe how the business activities of a family fashion firm can be tied to the needs of a specific family and the trends and styles of the fashion industry. While the links between family, fashion, and business often present added value for businesses, these same links

may also present challenges. Landreth and Caponigri detail how at the same time as family members produce new designs, maintain a firm's connection to its founder, and offer loyal stewardship, family members might put themselves in competition with the firm, and founder's descendants might fundamentally disagree with design directions. Comparing US and Italian business law, Landreth and Caponigri explore how considering the best interests of a corporation under the US duty of care allows fiduciaries in closely held firms to prioritize what is best for their business. In Italy, however, the authors argue that a more express consideration of directors' expertise and the actions of similarly situated companies leave room for directors to compare their knowledge to that of other directors of companies in the same business sector. Similarly, the Italian duty of loyalty's requirement that directors share their reasoning offers a foundation for increased considerations of indirect conflicts and the wider interests in a family fashion firm ecosystem. In contexts like the Italian one where culture and industry have historically been strongly connected, the authors identify an Italian style of fiduciary law within Fashion Law which might particularly benefit the family fashion firm. Using the examples of Ferragamo, Gucci, the luxury fabric producer Ratti, and Prada as case studies interspersed in their analysis, Landreth and Caponigri also explore the creative Italian exits available to family members reluctant to work in the family fashion firm, including foundations and benefit corporations.