

Fashion Law and the Family Fashion Firm: Transatlantic Lessons from Multinational Italian Brands

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Abstract

The business of fashion on the Italian territory is tied to a specific triangular ecosystem: fashion, family, and business form the three main points of firms' activities in Italy, with brand heritage and cultural heritage at their center. These points of activity raise tensions between family and fashion, family and business, business and fashion or family. What is the best role for law within an ecosystem of family, fashion, and business grounded by brand and cultural heritage? What legal rules might uniquely allow this ecosystem to thrive? Exploring comparatively how Italian law defines the duty of care and the duty of loyalty, and the institutions which work with corporations to promote fashion firms and family narratives as cultural heritage, the authors make some observations regarding how legal rules that apply to corporations and the duties of their directors, members, and shareholders seem to weigh one part of the family/fashion/ business triangle over another. They propose that the Italian duty of care rule leaves room for parallel activities, like fashion archiving and cultural engagement, that prioritize the family and fashion corners of a firm, and a family fashion firm's brand heritage as part of a wider cultural heritage. A broader understanding of loyalty might allow family fashion firms to consider unexpected fashion industry collaborations and new initiatives within the family that may at first seem adverse, supporting compelling firm futures instead of infighting or family drama. Lastly, the authors showcase the important role foundations play for Italian family fashion firms alongside more traditional corporate activities, offering an inspiring model for exiting fashion family firms and future uses of fashion heritage connected to family business narratives for a transatlantic audience.

I. Introduction

Fashion brands in Italy have sparked the American imagination since Italian fashion took its place on the world stage from the Sala Bianca in Florence after World War II.¹ Early editorials spotlighting Italian accessories presented these

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¹ 'The "Birth" of Italian Fashion at the Sala Bianca in Florence', in V. Steele, *Fashion, Italian Style* (New Haven: Yale University Press, 2003), 17; L. Settembrini, 'From Haute Couture to Prêt-à-Porter' in G. Celant ed, *The Italian Metamorphosis, 1943- 1968* (New York: Solomon R.

post-war products in the context of Italian craftsmanship and heritage.² Far from only an American perception, founders and managers of fashion brands in Italy have grounded their work within a continuous tradition, at the same time as they embrace innovation.³ The foundation of Italian craftsmanship and know-how on which the success of Italian fashion brands is based often joins another Italian cultural phenomenon: the family. The industry of Italian fashion is characterized by the presence of mid-sized manufacturing companies closely connected to specific geographic areas on the Italian territory.⁴ Today, with the passage of time, these mid-sized manufacturing companies and the small, medium enterprises or closely held corporations into which they have often evolved are managed by family members and even by second and/or third generations.⁵ The business of fashion

Guggenheim Museum, 1994), 485; G. Vergani, *La Renaissance de la Mode Italienne, Florence, La Sala Bianca, 1952- 1973* (Florence: Electa, 1993).

² 'The Italian School' 108 *Vogue* 9, November 15, 166-167 (1946). The text accompanying photographs of a Gucci bag and Ferragamo in front of the Ponte Vecchio noted 'This is what Italy makes, and what it has made for centuries: shoes, bags, perfections in leather. Interrupted by war, Italian leather makers have returned to their craft- and from the celebrated school of shoemaking that gave us the wedge sole, the thong-sandal, come these handmade leather accessories.'

³ Salvatore Ferragamo describes his reliance on Italian artisans when explaining his revised vision for 'Ferragamo Originals' upon his return to Italy in 1927 after experimenting with industrial manufacturers in the US. S. Ferragamo, *Il Calzolaio dei Sogni* (Milan: Skira, 3rd ed, 2010), 94-98. Guccio Gucci's early luggage designs built on the leatherwork and skill of Florentine craftsmen. S.G. Forden, *House of Gucci* (New York: Harper Collins, 2001), 11, 14. An official publication of the Gucci corporation while under the creative direction of Frida Giannini noted, '[Guccio Gucci's] idea was simple: to create a business founded on the unsurpassed artisanal skills of Florentine workshops and the elegance and refinement of Britain associated at the time.' See '1921', in 'Forever Now', in F. Giannini et al eds, *Gucci: The Making Of* (New York: Rizzoli, 2010), 10. In some ways this association with tradition is part of an even longer Italian tradition outside of fashion proper. As Luca Cottini has described, the complementary relationship between industrial objects and traditional craftsmanship and art in Italy has been present since the 1880s when objects began to be newly aestheticized by authors such as Serao and d'Annunzio and as products came to represent Italian style at Universal Expositions. L. Cottini, *The Art of Objects* (Toronto: University of Toronto Press, 2018), 14, 18-24.

⁴ E. Corbellini and S. Saviolo, *Managing Fashion and Luxury Companies* (Milano: Rizzoli, 2009), 49-55.

⁵ Salvatore Ferragamo's son Leonardo Ferragamo is currently Chairman of the Salvatore Ferragamo SpA Board, while his grandson, James Ferragamo, is a Director. See 'Board of Directors' available at <https://tinyurl.com/mr3kfpnb> (last visited 20 September 2023). Prada, in which Prada Holding SpA holds 81% ownership, has the founder Mario Prada's granddaughter, Miuccia Prada Bianchi, her husband Patrizio Bertelli and their son, Lorenzo Bertelli as Executive Directors as of this writing. R. Williams, 'Patrizio Bertelli on Prada's Next Chapter' *The Business of Fashion*, November 18, (2021), available at <https://tinyurl.com/3fadz482> (last visited 20 September 2023). See 'Corporate Governance, Board of Directors' available at <https://tinyurl.com/3p2a3dvw> (last visited 20 September 2023). While Gianni Versace srl is as of this writing a subsidiary of Capri Holdings Ltd, with the Versace family owning a portion of shares in Capri Holdings Ltd, Donatella Versace, Gianni Versace's sister, is still Versace's Artistic Director. See Capri Holdings Ltd, 'SEC FORM 10-K', available at <https://tinyurl.com/b7mp9jnm> (last visited 20 September 2023); 'Company Profile' *Versace*, <https://tinyurl.com/mryw584t> (last visited 20 September 2023); Capri Holdings Limited Completes Acquisition of Versace, 'Press Release', *Capri Holdings Ltd.*, December 31, 2018, <https://tinyurl.com/2p8pe3ws> (last visited 20 September 2023). Giorgio

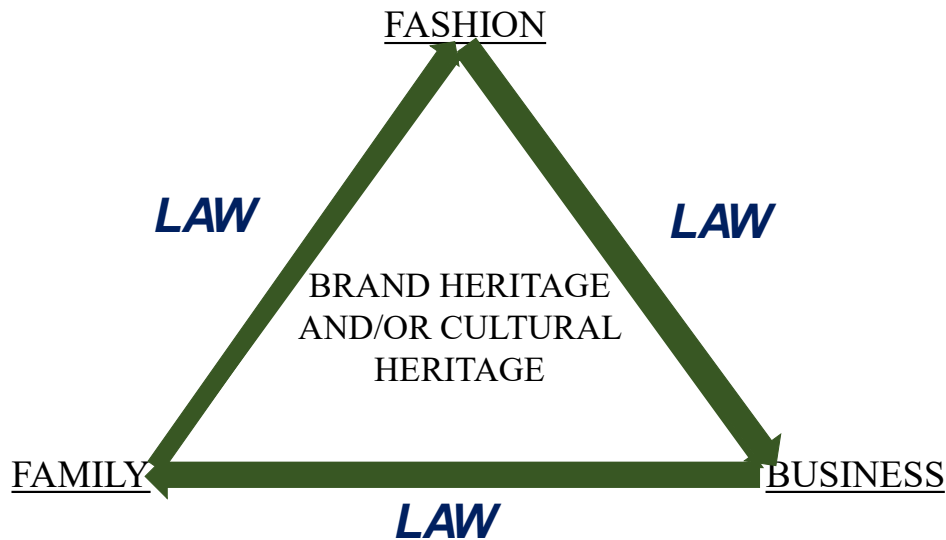
on the Italian territory seems tied to a specific triangular ecosystem.

Figure 1



Fashion, family, and business form the three main points of these firms' activities in Italy, with brand heritage and cultural heritage at their center. Legal rules and standards help to balance the equilibrium in this ecosystem. At the same time, these same legal rules and standards can also weigh in favor of one angle over another: family over fashion, family over business, fashion over family, business over fashion or family. The law also supports the brand heritage and cultural heritage at the heart of family, fashion and business. The law, and those who use the rights and obligations under it, can also lean on brand heritage and cultural heritage to fundamentally break the triangle of family, fashion, and business and the family fashion firm ecosystem.

Armani is still reported as the main shareholder of Armani SpA. The first non-family member to join the Board, Federico Marchetti, only did so in 2020 and was recently reappointed. L. Zargani, 'Federico Marchetti Reappointed to Giorgio Armani's Board' *Women's Wear Daily*, July 11, (2022), available at <https://tinyurl.com/yfmdy34y> (last visited 20 September 2023). F. Rotondi, 'Giorgio Armani Says Company's Independence Is Essential: MFF' *Bloomberg*, September 18, 2021, <https://tinyurl.com/ytmkv3je> (last visited 20 September 2023). Missoni is yet another example, with Ottavio and Rosita Missoni's daughter Angela Missoni having played a large role in the closely held company's product design and management until 2021. T. O'Connor, 'Missoni Sells Minority Stake to Private Equity Firm in €70 Million Deal' *The Business of Fashion*, June 15, 2018, <https://tinyurl.com/4e56xvp3> (last visited 20 September 2023). T. Blanks, 'Angela Missoni Exits Creative Director Role' *The Business of Fashion*, May 19, 2021, <https://tinyurl.com/4yuhdc3e> (last visited 20 September 2023).

Figure 2

As part of this Symposium on *Fashion Law, Italian Style*, our essay explores 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. In the process, we also wonder, what is the best role for law within an ecosystem of family, fashion, and business grounded by brand and cultural heritage? What legal rules might uniquely allow this ecosystem to thrive? Providing at least initial answers to these questions is timely. Ostensibly founded in New York at the turn of the 21st century,⁶ the field of Fashion Law began, despite the existence of laws applicable to fashion for centuries,⁷ with what might be characterized as a uniquely American perspective. Born at a

⁶ S. Scafidi, 'Fiat Fashion Law! The launch of a label – and a new branch of law', in A. Behr et al, *Navigating Fashion Law: Leading Lawyers on Exploring the Trends Cases, and Strategies of Fashion Law* (Boston: Thomson Reuters/Aspatore, 2012); G.C. Jimenez and B. Kolsun eds, *Fashion Law: A Guide for Designers, Fashion Executives, and Attorneys* (London: Fairchild Books, 2010); M.K. Brewer, 'Fashion Law: More than Wigs, Gowns, and Intellectual Property' 54 *San Diego Law Review*, 739, 742 (2017); J. Buchalska, 'Fashion Law: A New Approach' 7 *Queen Mary Law Journal*, Special Conference Issue 13- 26, 14-15 (Autumn 2016); S. Scafidi, 'Towards a Jurisprudence of Fashion' 29(2) *Fordham Intellectual Property Media & Entertainment Law Journal*, 429 (2019). In her work Scafidi also notes the importance of the French foray into Fashion Law before her own. J. Belhumeur, *Droit International de la Mode* (Treviso: Canova, 2000) (exploring the legal protections afforded to fashion from a comparative intellectual property perspective between France, Italy and supranational and international law with reference to fashion history, aesthetics and art; the work is an evolution of Belhumeur's PhD dissertation at the University of Geneva).

⁷ Sumptuary laws are just one example. See C. Koveski Killerby, *Sumptuary Law in Italy 1200-1500* (Oxford: Clarendon Press, 2002).

time when increased copyright protection for American fashion designers was at issue, US legal scholars have shaped Fashion Law into a field that is fundamentally defined by intellectual property questions, casting the legal rules applicable to the American fashion industry as inferior to their European counterparts⁸ or as part of a different tradition of rules for fashion altogether.⁹ We might say that the *Star Athletica* case, in all its problematic complexity, as well as the now widely recognized role of intellectual property law's negative space, are the unique contributions of the American style of Fashion Law. While Italian fashion may have had its own experiences with the evolution of the separability test¹⁰ and fashion design protection under the law, the importance of brand heritage and cultural heritage to the fashion industry in Italy seems to offer Italy's unique contribution to the field of Fashion Law.¹¹ This is especially so as fashion firms in Italy continue to leverage their brand heritage in unique ways and partner with cultural institutions in Italy in dynamic initiatives, from museums to archives, restorations and other funding models. As fashion firms in the US evaluate their connections to founders and founding families,¹² decide to use their brand heritage

⁸ As evidenced primarily by the work of Susan Scafidi and the testimony of American designers to Congress. See S. Scafidi, 'Intellectual Property and Fashion Design', in P.K. Yu ed, *Intellectual Property and Information Wealth* (Westport: Praeger, 2007); G.C. Jimenez and B. Kolsun, *Fashion Law: Cases and Materials* (Durham: Carolina Academic Press, 2016), 345-355. See also C.S. Hemphill and J. Suk Gersen, 'The Law, Culture, and Economics of Fashion' 61 *Stanford Law Review*, 1147 (2009).

⁹ As evidenced by the work of Chris Sprigman and Kal Raustiala in their trio of *Piracy Paradox* articles. See C. Sprigman and K. Raustala, 'The Piracy Paradox: Innovation and Intellectual Property in Fashion Design' 92 *Virginia Law Review*, 1687 (2006); C. Sprigman and K. Raustala, 'The Piracy Paradox Revisited' 61(5) *Stanford Law Review*, 1201, 1204, (2009); K. Raustiala and C.J. Sprigman, 'Faster Fashion: The Piracy Paradox and its Perils' 39(2) *Cardozo Arts and Entertainment Law Journal*, 535 (2021).

¹⁰ See J.H. Reichman, 'Design Protection after the Copyright Act of 1976: A Comparative View of the Emerging Interim Models' 31 *Journal Copyright Society USA*, 267 (1984) and F. Morri, 'Le Opere dell'Industrial Design tra Diritto d'Autore e Tutela come Modelli Industriali: Deve Cambiare Tutto Perché (quasi) nulla cambi?' *Rivista di Diritto Industriale*, 177 (2013).

¹¹ We do note that the French fashion industry seems to have had a lengthy relationship with fashion's heritage value. An exhibition of historic dress was staged at the 1900 Universal Exhibition. See G. Cain et al, *Exposition universelle internationale de 1900 - Musée rétrospectif des classes 85 & 86 Le Costume et ses Accessoires* (Saint-Cloud : Imprimerie Belin Frères, circa 1900). The French state also collects examples of fashion for their state collections. See J. Diderich, 'French Government to Buy Five Designer Items Every Season' *Women's Wear Daily*, April 28, (2017), available at <https://tinyurl.com/296yth3a> (last visited 20 September 2023). The first museum exhibit officially announcing fashion as part of heritage was also dedicated to Yves Saint Laurent, although held at the Metropolitan Museum of Art in 1983. S. Menkes, 'Gone Global: Fashion as Art?' *New York Times*, July 4, (2011), available at <https://tinyurl.com/3ayasmvy> (last visited 20 September 2023). At the same time as these examples show fashion heritage's relevance in France and in the US, we feel Italy's heritage contribution to the fashion industry has been undervalued and understudied, especially outside of Italy.

¹² Eileen Fisher of the eponymous US brand, has recently shared her plans to exit her company, and is contemplating her legacy as part of this move. E. Paton, 'The Queen of Slow Fashion on the Art of a Slow Exit' *New York Times*, August 13, (2022), available at <https://tinyurl.com/4denpn62> (last visited 20 September 2023). See also E. Clark, 'Will there be another Ralph, Calvin, or Donna?'

as part of their value propositions,¹³ and engage with cultural heritage sites and public administrations,¹⁴ Italian case studies may provide helpful guidance.

The essay proceeds in three parts. First, we share some context regarding our conception of closely held corporations, and how the family fashion firms we spotlight map on to what we identify as a closely held spectrum. In the second section we explore duties for family members working within the family fashion firm ecosystem and exit strategies from the family fashion firm for these same players. We compare legal rules and standards in the US and in Italy, mainly because the Italian family fashion firms we spotlight are multinational companies with a strong presence in the United States. We apply the rules to different historic and contemporary examples of the activities of family fashion firms in Italy. As part of the application, we make some observations regarding how legal rules seem to weigh one part of the family/fashion/business triangle over another, and what the legal rules' practical application might mean for the present and future family fashion firm ecosystem founded on brand heritage and cultural heritage.

II. Law and the Ecosystem of the Family Fashion Firm Between Italy and the US

Family and fashion exert unique pressures on business activities. Just as the talents of individual family members can provide ready sources of talent in-house, family dynamics can add friction to otherwise less problematic management decisions. Similarly, as an industry built on a combination of intangible, symbolic value, and the frantic production of tangible products,¹⁵ operating a business in

Women's Wear Daily, August 15, (2022), available at <https://tinyurl.com/mwfarkjk> (last visited 20 September 2023). Outside of the fashion industry proper some American cities are seeing the next generation take over the family business. A. Kreuger, 'Saving the Family Business in a Beach Town Where Money Talks' *New York Times*, August 12, (2022), available at <https://tinyurl.com/57xfu2kt> (last visited 20 September 2023).

¹³ For example, Marc Jacobs has recently launched handbags designed from iconic archival examples (the M-Archives). See <https://tinyurl.com/bdfhv9k5> (last visited 20 September 2023).

¹⁴ The most quintessential American example may be The Metropolitan Museum's continuous relationships with fashion brands as part of the Costume Institute's exhibitions. For the most recent see 'In America: A Lexicon of Fashion', available at <https://tinyurl.com/4zyayjpc> (last visited 20 September 2023). Chanel also staged a fashion show in front of the Temple of Dendur: V. Friedman, 'Chanel Has Its Own Met Gala, in a Way' *New York Times*, December 5, (2018), available at <https://tinyurl.com/ydh2ay5a> (last visited 20 September 2023). The debacle with Kim Kardashian wearing Marilyn Monroe's dress has raised the issue of how to safeguard American fashion as part of cultural heritage in museum and conservator terms. See D. Vankin, 'Conservators 'speechless' that Kim Kardashian wore Marilyn Monroe's dress to Met Gala' *Los Angeles Times*, May 3 2022, available at <https://tinyurl.com/ycuzs2f9> (last visited 20 September 2023).

¹⁵ TFL, 'There's More to the Resurgence of Logomania than Meets the Eye' *The Fashion Law*, January 19, (2018), available at <https://tinyurl.com/mnc9y5n5> (last visited 20 September 2023); B. Beebe, 'The Semiotic Analysis of Trademark Law' 51 *UCLA Law Review*, 621 (2004); O. Ahmed, 'As Branding Evolves, What's a Logo Worth?' *The Business of Fashion*, 29 July 2017, available at <https://tinyurl.com/yckun6d2> (last visited 20 September 2023) (explaining the fluidity of

the fashion industry requires responding to specific business pressures. The need to create timely trends while also being sustainable can create both profit-generating opportunities and risky ventures. While fashion firms might certainly be considered like firms in other industries, the fashion industry exists in a space between function and form, between necessity and pure luxury. While firms in the fashion industry certainly market products that serve a function (to clothe the body, hold personal possessions, keep warm, and other reasons) fashion firms are just as tied to symbolic value, to traditional knowledge, and to unique corporate universes and storytelling. Fashion firms are called to succeed by producing a hybrid product, if you will, one that is functional and yet tells a story, one that fulfills some necessary characteristics and yet is prized for its quality, its form, and other qualities over and above necessity. At the same time, they are increasingly called to provide benefits to a community beyond their own consumers, benefits that are practical (reduced carbon emissions) but also social (diversity and inclusion, support of culture and communities) and to incorporate these benefits into their very products (using different raw materials, designing for a spectrum of body shapes, and/or supporting cultural initiatives). The production of a car, the sale of bonds, or the sale of a work of art might exhibit some of these similar tensions but not, we would argue, to the extent that the entirety of these unique tensions would affect both production, management decisions and firms' day to day activities to such a holistic extent as for fashion firms.

The law already offers legal personalities for firms to enable business activity: options from the partnership to the limited liability company and the corporation. These legal personalities come with obligations and duties for those working with and for the firm as owners, managers, shareholders, and directors. The law also offers intellectual property rights and other contractual agreements as partners to business structures. Depending on the balance a founder or founder(s) wish to strike between family, fashion, and business, some legal personalities might be better than others. The involvement of various family members, attention to a specific market segment, and the role that brand heritage and cultural heritage will play in a fashion brand's value proposition also shape the handling of intellectual property and other related rights.

Family fashion firms often begin as limited liability companies with pass-through taxation and member or quota-holder management.¹⁶ Central to the

brand codes and logos, which is even more relevant today as fashion confronts the metaverse). Some designers have combatted the fast pace of fashion by looking to their archives for pieces to resell. C. DeLong, 'Are Designers Ready for the Supply Circle?' *L'Officiel USA*, 13 November 2020, available at <https://tinyurl.com/bdhf2xeu> (last visited 20 September 2023). One example of a designer who has sold reissued pieces from his archive is Raf Simons. E. Brain, 'Raf Simons Archive Redux Brings Back 25 Years Worth of Grails' *Hypebeast*, 22 January 2021, available at <https://tinyurl.com/mr2m2m59> (last visited 20 September 2023).

¹⁶ For an overview of recommended business structures for fashion brands and retail concepts, see D. Hand and B. Kolsun, *The Business and Law of Fashion and Retail* (Durham: Carolina Academic Press, 2020), 43: (noting 'the number of founders, for example, will help determine

concept of an LLC is flexibility (along with the defining feature of limited liability for multiple members). LLCs have greater freedom to define the roles of quota-holders or members, and the relationship between members and managers.¹⁷ A board of directors, in an LLC, is optional.¹⁸ LLCs can be member managed or manager managed. This flexibility can also mean that the ownership of intellectual property rights associated with the fashion the company produces and the intellectual property generated by members of a founding family can be structured flexibly. Trademark rights might, for example, be owned by the company, but copyrights might be assigned or licensed. Design service agreements as well as collaboration and influencer agreements might provide opportunities to spread the wealth and creativity of a family fashion firm without involving all family members in an LLC as members or quota-holders.¹⁹ One LLC might even enter a joint venture with another LLC, perhaps valorizing a family member's unique talents in the fashion industry outside the original company's structure.²⁰ Of course, when LLCs wish to go public or when greater formalities become more attractive, an LLC can transform into a corporation in Inc or SpA form. In the Inc and SpA model, shareholders 'own' the corporation and do not usually participate directly in the management of the corporation, as members or quota-holders may do in an LLC or srl. Rather, shareholders elect directors as both the primary agents of the corporation and of shareholders. These directors are responsible for long-term strategy of the corporation and corporate governance.²¹ In Italy shareholders usually follow the Latin model and elect both a Board of Statutory Auditors and a Board of Directors.²² Family members of a fashion firm with an Inc or SpA form

whether the business should be structured as a sole proprietorship, a partnership, a limited liability company ("LLC"), or a corporation'). Owners of LLCs are referred to as members in the US, as opposed to shareholders (ibid 47). In Italy, the term quota-holder is used in English and the term 'socio' in Italian. For a description of 'soci' and quota-holders in Italy see 'Società a responsabilità limitata' *Enciclopedia Treccani*, available at <https://tinyurl.com/38tj4pz8> (last visited 20 September 2023); A. De Nicola and M. Carone, *Italian Company Law 1. Companies Limited By Shares* (Milano: Egea, 2014), 25, 27-28.

¹⁷ A. De Nicola and M. Carone, 'Società a responsabilità limitata' n 16 above. See D. Hand and B. Kolsun, n 16 above at 47 (describing the operating agreement and the flexibility it offers in an LLC).

¹⁸ D. Hand and B. Kolsun, n 16 above, 16, 45-46, 47 (describing the different formalities between a corporation and an LLC). Under Italian law, see Art 2479 Codice Civile.

¹⁹ For a description of the nuances of licensing agreements in fashion, a breakdown of the elements of a licensing agreement (from granting the right to use to including a prescribed time period), and an outline of design service and influencer and collaboration agreements, see D. Hand and B. Kolsun, n 16 above, 585- 590.

²⁰ ibid 80-83 (describing the links between licensing and joint ventures).

²¹ ibid 45.

²² For a description of the differences between the one-tier Anglo-Saxon governance model, the two-tier German model, and the traditional Latin model as types of corporate governance models see M. Ventoruzzo et al, *Comparative Corporate Governance* (St. Paul: West Academic Publishing, 2015), 250-252. Salvatore Ferragamo, for example, has both a Board of Directors and a statutory Board of Auditors. See 'Corporate Governance, Salvatore Ferragamo, SpA', available at <https://tinyurl.com/ytmbt932> (last visited 20 September 2023).

may sit on the Board of Directors, be officers of the company appointed by the Board for day-to-day management or shareholders alone.

Today, ‘around 85%-90% of all enterprises [in Italy] are family firms’.²³ In addition, scholars have noted how theoretical separation between ownership and control in these enterprises is often blurred as Italian companies are characterized by strong ownership structures. Ownership of impactful percentages of the stock, including of up to 50%, can be concentrated in the hands of a few, whether as individuals or as a holding company with ‘faithful’ managers facilitating these shareholders’ control.²⁴ The concept of ‘closely-held’ when speaking of Italian enterprises, and of family firms, can therefore be thought of on a spectrum. At their most narrow, close corporations are defined as corporations which do not usually exceed some ‘statutory defined number of shareholders and are not public corporations’.²⁵ Some scholars have defined family-owned corporations narrowly as a subset of close corporations ‘owned by not more than four individuals or families, of whom a qualified majority want ownership to remain’, taking their definitions from statutory language.²⁶ At its most broad, closely-held corporation can mean a publicly held corporation with a majority of the stock concentrated in the hands of one shareholder or, for family firms, a holding company in which the family is the sole shareholder or in which members of the same family act with the same interests. The actions of these ‘closely-held’ corporations, understood on a spectrum, can also be shaped by family dynamics and the nature of fashion production; by family legacy; by a brand’s heritage, and family members; and by a brand’s proximity to cultural heritage.

The combination of business and family relationships leads to certain organizational characteristics and dynamics.²⁷ Key components that contribute to high performance of a traditional non-family owned business include specification of target customers and markets, geographic domain, identification of principle products or services, identification of core technologies, and other

²³ P. Agstner, ‘Designing Generation Change in Family Firms: Lessons from Italy’ 32 *European Business Law Review*, 419 (2021).

²⁴ L. Stanghellini, ‘Corporate Governance in Italy: Strong Owners, Faithful Managers. An Assessment and a Proposal for Reform’ 6(1) *Indiana International & Comparative Law Review*, 91, 135- 140 (1995).

²⁵ Cornell Law School, ‘Close Corporation’ *Legal Information Institute*, July 2022, available at <https://tinyurl.com/2sc4vbnw> (last visited 20 September 2023) (‘This number depends on the state’s business laws, but the number is usually 35 shareholders’).

²⁶ L. Sund and P. Bjuggren, ‘Family-owned, limited closed corporations and protection of ownership’ *European Journal of Law & Economics*, 275 (2007). Sund and Biuggren define a family as ‘spouses or cohabitantes, their descendants (including adopted children and officially recognized stepchildren) and siblings, as well as nephews and nieces. Ownership can be spread among many individuals in each family and the firm can still meet the definition of a family firm, as long as there are not more than four owner-families’.

²⁷ J. Cater III and A. Schwab, ‘Turnaround Strategies in Established Small Family Firms’ 11(1) *Family Business Review*, 31-50 (2008).

specifications of key elements in the company philosophy.²⁸ However these components have been shown to be different for family-owned businesses because often family-owned businesses are inflexible or more constrained in their definition of mission due to their 'loyalty to the products or markets invented by previous generations of relatives'.²⁹ For fashion firms with a strong brand heritage and brand codes, constraints to keep historically successful products are especially relevant. Consider Salvatore Ferragamo's F heel or Gucci's green-red-green stripe. Not only might these designs have acquired secondary meaning on the market, making them financially relevant intellectual properties for the firm, but second and third generations may see these designs as imbued with the creativity and expertise of their grandfathers or fathers, making decisions to break with the use of these designs in current collections fraught with financial and emotional impact. New models are more likely to come from outsiders, but family businesses usually seem to prefer inside succession, and emphasize organizational loyalty. Family business successors typically have little experience outside the company and, since new models also are more likely to come from those who have had a broad variety of personal experience, family business may or may not exhibit the innovation that characterizes high performance.³⁰ At the same time, new generations of family members can bring life into a company, pushing for new designs and making a corporation more relevant with a broader group of consumers.³¹ The presence of a 'specific family founder, spirit, family tradition, family vision, goals, and values'³² can cut both ways. Fiamma Ferragamo's design of the Vara shoe is a primary example, creating a product which has generated derivative designs and is still a financially viable model for Ferragamo.³³ Fashion trends and consumer wants can lead to new business activities and proposals which family members on boards of directors or as member managers will need

²⁸ J. Pearce and F. David, 'Corporate Mission Statements: The Bottom Line' 1(2) *Academy of Management Executive*, 109-116 (1987).

²⁹ E. Vizenetz, *Exploring the role of purpose as part of organizational identity in a family firm* (Masters Thesis - Innsbruck: Leopold-Franzens-Universität, 2021), 161. Martinelli Luce, a design company producing lamps, is a good example of this. As their Director of Merchandising noted, the company can make business decisions not based on profit but, rather, on legacy because they are still run by the daughter of the founder. This would be almost unheard of in a non-family setting. Visit to and Tour of Martinelli Luce with Dott. Lorenzo Calabrese, June 2022.

³⁰ J.A. Barker, *Discovering the Future: The Business of Paradigms* (Lake Elmo MN: ILI Press, 1985) (Research on paradigms suggests that paradigm flexibility is more possible under certain conditions that are potentially very problematic for family-owned businesses.). This, for example, has been a critique of Ferragamo, which has seemed loathe to turn over control to outside designers and give up control of the brand until now.

³¹ C.R. White, 'Fiamma Ferragamo', 57, Dies; Shoe Designer for the Elegant' *The New York Times*, 30 September 1998, available at <https://tinyurl.com/yjpcdw6a> (last visited 20 September 2023).

³² F. Canterino et al, 'Leading transformation in a family-owned business: insights from an Italian company' 17:1-3 *International Journal of Entrepreneurship and Innovation Management*, 54-83 (2013).

³³ *ibid*

to vote on in the context of family dynamics. Consider the importance of resale in fashion today and the questions it raises for current business practices, the preservation of brand heritage, and the connection of that brand heritage to a family's heritage and a country's wider cultural heritage. Gucci VAULT provides an example. VAULT is a resale platform created by Gucci, now fully owned by the French luxury conglomerate Kering, to sell archival pieces and vintage products sourced from second-hand shops and collectors.³⁴ VAULT offers pieces to the public that reflect Gucci's historic codes (older trademarks, past designs) and the Gucci family's legacy (design aesthetics agreed upon when Gucci family members were designing, products reflective of familial business decisions). Vintage Gucci pieces may also include accessories by non-living authors which are over seventy years old, placing them in the definition of cultural property.³⁵ Directors approving Gucci Vault as a business activity would consider the benefits of such a project for Gucci's bottom line. Directors who are family members might also consider whether they want precious family heirlooms placed on the market. The perspective of the State towards these items as cultural property might also be a factor in directors' decisions. So might a family member/director's desire to have their family history acknowledged as part of a national cultural heritage. The corporation itself might already have supported cultural initiatives led by the State. Where do we draw the lines between these different interests? How should fashion firms, and the directors and members who manage them, understand their duties towards entities with such symbiotic relationships between family, fashion, and business? How should fashion firms, and the directors and members who manage fashion firms, conceptualize of their products and know-how as part of a Nation's cultural heritage, as a first matter? How should fashion firms, and the directors and members who manage them, weigh the role of brand heritage and cultural heritage in their business decisions? Does business law already provide standards with which to answer these questions?

Directors of corporations generally owe fiduciary duties - a duty of care³⁶ and a duty of loyalty³⁷ - to the corporation, shareholders, and creditors. Corporations may, according to enabling statutes, waive liability for the breach of the duty of care.³⁸ In the LLC context, operating agreements can contain obligations and language which courts can interpret as imposing fiduciary duties on members.³⁹ In the exemplary United States' jurisdiction of Delaware, Section 18-1101 of the Delaware Limited Liability Company Act does allow members to restrict fiduciary duties, with

³⁴ 'VAULT Gucci' available at <https://vault.gucci.com/en-US> (last visited 20 September 2023).

³⁵ See Art 10 Italian Code of Cultural Property, Decreto Legge no 42/2004.

³⁶ *Smith v Van Gorkom*, 480 A.2d 858. In Italy, see Art 2392 Codice Civile. See also A. De Nicola and M. Carone, n 16 above, 112.

³⁷ Arts 2390 and 2391 Codice Civile. See M. Ventoruzzo et al, n 22 above, 316-319.

³⁸ 8 Del. C. 1953, § 102 (b)(7).

³⁹ See, for example, *Gatz Properties, LLC v Auriga, C.A. No. 4390* (Del. Nov. 7, 2012) 13-14 (PDF pagination).

the exception of acts in bad faith.⁴⁰ However, Section 18-1104 provides a catch-all provision applying ‘the rules of law and equity relating to fiduciary duties’ to circumstances not outlined in the Act.⁴¹ In the srl context, managers, and members when managing,⁴² have a duty of care and a duty of loyalty towards the corporation as do members which authorize managers’ decisions or who approve acts contrary to the duty of care and the duty of loyalty.⁴³ The business judgment rule and procedural presentations already provide additional safeguards for directors to follow the duty of care and the duty of loyalty, respectively, both in Italy and in the US.⁴⁴

Closely held corporations, whether in Inc or LLC form, raise questions for the application of fiduciary duties. In closely held corporations relationships between shareholders, directors, and members can exhibit power imbalances. Shareholders and members may be tied to the corporation in ways that are more like a partnership, which requires heightened fiduciary duties more definitive of strict agency law.⁴⁵ Family dynamics and fashion make these questions even more pressing. When a corporation is closely held, with a controlling shareholder

⁴⁰ 68 Del. Laws, c 434, §§ 18-1101 (providing in the following sections, ‘(b) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements. (c) To the extent that, at law or in equity, a member or manager or other person has duties (including fiduciary duties) to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement, the member’s or manager’s or other person’s duties may be expanded or restricted or eliminated by provisions in the limited liability company agreement; provided, that the limited liability company agreement may not eliminate the implied contractual covenant of good faith and fair dealing. (d) Unless otherwise provided in a limited liability company agreement, a member or manager or other person shall not be liable to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement for breach of fiduciary duty for the member’s or manager’s or other person’s good faith reliance on the provisions of the limited liability company agreement. (e) A limited liability company agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a member, manager or other person to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement; provided, that a limited liability company agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing’).

⁴¹ 68 Del. Laws, c 434, paras 18-1104 (‘In any case not provided for in this chapter, the rules of law and equity, including the rules of law and equity relating to fiduciary duties and the law merchant, shall govern’).

⁴² Art 2475 Codice Civile (noting that, unless otherwise provided for in the operating agreement (or founding document) an srl is administered by one or more members).

⁴³ Arts 2476 and 2475 Codice Civile (describing conflicts of interest).

⁴⁴ Described further in sections 1 and 2 below.

⁴⁵ Restatement (Second) of Agency § 379, ‘Duty of Care and Skill’ (‘(1) Unless otherwise agreed, a paid agent is subject to a duty to the principle to act with standard care and with the skill which is standard in the locality for the kind of work which he is employed to perform and, in addition, to exercise any special skill that he has.’). *ibid* § 387, ‘Duty of Loyalty’ (‘Unless otherwise agreed, an agent is subject to a duty to his principle to act solely for the benefit of the principle in all matters connected with his agency.’).

who is also a family member, what standard of fiduciary duty should apply? Should operating agreements be able to restrict the duty of care when an LLC is member-managed by family members who are in a parental relationship with other members? Should standards of fiduciary duty law take specific aspects of the fashion industry into account when evaluating directors' and members' actions, especially business decisions that exist at the nexus of family, brand, and cultural heritage, like the use of designs of a founder held in a corporate archive or museum? In the United States, some jurisdictions already hold members and shareholders in closely held corporations to the different, what may seem like higher standards of fiduciaries under agency law, requiring that these duties apply to members' interactions with each other and not just towards the corporation. There is some disagreement as to whether this different standard is applicable in every circumstance no matter the operations of the company in practice. This leads in some sense to different schools of thought regarding fiduciary duties for closely held corporations.⁴⁶ While US corporate law has recognized heightened fiduciary duties for shareholders, officers and directors in close corporations in light of different variables, the law does not distinguish between fiduciary duties applicable to a family owned business and fiduciary duties applicable to any other business.⁴⁷ US corporate law also does not specifically take the unique ecosystem of fashion, family, and business into account.⁴⁸ In Italy, directors in corporations are already

⁴⁶ See *Donahue v Rodd Electrotype Co.*, 328 N.E.2d 505, 587 (Mass. 1975) ('Many close corporations are really partnerships between two or three people who contribute their capital, skills, experience and labor. Just as in a partnership, the relationship among the stockholders must be one of trust, confidence and absolute loyalty if the enterprise is to succeed. All participants rely on the fidelity and abilities of those stockholders who hold office.'). But see *Powers Steel & Wire Products, Inc. v Vinton Steel, LLC*, Ariz: Court of Appeals, 1 Div. 2021, applying a control test as opposed to a blanket higher standard of fiduciary duty ('In the absence of persuasive Arizona authority, Powers Steel cites out-of-state cases for the proposition that shareholders in closely held corporations always owe each other fiduciary duties. See *Donahue v Rodd Electrotype Co. of New England*, 328 N.E.2d 505, 515 (Mass. 1975). But the Donahue rule is not universal. See *Nixon v Blackwell*, 626 A.2d 1366, 1380-81 (Del. 1993) (refusing to create special rules applicable to closely held corporations); *Hoggett v Brown*, 971 S.W.2d 472, 488 (Tex. App. 1997) ('[A] co-shareholder in a closely held corporation does not as a matter of law owe a fiduciary duty to his co-shareholder.'). *Carson Cheng v AIM Sports, Inc.*, CV-10-3814-PSG-PLAX, 2012 WL 12953239, *3 (C.D. Cal. May 11, 2012) (holding that under California law a minority shareholder in a closely held corporation 'did not owe a fiduciary duty to other shareholders'); *Bagdon v Bridgestone/ Firestone, Inc.*, 916 F.2d 379, 384 (7th Cir. 1990) ('Corporations are not partnerships. Whether to incorporate entails a choice of many formalities...So it is understandable that not all states have joined the parade.').; see also D.K. Moll, 'Of Donahue and Fiduciary Duty: Much Ado About ...?' 33 *West New England Law Review*, 471, 485 (2011) ('[I]t is simply inaccurate to read *Donahue* for the proposition that partnership law applies in its entirety to closely held corporation disputes.') ... Arizona law imposes a fiduciary duty on shareholders who can exercise control over the corporation ... We decline Powers Steel's invitation to expand the fiduciary duties of shareholders in Arizona and see no reason why the same focus on control should not apply if the corporation is closely held by several shareholders.')

⁴⁷ A.W. Steen, 'Fiduciary Duties in a Family Owned Business' *Davis Wright Tremaine LLP*, 14 May 2014, available at <https://tinyurl.com/y779y4dt> (last visited 20 September 2023).

⁴⁸ Although some commentators note that special legislations requiring specific disclosures

often held to a different, what seems to be a higher standard of a fiduciary under the duty of care in agency law, whether they are in a closely held corporation or not. Directors are required

‘to carry out the management of the company in accordance with the law and the articles of association with the care that is required in relation to their office and their professional skills.’⁴⁹

Managers and managing members in srls are held to the same standard.⁵⁰ These standards already allow important variables to be evaluated in a more express way for the benefit of the corporation. Under the duty of loyalty in Italian law, directors cannot engage in competing business activities without the permission of the Board.⁵¹ In srls contracts concluded by manager or members as managers for the business which exhibit a conflict of interest can be annulled.⁵² Particular cases and facts in Italian family fashion firms can show how family dynamics and the particular needs of the fashion industry make the application of these rules in specific contexts supportive of or problematic for family fashion firm’s unique ecosystems.

III. The Duty of Care: Factoring in Family, and Brand and Cultural Heritage, Beyond Business for a Family Fashion Firm’s Ecosystem

The substance of the duty of care rule requires a director to manage a corporation according to the standard of a prudent director in like circumstances, pursuing the corporation’s interests with reasonable diligence and prudence.⁵³ When a more detailed standard of care with consideration of specific circumstances is required, especially in the application of the standard, as in some jurisdictions for closely held corporations in the US and for corporations and srls in Italy, directors are also held to a level of standard care plus that of any special skill the agent has. To put this in the context of the fashion industry, a designer sitting as a director on a board in a closely held fashion corporation or a designer who is a member managing an LLC has a standard duty of care to make decisions for the company that are both generally informed and in line with his or her special skills as a designer. Under one school of thought in the US, a designer who holds a

might fill this gap, especially in the Italian context. See De Nicola and Carone, n 16 above, 111.

⁴⁹ Art 2392 Codice Civile. See also A. De Nicola and M. Carone, n. 16 above, 112. For more on the notion of diligence under the concept of a ‘*buon padre di famiglia*’ see G. Campana, ‘La responsabilità civile degli amministratori delle società di capitali’ *Nuova giurisprudenza civile commentata*, 2015 (2000).

⁵⁰ Art 2476 Codice Civile.

⁵¹ Art 2390 Codice Civile.

⁵² Art 2475-ter Codice Civile.

⁵³ Cornell Law School, ‘Duty of Care’ *Legal Information Institute*, available at <https://tinyurl.com/4ex6885a> (last visited 20 September 2023).

majority of shares in a closely held corporation and exerts power over minority shareholders might also owe such a duty of care to minority shareholders in the company.

In practice, the business judgment rule, a rebuttable presumption used to evaluate directors' actions and whether there has been a breach of the duty of care, often helps to provide more substance to what diligence and prudence mean in specific circumstances. The purposes of the business judgment rule are grounded in the knowledge that directors must inherently take some risks in managing a corporation, and that courts, judges, and even, for that matter, shareholders,⁵⁴ should not second-guess the decisions of directors in circumstances where they have decided in the correct way. These circumstances include obtaining advice from experts, taking the time to make their decisions and even, perhaps, making honest mistakes in the process.⁵⁵ The rule requires that

‘in making a business decision, the directors of a corporation ac[t] on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company’.⁵⁶

So, in the classic extreme *Smith v Van Gorkom* case, directors were not safeguarded by the business judgment rule where the board did not consult management on the price per share for a leveraged buyout; did not consult an outside source; and made the decision in a short 3-day period, without documents or added documentation regarding the intrinsic value of the company.⁵⁷

The Italian version of the business judgment rule holds that directors are not liable for

‘erroneous and/or unfortunate business choices... provided that such choices are part of the range of choices that, in the specific case, could be by a person having the standard of care and knowledge which could be expected from the director of a company operating in the same business sector.’⁵⁸

At a general level, in contrast to US law, Italian law usually places increased duties on directors under the duty of care, requiring actions that reflect directors'

⁵⁴ *Gagliardi v Trifoods International Inc.*, 683 A.2d 1049 (Del. 1996). ('Shareholders don't want (or shouldn't rationally want) directors to be risk adverse. Shareholders' investment interests, across the full range of their diversifiable equity investments, will be maximized if corporate directors and managers honestly assess risk and reward and accept for the corporation the highest risk adjusted returns available that are above the firm's cost of capital. But directors will tend to deviate from this rational acceptance of corporate risk if in authorizing the corporation to undertake a risky investment, the directors must assume some degree of personal risk relating to ex post facto claims of derivative liability for any resulting corporate loss').

⁵⁵ M. Ventrizzo et al, n 22 above, 296.

⁵⁶ *Smith v Van Gorkom*, 480 A.2d 858 (Del. 1985).

⁵⁷ *ibid.*

⁵⁸ A. De Nicola and M. Carone, n 16 above, 112.

professional skills, as noted above.⁵⁹ Like US law, Italian law places an emphasis on being well-informed and seeking expert opinions to cure a director's lack of knowledge and make a relatively well-calculated risk.⁶⁰ While, as in the United States, the evaluation of whether a director has exercised their duty of care is mostly procedural in nature, Italian courts may also evaluate gross negligence, reckless disregard, and a director's 'actual awareness that [their] decision would cause prejudice to the company.'⁶¹ Although still a procedural check, we might say that Italian courts inspect the 'reasonableness' of directors' choices to some extent and may consider, for example, whether the directors' *ex ante* decision was grounded, considering the information they had available at the time.⁶² In comparing the US and Italian standards for the duty of care with family fashion firms in mind, however, the more express relevance of the type of business or business activities in the Italian context stands out. The devil, as they say, seems to be in the details of the application of the standard.

The knowledge gleaned from similar decisions by directors of companies in the same business sector can make a difference for the scope of the duty of care in a family fashion firm. Directors and managers in family fashion firms can find themselves having to approve officers' and members' plans to support activities outside a family fashion firm's core business model.⁶³ Parallel activities can include funding the restoration of an artwork, collaborating with a cultural institution to sponsor or organize a museum exhibition, or even supporting academic conferences. The general, and not heightened, US duty of care might already provide directors with room to approve these parallel activities. Directors of a US corporation could ask for the opinion of experts on the benefits of these activities. They could take time to research and evaluate the proposed activities and the officers' reasoning with supporting documentation, and could, in good faith, approve the activity. However, by not evaluating directors' decisions based on the knowledge of directors in the same business sector and instead privileging a knowledge based in the *best interests of a specific company* alone, the US rule may allow a director or manager in an LLC to disregard beneficial trends in the fashion industry which would support an approval of these parallel activities. Of

⁵⁹ M. Ventrizzo et al, n 22 above, 297.

⁶⁰ G. Campana, n 49 above, 20215. 'Ciò che da lui è lecito pretendere, ai fini di una condotta diligente, è che al momento del compimento delle scelte direttive sia ben informato e che, dinanzi alle inevitabili lacune delle proprie conoscenze tecniche, si avvalga di validi collaboratori, di modo che le sue scelte siano espressione di decisioni ponderate e frutto di un rischio calcolato': Trib. Milano, 2 March 1995, *Giurisprudenza italiana*, 706 (1995).

⁶¹ A. De Nicola and M. Carone, n 16 above, 112.

⁶² *ibid* 112-113.

⁶³ A. Saca, *Fashionable Sponsorship: Fashion Corporations and Cultural Institutions* (Masters Thesis - South Orange, NJ: Seton Hall University, 2013), available at <https://tinyurl.com/yc29s8wn> (last visited 20 September 2023) (discussing 'the Tod's Corporation funding the restoration of the Colosseum in Rome, the Ferragamo Corporation's donation to the restoration of the Leonardo da Vinci's Saint Anne, and the Ralph Lauren Corporation funding the restoration of the Star-Spangled Banner in the National Museum of American History').

course, at the same time, the US rule gives directors and managing members the latitude to act *above* trends in the fashion industry if their specific company is a first mover in supporting restorations of artworks, sponsoring cultural activities, and other similar parallel activities. Individual by-laws of a corporation can put a proverbial thumb on the scale for comparisons with other directors in the same business sector, supporting a broader interest of the corporation. The tensions between the best interests of a corporation and business activities and actions of a wider business sector, and how that tension is included in the notion of what is in the best interests of the corporation, can support or undermine the unique ecosystem of family fashion firms by privileging business over family or by negating the importance of certain links between brand heritage and cultural heritage for the family fashion firm. Evaluating the facets of Salvatore Ferragamo SpA's decision to fund the restoration of the Fountain of Neptune in Piazza Signoria can make this tension and the benefits of one application of the standard of duty of care over another more evident.

Salvatore Ferragamo SpA is currently a public corporation in which Ferragamo Finanziaria SpA is a controlling shareholder.⁶⁴ Ferragamo's links to Florence are a key part of the brand's business proposition and the family's history.⁶⁵ Florentine artisanship and the support of initiatives on the Florentine and Tuscan territory have also been central to the development of Ferragamo's fashion product with materials, traditional craftsmanship, and know-how grown from Florentine knowledge and tradition.⁶⁶ Indeed, the connection to Florence reveals the

⁶⁴ Salvatore Ferragamo Group Corporate Governance Report 2021, available at <https://tinyurl.com/bdcrcvz9> (last visited 20 September 2023).

⁶⁵ 'Arrival in Florence', *Timeline, Ferragamo*, <https://tinyurl.com/mwfdjevz> (noting, with regards to Salvatore Ferragamo's decision to set up his business in 1927 in Florence, despite being from a small town outside of Naples and having worked in the United States, 'After a tour of Italy and a stay in Naples, where Salvatore had received his training, in the summer of 1927 he arrived in Florence, which he chose for its historic reputation as a city of art, culture and business. Ferragamo was charmed by the beauty of the Tuscan capital and he filmed the city with the camera he had purchased in America, capturing the Uffizi Gallery, the Lungarno (the streets along the Arno River), Piazzale Michelangelo and the hill in Fiesole where he would soon make his home. Florence had recently become the burgeoning hub of the Fascist government's nation-wide strategy to relaunch Italian artisanship and tourism. However, Ferragamo's meetings with master shoemakers left him disappointed. Many were skeptical about his new techniques for crafting shoes and measuring feet. Only younger artisans showed curiosity and interest in his plan. So Salvatore opened a factory that would serve as a training ground for 75 apprentices under his supervision. He salvaged the city's artisanal heritage and melded it with the production system of American factories, breaking down the process into step'). Throughout Wanda Ferragamo's life in Florence she was active in many Florentine activities and societies. As recognition of her support, Wanda Ferragamo was made an Honorary Officer of the British Empire (OBE) for her support of the British Institute of Florence and, in 1996, was awarded the 'Fiorino d'oro' for entrepreneurship by the Mayor of Florence 'for her steady and intelligent commitment to creating and promoting an exemplary business of world renown, thereby providing a significant service to the city of Florence' 'Wanda Miletta Ferragamo' *Museo Salvatore Ferragamo*, <https://tinyurl.com/24rxsr4t> (last visited 20 September 2023).

⁶⁶ As early as 1926 Ferragamo spoke of training young Florentine artisans to implement his

interconnectedness of family, fashion, and business for Salvatore Ferragamo SpA. A decision, for example, to spotlight artisans working on Ferragamo luxury products can easily include a spotlight on the history of the shoe's production, Italian artisanship more generally, and Salvatore Ferragamo's vision as the founder of this luxury brand. Such a spotlight could certainly be in the best interests of Salvatore Ferragamo as a company. The spotlight emphasizes the luxury nature of its product and a strong connection to *Made in Italy*.⁶⁷ At the same time, an emphasis on Salvatore Ferragamo's vision as a founder is also in the best interests of the Ferragamo family, reflecting well on their family's heritage. The reverse can also be true: a desire by the Ferragamo family to give back to the city of Florence, as evidenced by Wanda Ferragamo's many activities, certainly reflects well on the Ferragamo family, but also gives cultural cachet to the brand, especially in contemporary times where consumers increasingly prize sustainability and brand engagement in cultural projects.⁶⁸ In addition, a financial contribution to restore the Fountain of Neptune can also be of benefit to the corporation, in a traditional sense. Thanks to the Art Bonus legislation, sponsoring the restoration through a financial contribution allows Salvatore Ferragamo SpA to benefit from a tax break.⁶⁹ Were directors to strictly interpret 'in the best interests of the corporation' under the US standard of the duty of care, they might be excused for only approving such a parallel activity if the sponsorship was of financial benefit to the corporation. Prior to the Art Bonus legislation, for example, the benefit of cultural cachet and increased visibility for the brand might not have been thought enough to justify the approval of a restoration sponsored by the corporation.

At the same time, Ferragamo's directors could be first movers in considering cultural activities in the best interest of the corporation. The Ferragamo Museum founded as a corporate museum by the Ferragamo family in 1995 is an example.⁷⁰ Applying an increased standard of the duty of care may be valuable to members of the Ferragamo family acting in their capacity as Board members and shareholders in this closely held corporation. Applying the actual standard of diligence might be read to require directors or controlling shareholders to parse interests of family, fashion, and business more closely as fiduciaries. In addition, where applicable, special skills that family directors or member managers may have- including

innovative vision for shoe designs. See S. Ferragamo, n 3 above.

⁶⁷ An important factor for the company's bottom line, given that the luxury design industry consortium *Altagamma* estimates that creative and cultural sectors account for 6.85% of Italy's GDP, or 115 billion euro. See 'L'Alta Industria Culturale e Creativa: Un Patrimonio Europeo', July 2020, available at <https://tinyurl.com/yc2rrvdx> (last visited 20 September 2023).

⁶⁸ C. Anderson, 'For Big Businesses, Sustainability is Starting to Pay Off' *The Fashion Law*, 21 December 2021, available at <https://tinyurl.com/2m87eaje> (last visited 20 September 2023).

⁶⁹ For a more extensive discussion of the drafting of ArtBonus and the 60% tax break it affords contributors over a period of three years see L. Casini, *Ereditare il Futuro* (Bologna: il Mulino, 2014).

⁷⁰ 'Museum History' *Museo Salvatore Ferragamo*, <https://tinyurl.com/md4njm7m> (last visited 20 September 2023).

knowledge of family heritage and a founder's vision- might be beneficial.

When decisions are made holistically and flexibly, taking the best interests of all three corners of the ecosystem of the family fashion firm into account, an impactful balance can be achieved. More narrow conceptions of business interest based only in financial benefit to the corporation put emphasis on the business area of the ecosystem alone. Such a narrow conception risks undermining other parts of the family fashion firm which make it uniquely successful. These include the family's perspective, family heritage, and the cycle of fashion that contrasts the timeliness of trends with the timelessness of styles and craftsmanship.⁷¹ All of these perspectives beyond business proper can lead to compelling parallel activities that enable profit for the firm in direct or indirect ways.

A narrow conception of business interest within the duty of care also undermines the links between brand heritage and cultural heritage which can make a brand a national cultural force. When announcing the completion of the restoration of the Fountain of Neptune financed by Salvatore Ferragamo SpA, Ferruccio Ferragamo, Salvatore and Wanda Ferragamo's son and, at the time, the Chairman of the Salvatore Ferragamo Group Board noted

It has been a privilege for our company to support this important restoration project and see this work of art restored in its full splendour to Florence, its residents and the many travellers from around the world who visit the Tuscan capital every year. This is the result of a virtuous partnership between the public and private sectors and it is our family's way of thanking the city and upholding the close relationship that my mother and father forged with it. This project is a tangible expression of our gratitude to Florence'.⁷²

The partnership Ferruccio Ferragamo describes is also the fruit of a bond between the brand's heritage and Italy's cultural heritage. The partnership fuses fashion design and family heritage, Ferragamo brand's presence and business practices with connections to craftsmanship as intangible cultural heritage, and the tangible Fountain of Neptune as cultural property. Far from just an expression of gratitude separate from a bottom line, the partnership and project also provided a compelling background to Ferragamo's fashion show in Piazza della Signoria in Florence a few months after the restoration's completion.⁷³ When seen in the greater context of the family fashion firm ecosystem, cultural projects such as Ferragamo's restoration of the Fountain of Neptune provide a reasonable and logical foundation for future brand projects, from impactful runway shows with media impact to profitable sales. The duty of care in the US provides flexibility to directors and member-managers, with possibly higher standards when the

⁷¹ E. Corbellini and S. Saviolo, n 4 above and J. Suk Gersen, n 8 above.

⁷² 'Fountain of Neptune Restoration' - Press Release *Salvatore Ferragamo*, 25 March 2019.

⁷³ 'Ferragamo, la sfilata da sogno in piazza della Signoria' *La Nazione*, 11 June 2019, available at <https://tinyurl.com/26yhmd7e> (last visited 20 September 2023).

boundaries between shareholders, members, and directors are blurred in a closely held corporation. At the same time, this flexibility might benefit from a deeper and more express understanding of what is actually in the best interests of a family fashion firm given the unique relationship between family, fashion, business, and the use of brand and cultural heritage to its activities.

By more expressly incorporating considerations of what knowledge directors in a similar business sector may have in the actual standard of diligence, the Italian duty of care opens the door for such specificity. Italian business has throughout history seen business activities as closely connected to cultural activities.⁷⁴ Considering therefore how other directors in family fashion firms have facilitated parallel activities like restorations gives life to a broader understanding of what is in the best interests of the corporation in Italy. At the same time, there may be a limit to a broader interpretation of what is in the best interests of a family fashion firm. Measuring one family fashion firm's judgments against another's may not be logical: not all family fashion firms are in fact created equal. The recent rise in resale platforms and upselling⁷⁵ in the fashion industry provides an example. This now popular fashion practice might run counter to the best interests of a family fashion firm by too closely marrying brand heritage with cultural heritage for specific family fashion firms' ecosystems. Resale extends the life of fashion products and is effectively the contemporary version of vintage dressing or buying goods secondhand. Similarly, upcycling involves taking an old product and using it as raw material for a new product.⁷⁶ Resale ventures are still evolving through profitable partnerships with third party platforms or in independent resale initiatives managed by firms themselves.⁷⁷ These ventures consistently allow fashion brands to 'drive customer acquisition and loyalty'.⁷⁸ Reselling is also, however, a mirror image of collecting: previous fashion designs of a brand are often collected to learn more about a founder's vision and previous production lines. While the end goal of resale platforms' like 'TheRealReal' may be

'extending the life of luxury goods and enable[ing] more people to own and appreciate them while giving their original owners the opportunity to maximize the value of their investments',⁷⁹

⁷⁴ One example is Antonio Ratti, the founder of the silk manufacturing firm Antonio Ratti, SpA. See *infra* Section 3.

⁷⁵ C. Chen, 'Can Fashion Resale Ever Be a Profitable Business?' *The Business of Fashion*, 4 April 2022, available at <https://tinyurl.com/3tfnpzad> (last visited 20 September 2023).

⁷⁶ J. Harvey, 'The Rise Of Deadstock Dressing: Designers Approach Upcycling Clothes The Chic Way' *Elle*, 15 June 2021, available at <https://tinyurl.com/yn2ijttx> (last visited 20 September 2023).

⁷⁷ As in the case of Gucci's Vault.

⁷⁸ J. Kennedy, 'Why Brands Are Racing Into Resale - in Five Charts' *The Business of Fashion*, 11 May 2022, available at <https://tinyurl.com/bddu3ypa> (last visited 20 September 2023).

⁷⁹ *About Us, Extend the life cycle of luxury, TheRealReal*, <https://tinyurl.com/4rebcx52> (last visited 20 September 2023).

fashion brands' resale platforms are a vision into a brand's past.⁸⁰ This act of collecting and knowledge-building can both support the communication of brand heritage to consumers while uncovering examples of fashion that are relevant to a wider public beyond the brand's consumer base.⁸¹ Under Italian cultural property law the collective and individual treasures found by brands prior to their resale may be eligible to be cultural property. This would in part depend on where their cultural interest lies, how 'vintage' they are, and how the law conceives of the relationship between a brand and an author.⁸² The presence of this cultural interest, however, risks imposing obligations of preservation on fashion brands that may wish, instead, to resell the vintage products for profit. Directors and member-managers in family fashion firms may be caught between a proverbial rock and a hard place. This tension can animate approvals of resale initiatives. A declaration that vintage products in their possession are cultural property, could lead to impediments on the use of a firm's private property, effectively making it like a public archive or museum collection. On the other hand, resale initiatives and upcycling might benefit a family fashion firm's bottom line and increase their goodwill with their consumers, especially in light of sustainability's increasing value on the market. In these cases, the flexibility of the best interests of the company in the US duty of care rule may come in handy. The Italian rule which considers knowledge by directors in similar positions puts a weight on one option over the other. Directors and member-managers might not approve resale initiatives considering cultural property concerns. On the other hand, they might give a green light for the expansion of business activities to the preservation of fashion as cultural heritage.

The Italian duty of care rule also risks frustration for family fashion firms that are first movers. While collecting and opening corporate archives and museums that also emphasize family history might seem logical to the directors and member-managers of today's family fashion firms, it was not always so evident. In this sense, the recent express addition of public benefit to business purposes which may be completed by amendment to a company's by-laws, and the increase in certification agencies to communicate a brand's dedication to sustainability and the public good⁸³ may more expressly allow first movers in the fashion industry

⁸⁰ *Gucci Vault*, <https://tinyurl.com/m8p5exzc> (presenting the site as 'Gucci Vintage Treasures' 'Vault presents a highly curated assortment of rare finds from Gucci's past, each the one and only of its kind').

⁸¹ For an exploration of such differences between brand heritage and cultural heritage in fashion see F. Caponigri, 'Fashion's Brand Heritage, Cultural Heritage, and "The Piracy Paradox"' 39(2) *Cardozo Arts and Entertainment Law Journal*, 558 (2021), available at <https://tinyurl.com/bdeyv6n5> (last visited 20 September 2023).

⁸² For more about the challenges of classifying fashion design objects as cultural property under Italian law see F. Caponigri, 'Problematizing Fashion's Legal Categorization as Cultural Property' 2 *Aedon* (2017), <https://tinyurl.com/2ybxj7pa> (last visited 20 September 2023).

⁸³ 'About B Lab' *B Corporation*, <https://tinyurl.com/ynkzthxe> ('B Lab became known for certifying B Corporations, which are companies that meet high standards of social and environmental

when other firms do not yet see themselves in this way. At the same time, an expansion of corporate purpose that results in vague notions of prosperity has been met with skepticism given the latitude allowed to fiduciaries already.⁸⁴ The Italian rule and the application of the actual standard of diligence may enable some tensions for directors' and member-managers' decisions while also leaving potentially greater room than the US standard for the corners of the family fashion firm ecosystem.

IV. The Duty of Loyalty: Narrow Indirect Conflicts with a Broad Conception of Loyalty to Preserve a Family Fashion Firm's Ecosystem

The duty of loyalty is essentially a conflict-of-interest provision: directors, member managers, and shareholders, when they owe a fiduciary duty, should not gain where the corporation would lose. The corporation's interests are paramount.⁸⁵ While at times conflicts of interests or business opportunities may seem to benefit a director, member, manager, or shareholder in a closely-held corporation over the firm in question, indirect conflicts of interest provide more nuanced cases. Suppose, for example, that 'the [corporate] conflict is with a close family member of the director or with a corporation owned or managed by the director.'⁸⁶ Family fashion firms provide fertile ground for such indirect conflicts. A close family member of the director could also be a family member already connected to the family fashion firm. A close association with a family member of the founding family who designs outside the firm could benefit a firm as much as undermine its business, depending on how one identifies the parties and the benefits at issue.

performance, accountability, and transparency... B Lab creates standards, policies, tools, and programs that shift the behavior, culture, and structural underpinnings of capitalism.); L. Zargani, 'Salvatore Ferragamo Obtains Sustainability SI Rating Silver Certificate' *Women's Wear Daily*, 10 August 2020, available at <https://tinyurl.com/r6jfsk3n> (last visited 20 September 2023).

⁸⁴ M. Ventrizzo, 'Brief remarks on "Prosperity" by Colin Mayer and the often misunderstood notion of corporate purpose' *Bocconi Legal Studies Research Paper No 3546139*, 28 February 2020, 5, available at <https://tinyurl.com/4hxz7evs> (last visited 20 September 2023) ('The very doctrine of fiduciary duties, with its flexibility and ambiguities, developed – and it is necessary – in light of an agency relationship that defies strict and specific instructions defined ex ante... Directors' power is, essentially and first of all, exactly the power to balance different interests of different constituencies, in the context of incomplete contracts. Directors and managers need the free space granted by the business judgment rule to operate and implement their decisions, within reasonable limits. Virtually any corporate action implies a choice between short-term gains and long-term growth, between creditors' protection and shareholders' profitability, between clients' satisfaction and workers' welfare, between providers' interests and environmental integrity. To think that listing different and often conflicting goals in a piece of paper, even if in principle binding, might resolve or even ease the conundrums that corporate leaders face at each and every turn, or clarify the standards of care and loyalty to which they are held, is naïve at best').

⁸⁵ M. Ventrizzo et al, n 22 above, 316-317.

⁸⁶ *ibid* 316.

A benefit to a director might be an indirect benefit to the firm. To make matters more complicated, opportunities for the family firm may hinge on a specific director's knowledge or even their place in the founding family. A founder's archive controlled by a director/son might offer the best designs for a new collection, for example.

While these conflicts may be present in family firms outside the fashion industry, fashion's connection to identity magnifies conflicts. A director/son controlling a founder's archive may see the fashion created by his founder/ father as uniquely tied to a fashion identity that is not necessarily the same as that produced by the current family firm. The need to constantly update fashion designs, while staying true to a brand's heritage, makes the question of identity even more pressing. Consumers must still recognize a fashion design as from a family fashion firm, for example, but be captured by a newness, a relevance in the contemporary fashion space. Family members are often intimately connected to a firm's fashion identity in ways that may be incomparable to a family firm in another industry because of these links between creating, managing, identity and fashion's communicative value. Battles over fashion identity, and who decides what is 'Gucci', as will be discussed further below, may set family members on opposite financially beneficial paths.

A usual way of combatting conflicts of interests is to delegate the decision to a different director without the conflict or to require a director to present the business opportunity to the board for a full vote, disclosing the conflict to make sure the transaction is fair.⁸⁷ Section 144 of the Delaware General Corporation Law lays out options for what has been termed a 'safe harbor'⁸⁸ for directors: the approval of a transaction with a conflict of interest between a director and the corporation. A majority of disinterested directors voting to approve the transaction with a knowledge of the material facts may activate this safe harbor. So may approval by disinterested shareholders who know of the material facts. These two safe harbors trigger a review of the transaction under the business judgment rule if it is challenged following its approval.⁸⁹ As a third option, the transaction, if not approved by disinterested directors or shareholders, may not be a conflict if it is fair to the corporation at the time it is authorized or approved by interested directors or shareholders.⁹⁰ Fair is understood as fair dealing and fair price.⁹¹ Italian law has a similar rule in Art 2391 of the Italian Civil Code.⁹² Interested directors must notify the other directors and the board of all of their and other interests in a transaction, and interested directors should not vote on the

⁸⁷ *ibid* 317.

⁸⁸ *Toedtman v Turnpoint Medical Devices, Inc*, C.A. No. N17C- 08- 210-RRC, January 23, 2019, Superior Court of the State of Delaware, 14, available at <https://tinyurl.com/mryvtvn3> (last visited 20 September 2023).

⁸⁹ *ibid* 14-15.

⁹⁰ *ibid*

⁹¹ M. Ventoruzzo et al, n 22 above, 318.

⁹² Art 2391 Codice Civile.

transaction.⁹³ This is a broader provision than in the srl context, where contracts entered into by an interested member for the company can be voided if the conflict was known or could be known to the third party.⁹⁴ The voiding of contracts because of a member's conflict of interest in Art 2475-ter, which follows the rule in agency law,⁹⁵ recognizes that, in an srl context, a member/manager might have more discretion and, therefore, all contractual obligations might not be put in front of a committee or board.⁹⁶

Italian doctrine has characterized the conflicts in the srl context as more narrow than those in the SpA and by extension, more focused on the company itself: effective, and not potential, harms to a company because of a manager's interest matter more in the srl context, and members themselves do not have a right to challenge harms outside of those to the company that may result from an approval of the transaction.⁹⁷ In this sense, shareholders have relatively more power in the SpA context than members do in a member-managed srl context. A narrower evaluation of harm to the company and actual impact the company's own best interests seems more paramount in the srl. At the same time, there is also more flexibility to evaluate conflicts in the srl context, as there are few to no statutorily required procedural aspects to frame the consideration of the conflict. In the SpA context, by contrast, if the board approves the transaction it must share its reasoning and outline advantages for the corporation.⁹⁸ If these procedural processes are not followed, or if an interested director's vote is determinative for an approval, a board's approval can be challenged and voided within a specific period of time if there is damage to the corporation by the approval.⁹⁹ An srl does also allow for the voiding of a transaction approved by managers when a manager has an interest which is objectively in conflict with the company.¹⁰⁰ The concern

⁹³ *ibid*

⁹⁴ Art 2475-ter, Codice Civile.

⁹⁵ Art 1394, Codice Civile.

⁹⁶ Codice Civile commentato, Art 2475-ter - Conflitto di interessi, edited by Ilaria Capelli, updated by Lucia De Angelis, available at <https://www.leggiditaliaprofessionale.it/>.

⁹⁷ *ibid* ('L'Art 2475-ter - a differenza del vigente Art 2391 che, per le società per azioni, si limita a chiedere il riscontro di un interesse personale dell'amministratore (anche non antitetico) e la prospettiva meramente 'potenziale' del correlativo danno alla società - sanziona le fattispecie ove siano preliminarmente dimostrate tre condizioni: esse sono date dalla contemporanea esistenza di un conflitto di interessi 'effettivo' in capo all'amministratore; di un suo voto 'determinante' ai fini dell'approvazione della contestata delibera consiliare e, infine, di un danno 'reale' cagionato alla società con tale decisione. Tale norma si occupa del pregiudizio subito dalla società - anziché dai suoi soci - da ciò consegue che la legittimazione attiva sia attribuita ai soli amministratori ed ai sindaci. In altri termini, per le Srl manca una disposizione esplicita corrispondente a quella - viceversa prevista dall'Art 2388, para 4 - che, nelle Spa autorizza i soci ad impugnare 'in proprio' le delibere dei Cda, ove riconosciute 'lesive dei loro diritti', applicandosi, in tal caso, in quanto compatibili, gli Artt 2377 e 2378 (Tribunale di Bologna 20 October 2006 no 2412)').

⁹⁸ *ibid* (English translation in *Comparative Corporate Law*, n 22 above, 319). Art 2391, Italian Civil Code.

⁹⁹ *ibid* Art 2475-ter, Italian Civil Code.

¹⁰⁰ Art 2475-ter, Italian Civil Code and Codice Civile commentato, Art 2475-ter - Conflitto

for conflicting interests in both corporate contexts is mirrored in provisions in the Italian Civil Code which forbid directors from being shareholders without limited liability in competing firms and from exercising competing business activities on their own or with third parties.¹⁰¹ The Italian Civil Code also has a general unfair competition provision which has been read to apply to members in the srl context,¹⁰² although not necessarily to members who no longer have shares in the company.¹⁰³

In closely held family fashion firms, procedural safeguards, especially the Italian requirement that those approving the transaction share their reasoning and outline advantages for the corporation, might provide a foundation for deeper considerations of indirect conflicts for the success of family fashion firms' ecosystems. These deeper considerations might especially have impact if they are expressly extended to member-managers in an srl context.¹⁰⁴

The Paolo Gucci case provides an example where greater communication and identification of specific advantages unique to the fashion industry might have avoided gridlock and unnecessary family drama. In this case, refocusing the consideration of a conflict on the synergies between business, fashion and family, and not on family alone, might have benefited Gucci as a fashion family firm. Founded in Florence by Guccio Gucci in 1921¹⁰⁵ what began as a leather luggage store on Via della Vigna Nuova and soon evolved into a global luxury leather accessories was, at its heart, a dysfunctional family business until the early 1990s. In Italy, the company began as Guccio Gucci, srl, a limited liability company. In 1953 upon Guccio Gucci's death, his three sons Aldo, Rodolfo, and Vasco took over Guccio Gucci, srl, as members and managers. In the United States Gucci operated

di interessi, edited by Ilaria Capelli, updated by Lucia De Angelis, *Leggi d'Italia*. ('La norma contenuta nell'Art 2475-ter, para 2, trova applicazione nell'ipotesi in cui un amministratore sia portatore di un interesse obiettivamente in conflitto con quello della società; diversamente, in materia di Spa per l'applicabilità della disciplina contenuta nell' Art 2391 è sufficiente la sussistenza nell'operazione di un interesse (anche non in conflitto) dell'amministratore (N. Abriani et al, 'Decisioni dei soci. Amministrazione e controlli', in *Diritto delle società. Manuale breve* (Milano: Giuffrè, 2008), 318).')

¹⁰¹ Art 2390, Italian Civil Code.

¹⁰² Art 2598, Italian Civil Code.

¹⁰³ Tribunale di Bologna 21 January 2019 no 172 ('in effetti il socio uscente non era soggetto ad un divieto di concorrenza, cui la società abbia irrazionalmente rinunciato: la disciplina delle società di capitali non prevede, (diversamente dalla disciplina della società in nome collettivo v. Art 2301 c.c.), un generale divieto di concorrenza per il socio uscente, e nel caso in esame tale divieto non è contenuto neppure nello statuto sociale o nell'atto di cessione della quota').

¹⁰⁴ I. Capelli, 'Codice Civile commentato, Art 2475-ter - Conflitto di interessi' *Leggi d'Italia*. ('Diversamente da quanto accade in tema di Spa, non sono prescritti dall'Art 2475 ter doveri di informazione preventiva, di astensione in capo all'amministratore delegato e di adeguata motivazione della deliberazione (cfr. Art 2391, 1° e 2° co.). Tuttavia gli amministratori di Srl in conflitto di interessi sono tenuti al dovere di informazione nei confronti degli altri amministratori in forza delle clausole generali di correttezza e buona fede').

¹⁰⁵ *Gucci: The Making Of* n 3 above.

through Gucci Shops, Inc. incorporated in 1953,¹⁰⁶ later Gucci America, Inc.¹⁰⁷ In 1983 Guccio Gucci srl was transformed into an SpA. A central part of the Guccio Gucci srl's by-laws was the Art 7 provision that

‘...the status of quota-holder entails an absolute prohibition to use the ‘Gucci’ family name in connection with the exercise of any other future industrial, commercial and artisan activity even if additions or changes were made to such name for the purpose of avoiding confusion with the Company’s denomination ... [S]uch prohibition shall continue throughout the life of the company, i.e. until 31st December 2075 or until such later date which may be agreed upon at a future time and shall apply also to a quota-holder who may have lost such status for whatsoever reason.’¹⁰⁸

When the srl was transformed into Guccio Gucci, SpA in 1982¹⁰⁹ this Art 7 was replaced by an Art 12 in the new by-laws:

‘Without prejudice to Art 2390 of the Civil Code,¹¹⁰ it is also prohibited to the Shareholders to initiate or to perform particularly under the patronym ‘Gucci’ any activity which either directly or indirectly competes with the Company and with the activities which constitute the purposes of the Company, unless expressly authorized by the Board of Directors’.¹¹¹

Central to the formation of the Gucci company, then, was the notion that shareholders or members would not compete with the company by using the ‘Gucci’ name, even if it was their own family name. In some sense if you were a Gucci, the only way of embracing your family heritage as a shareholder in the company was to become active in the family business. Along with Guccio Gucci’s sons, a number of grandsons did just that. They embraced day-to-day management of the business in addition to their role as directors and shareholders. Chief among them were Paolo Gucci, one of Aldo’s sons, and Maurizio Gucci, Rodolfo’s only son.¹¹² Paolo Gucci first became a shareholder in 1972 when Aldo gifted him shares in exchange for his signing of a 1972 shareholders’ agreement which mirrored

¹⁰⁶ *Gucci v Gucci Shops, Inc.*, 688 F.Supp 916 (SDNY 1988).

¹⁰⁷ *ibid*

¹⁰⁸ *ibid*

¹⁰⁹ *ibid*; See also descriptions of the firm Gucci as an SpA in Corte di Cassazione 14 July 1993 no 7768.

¹¹⁰ Art 2390 is essentially a prohibition on director’s competition with the company (‘Gli amministratori non possono assumere la qualità di soci illimitatamente responsabili in società concorrenti, né esercitare un’attività concorrente per conto proprio o di terzi, né essere amministratori o direttori generali in società concorrenti, salvo autorizzazione dell’assemblea. Per l’inosservanza di tale divieto l’amministratore può essere revocato dall’ufficio e risponde dei danni’).

¹¹¹ *Gucci v Gucci Shops, Inc.*, 688 F.Supp 916 (SDNY 1988).

¹¹² *ibid* (for a description of family lineage).

Art 7 in the srl by-laws.¹¹³ Before then, and continuously until 1978, Paolo had been hired in various roles at Guccio Gucci srl from 1952 to 1978,¹¹⁴ including as a designer of Gucci products. But just as family lineage required a sacrifice of one's name to the company alongside ownership, family lineage also dictated the many tensions in control and ownership of the Gucci companies on both sides of the Atlantic. And it is here that the story of an indirect conflict between Paolo Gucci, Guccio Gucci srl (later SpA), and other members of the Gucci family ripens.

Paolo clashed greatly with his uncle, Rodolfo, who ran the Italian operation, so much so that a handbag being thrown out of a window in Florence in the late 1970s was deemed 'business as usual.'¹¹⁵ Tensions also extended to meetings of the boards of directors and even to shareholder meetings. Paolo regularly used his shareholder rights to try to take his father, Aldo Gucci, his uncle, Rodolfo, and Maurizio Gucci, his cousin¹¹⁶ to task for what he deemed their improper management of Gucci. To a certain extent Paolo's concerns as a shareholder were well-placed. Aldo Gucci had, in fact, decided to produce less than luxury items under a subsidiary of Gucci in the late 1970s.¹¹⁷ The 'Gucci Accessories Collection' included

'cosmetic cases, tote bags, and similar items made out of a treated canvas printed with the double G monogram and trimmed with Gucci's signature pigskin in brown or dark blue, with coordinating striped webbing.'¹¹⁸

With a lower manufacturing cost and a lower price point, Sarah Gay Forden observed in her history of Gucci that the line was

'an apparently well-intentioned and well-thought-out move that seemed in step with the times when introduced in 1979 ... [but] ultimately turned into a destabilizing force'

that compromised Gucci's control over the quality of its product.¹¹⁹ A central concern for trademark law, a lack of control over the quality of goods can be seen

¹¹³ The agreement in its relevant portion read, "...Messrs. Gucci jointly and severally promise one another on behalf of themselves, their heirs and successors, to refrain, and they do from this time forward refrain, from the use of the family name of "GUCCI" for the exercise of any further industrial, commercial, or artisan activity, even if additions or changes were to be made to said name with a view to avoiding confusion with the name of the companies..." *Gucci v Gucci Shops, Inc.* n 111 above; At the time, Rodolfo, Aldo, and Vasco were also shareholders, having owned and managed the company since their father's death in 1953, and Paolo's brothers, Roberto and Giorgio, were also listed as shareholders. *Ibid.*

¹¹⁴ *Gucci v Gucci Shops, Inc.* n 111 above.

¹¹⁵ *House Of Gucci* n 3 above, 74.

¹¹⁶ Maurizio inherited his father's 50% of Gucci Shops upon Rodolfo's death in 1983. *Gucci v Gucci Shops, Inc.* n 111 above.

¹¹⁷ *House Of Gucci* n 3 above, 69-70.

¹¹⁸ *ibid* 70.

¹¹⁹ *ibid*

as one factor that could weigh against the enforcement of trademark rights.¹²⁰ Vasco Gucci and Rodolfo Gucci originally approved the activities of Gucci Parfums, the subsidiary producing the Gucci Accessories Collection, in 1972 following Aldo Gucci's presentation of fragrance as 'the new frontier of the luxury goods market.'¹²¹ Gucci Parfums, SpA was disproportionately in the hands of Aldo Gucci and his sons, rendering greater profits to one side of the Gucci family over another.¹²² This hunger for increased recognition, power, and money soon seemed to spill over into Paolo's own activities. As Paolo's treatment by his father and uncles during his work for the Gucci brand became more hostile¹²³ he slowly began speaking with suppliers and designing his own line.¹²⁴ Fired by the Board of Directors in 1980, Paolo began a litigation war against his family both in Italian and US courts. Paolo fought for the right to use his own name in commerce, as a trademark, to sell his designs. The litigation proceeded in fits and starts due to the Gucci family's attempts to manage Paolo's design plans in house. In January 1982 Aldo and Rodolfo presented Paolo with the opportunity to become vice-chairman of Guccio Gucci SpA and the director of a new division Gucci Plus,

¹²⁰ The likelihood of confusion test includes the factor 'the quality of the junior user's product.' A dip in quality of the senior user's product might compromise an argument by the senior mark owner that the use of a similar mark on a similar product by a junior mark owner undermines the senior mark's ability to signal quality to its consumers, thereby leading to a likelihood of confusion. So, for example, if a Gucci consumer sees a real Gucci mark on a less than luxurious product, then consumers may no longer associate Gucci with high quality products or with a specific high-end product. This leads to less confusion when a false Gucci mark is on a similar low quality good. In other words, Gucci, when producing many different diffusion lines, may or may not be able to enforce their trademark rights as strongly as when they only produced a luxury line. A lower quality product by the senior mark may also compromise the goodwill of the senior mark. A lack of high-quality Gucci goods might additionally raise the argument that Gucci has less interest in protecting its mark. Diffusion lines such as the Gucci Accessories Collection also risk undermining the strength of a mark. On the other hand, they also might counterintuitively strengthen the senior mark by allowing a fashion firm to expand across different product categories. This would also depend on the management of the diffusion lines and the relationship with other luxury lines produced by the parent Gucci company. For a discussion of the likelihood of confusion test see *Lois Sportswear, USA, Inc. v Levi Strauss & Co.*, 799 F.2d. 867 (2d Cir. 1986).

¹²¹ *House Of Gucci* n 3 above, 67.

¹²² *ibid* 69 (noting that ownership of Gucci Parfums SpA in 1975 was divided between Rodolfo (20%) and Aldo and his three sons, who each had 20%, giving them more ownership combined than Rodolfo.) *ibid* at 79-80 (reporting that '... [by the 1980s] Aldo and Rodolfo clashed over the growing importance of Gucci Parfums. Although Rodolfo acknowledged that he had been able to love the life that he had thanks in large measure to Aldo, at the same time he was envious of his older brother's confidence and power and wanted to be everything that he was. He was no match for Aldo's genius, yet he resisted and resented the control Aldo had over the business. Rodolfo was also concerned about the lack of power Maurizio, his sole heir, had in the company ... [Rodolfo] had figured out Aldo's strategy to shift the lion's share of Gucci's revenues over to the Gucci Parfums subsidiary, in which [Rodolfo] only had 20% and Maurizio had nothing').

¹²³ Paolo not only worked for Rodolfo in Italy, but also for his father in New York. See *House Of Gucci* n 3 above, 76-77 (describing Aldo's berating of his son, unhappiness with his ideas for Gucci's marketing, etc).

¹²⁴ *House Of Gucci* n 3 above; *Gucci v Gucci Shops, Inc.* n 111 above.

under which he could bring his own licensing deals and design.¹²⁵ A condition of the offer was that the Board of Directors, of which Paolo was a member, would have to approve all of Paolo's designs, as would, by extension, his uncle Rodolfo in his role as Chairman of the Board.¹²⁶ The next board meeting in March went disastrously according to accounts. The Board did not approve any of Paolo's designs, reasoning that 'the whole concept of the cheaper product lines was 'contrary to the interests of the company.'¹²⁷ Paolo eventually recommenced his lawsuits, again fighting for the right to use his own name on his designs.¹²⁸ As part of the litigation in the US, Paolo also accused Maurizio Gucci, in his capacity as the President and a Director of Guccio Gucci, SpA and as the Chairman of the Board of Gucci Shops, Inc, as well as Domenico de Sole, as President and a Director of Gucci Shops, Inc. of violating antitrust laws to prevent him from using 'PAOLO GUCCI' as a mark for his line.¹²⁹

In the available opinion rendered by the Southern District of New York, the court held that Paolo Gucci could use his name on his designs if Paolo Gucci used his name only to identify himself as the designer of the products. In such a case, there would not be a likelihood of confusion with the 'GUCCI' mark. Evaluating survey evidence, including facts that purchasers of 'PAOLO GUCCI' products had brought those products to the actual 'GUCCI' store to be repaired and the United States Patent and Trademark Office's refusal to register 'PAOLO GUCCI' as a trademark due to the strength of the 'GUCCI' mark,¹³⁰ the court noted that there would be a likelihood of confusion if 'PAOLO GUCCI' was used as a mark. However, the ability of Paolo Gucci to identify himself as, essentially, himself, as part of this fashion family, was an ability the court was not willing to halt.

Courts have long recognized that

'to prohibit an individual from using his true family surname is to `take away his identity: without it he cannot make known who he is to those who may wish to deal with him; and that is so grievous an injury that courts will avoid imposing it, if they possibly can.'...

This is especially so where the second comer has spent his entire mature life working in the relevant business and, as a result, possesses extraordinary

¹²⁵ *House Of Gucci* n 3 above, 83.

¹²⁶ *ibid* 84.

¹²⁷ *ibid*

¹²⁸ Although it's unclear at what precise date Paolo sold his shares, at the time the Southern District of New York rendered its decision in 1988 the remaining 50% of Gucci Shops was reported as divided between Aldo, his sons, and a third party to whom Paolo Gucci had sold his shares. In 1988, Paolo Gucci no longer had any ownership stake in the US corporation. *Gucci v Gucci Shops, Inc.* n 111 above. Around the same year Italian courts noted the fractured nature of ownership in the Italian company, with Roberto Gucci owning less than his brother, Paolo. Corte di Cassazione 25 February 1987 no 1984; Corte di Cassazione 28 December 1988 no 7075.

¹²⁹ *Gucci v Gucci Shops, Inc.*, 651 F. Supp. 194 - Dist. Court, SD New York 1986.

¹³⁰ *Gucci v Gucci Shops, Inc.* n 111 above.

experience, skill and a desire to work in his field. Under those circumstances it cannot be said that the individual is entering the particular field

‘for no apparent reason other than to use a conveniently confusing surname to his advantage. ... it is evident that Paolo Gucci is entitled to identify himself as the designer of products so long as he does so in a manner which will not lead an appreciable number of consumers to believe that his products are ‘Gucci’ products’.¹³¹

On the antitrust claims, the court reasoned that Maurizio Gucci and Domenico de Sole had not violated antitrust laws under an ‘intraenterprise conspiracy doctrine’.¹³² Sister corporations and commonly-owned corporations have a ‘unity of corporate interest’ and a ‘common consciousness’.¹³³ The companies were not capable of violating antitrust laws as a matter of law: Guccio Gucci, SpA and Gucci Shops, Inc were ‘under common ownership’ since ‘all of the shareholders of Guccio Gucci are beneficial owners of all of the shares of Gucci Shops’. Moreover, ‘Maurizio Gucci effectively control[ed] the business of both companies’.¹³⁴ In addition, ‘collaborative action between a corporation and its employees, or among employees within a corporation, is not regarded as joint action’ for the purposes of collaboration or conspiracy under antitrust laws.¹³⁵ Hence, Maurizio Gucci and Domenico de Sole were found not liable. When two corporations or employees of commonly owned companies agree, there is no danger of antitrust action: new economic power is not brought together.¹³⁶

While the Southern District’s opinion has been discussed in US Fashion Law circles as an exemplary trademark case, it also has impact for evaluations of indirect conflicts under the duty of loyalty in family fashion firms.¹³⁷ Paolo sought a way to bring his own vision for Gucci to light outside the corporation’s framework by using his own name as a trademark. He explored this possibility while still with the company¹³⁸ and began designing under his own line soon after his firing from

¹³¹ Ibid. Although designers may in some cases extensively contract away this right in parts. See *JA Apparel Corp. v Abboud*, 682 F. Supp. 2d 294 (SDNY 2010).

¹³² *Gucci v Gucci Shops, Inc.*, 651 F. Supp. 194 - Dist. Court, SD New York 1986.

¹³³ *ibid*

¹³⁴ *ibid*

¹³⁵ *ibid*

¹³⁶ *ibid*

¹³⁷ The Gucci Board’s refusal to approve Paolo Gucci’s designs at the March 1982 meeting also raises questions under the duty of care for Aldo and Rodolfo Gucci in their capacity as directors. A Board decision to reject Paolo’s designs made on the grounds that they were ‘cheap’ might, especially in light of a previous approval of the Gucci Accessories Collection initiative, be seen as a proxy for silencing Paolo, putting family dynamics above the best interests of the corporation. On the other hand, learning from the lessons of the Gucci Accessories Collection, the Board might have felt it prudent to not endorse another aesthetic of lower quality or a second diffusion line. For the purposes of this section, we prioritize as an evaluation of the duty of loyalty.

¹³⁸ *Gucci v Gucci Shops, Inc.* n 111 above (‘Gucci Shops contends that Paolo was discharged for the additional reason of his alleged organization and participation in several companies in

Gucci, while still a shareholder of the company.¹³⁹ After his firing, Paolo was not at risk in the classic sense of violating his duty of loyalty; he was no longer a director. As a minority shareholder, Paolo may or may not have owed a fiduciary duty to the company or to his father and uncle. He may not have exerted enough control or approval over Gucci operations for such fiduciary duties to apply. But under the by-laws of the company and a strict application of the duty of loyalty Paolo Gucci should not have pursued a fashion line of his own using the ‘GUCCI’ name as a mark at all, either as a shareholder or as an officer of the company. At the same time, after selling his shares and no longer being affiliated with the company, Paolo was still actively prohibited from using his name as a mark. Paolo’s very identity and professional skills seemed to put him in an untenable position with respect to the family fashion firm. At the same time as Paolo continued to be a member of the Gucci family in practice, he was treated like a counterfeiter or competitor unaffiliated with the family at all.

To effectively see Paolo’s use of his own family name on any product he designs as an inherent gain or disloyal act which creates a loss to the corporation seems too reductive. In the fashion sphere brand extensions by family members can often increase the cachet and recognition of a mark.¹⁴⁰ The use of a family name in whole or in part as a mark by a member of that same family, even if on similar products, might not be competition in the strict sense of the term in the fashion industry. If it is understood as competition, such a definition factors out both the familial component and family dynamics, as well as the connection between brand heritage and family heritage in the fashion context. Prohibitions such as those enshrined in the by-laws of Guccio Gucci srl and Guccio Gucci SpA could be understood as strict prohibitions based on use of ‘GUCCI’ as a mark in a competing business. But when they are understood as such they become blanket prohibitions on the use of any personally identifying mark that might contain or be similar to ‘GUCCI’ in all cases by a family member. If we see fashion families as potentially producing talented or inspired individuals, and fashion families as central to brand heritage, we might interpret the sphere of conflicts for a family fashion firm in a narrower way. By extension, we might extend the sphere of to whom a duty of loyalty is owed in a family fashion firm. It is not only the company in a financial sense, but the company in its familial and financial sense. Requiring reasoning and the parsing of advantages in these circumstances may lead managers in an srl context to reframe conflicts for the benefit of their unique family fashion firm ecosystem.

Directors like Aldo and Rodolfo Gucci might be called to factor in family

Haiti making handbags allegedly in competition with Gucci. Paolo maintains that this production was undertaken merely to assure a supply of high-quality merchandise for Gucci Shops’).

¹³⁹ *Gucci v Gucci Shops, Inc.* n 111 above; *House Of Gucci* n 3 above.

¹⁴⁰ T. O’Connor, ‘Missoni Sells Minority Stake to Private Equity Firm in €70 Million Deal’ *The Business Of Fashion*, 15 June 2018, available at <https://tinyurl.com/5n6m7fym> (last visited 20 September 2023); ‘Un Archivio sul filo di lana’, *Missoni*, <https://tinyurl.com/yk2hw3sk> (last visited 20 September 2023) (describing the history of the Missoni brand).

relationships and related effects on brand heritage as part of their review of Paolo's 1982 proposal to the Board. Indirect conflicts in family fashion firms might be recast as conflicts which cannot really be prohibited. Interests are so overlapping and complex when family, fashion, and business collide. Innovation and development for a fashion brand can be based on contributions of individual family members and family stories. To see any action by a family member that is like the fashion firm's activities as a conflict may mean effectively undermining the development and heart of a family fashion business. In some senses, this mirrors the reasoning of the Southern District of New York in holding that Maurizio Gucci and Domenico de Sole had not violated antitrust laws under an 'intraenterprise conspiracy doctrine'.¹⁴¹ We might think of family fashion firms as entities which have an expansive economic power with different strands and lines of activities represented by individuals in the family. Each line, whether similar to or different from a fashion firm's activities, are part of the ecosystem and enterprise.

Of course, there are logical counterarguments to this reasoning. Unlike sister corporations or umbrella corporations and their wholly owned subsidiaries, families may not be 'in agreement', as required for the holding of the Southern District. Moreover, some activities may inevitably tarnish the family fashion firm. This is evident in the Gucci case. Paolo Gucci and Aldo, Rodolfo, Maurizio, and Domenico de Sole, were not in agreement about his plans to design his own line. Paolo's activities may have indeed tarnished Gucci as a brand in its directors' eyes. Moreover, who counts as part of a 'family' for the purposes of this expansive interpretation of the duty of loyalty? Would ex-husbands and ex-boyfriends count? The example of the American designer Tory Burch's ex-husband opening competing stores and even the business operations of Riccardo Pozzoli, the co-founder of Chiara Ferragni's 'The Blonde Salad' and her ex-boyfriend, are examples of how important it may indeed be to define family, and explore interests in extreme cases, for these purposes.¹⁴²

But if directors, member-managers and other fiduciaries were to read similar prohibitions as those for the mark 'GUCCI' as narrow when evaluating whether a conflict exists in a family fashion firm, we might find some common ground for agreement. Conflicts might not just be defined in terms of financial benefit but in terms of end results for family dynamics and rapports, and brand heritage which has been created in a family context. We could recast what is truly a loss to a family fashion firm, and what is truly a conflict even beyond definitions of family. In doing so we might recast the role of the Board in approving transactions. Board members in a family firm with close, family relationships to each other would not be required to make 'Sophie's Choice' like decisions between a corporation and a family member. They would not be required to potentially sacrifice parts of their brand heritage for

¹⁴¹ *Gucci v Gucci Shops, Inc.*, 651 F. Supp. 194 - Dist. Court, SD New York 1986.

¹⁴² L. Sund and P. Bjuggren, 'Family-owned, limited closed corporations and protection of ownership' *European Journal of Law & Economics*, 275 (2007).

a current bottom line. Boards would not need to see gain in strict financial terms. The need for family members to identify themselves and express themselves creatively given their upbringing or connection to family and fashion might be taken into account. A decision to approve a transaction would not require delving into family dynamics and evaluating any use of the family name in commerce. Rather, a narrow reading of a conflict and a broad understanding of the duty of loyalty might require a Board to consider gains to the family fashion firm, and future effects for brand heritage. Instead of collaborating on a tragic retelling of the House of Gucci's fall,¹⁴³ with these considerations Gucci might, today, be celebrating the continuing involvement of the Gucci family in the company in a parallel universe. Long term effects of family business ventures for the company might mean indirect or direct conflicts are no longer conflicts. For controlling shareholders who also owe a duty of loyalty to their fellow shareholders in addition to the corporation, reading identity related uses of a family name in fashion as outside the conflict zone would also help shareholders' rapport by supporting shareholders' own family relationships alongside business ones. Such a broad understanding of to whom loyalty is due would in turn support a family's evolution and, by extension, the brand heritage that is connected to a family's heritage. Italy's requirement that directors share their reasoning and outline advantages for the corporation might offer a first step to such a re-reading of the scope of the duty of loyalty for family fashion firms. At the very least, directors and managers would need to outline how they are conceiving of a conflict, who the parties on opposite sides of the transaction are, and how gain and loss are conceptualized.

V. Foundations Instead of Transfer Restrictions and Shareholder Agreements: Identifying Creative Exit Strategies to Safeguard a Family Fashion Firm's Ecosystem

Despite our proposals for nuanced interpretations and applications of heightened duties in cases involving closely held family fashion firms, some shareholders in these situations may still see an inevitable need to exit. Transfer restrictions and buy-out provisions are options. In a publicly held corporation, shareholders generally have the right to freely sell their shares at any point in time.¹⁴⁴ A family-owned company, however, has the ability to 'shield' fellow shareholders from freely transferring their shares of the company through transfer restrictions and buy-out provisions.¹⁴⁵ There are a number of different types of

¹⁴³ C. Lang, 'How House of Gucci's Costumes Help Tell Its Story' *Time*, 24 November 2021 ('Later, the brand even offered access to the Gucci archives, which resulted in two archival looks (a pantsuit emblazoned with Gucci's iconic double G logo and a silk blouse in the same print, paired with a leather skirt) being used in the film').

¹⁴⁴ With the exception of blackout periods during an IPO and insider trading rules.

¹⁴⁵ F.H. O'Neal, 'Restrictions on Transfer of Stock in Closely Held Corporations: Planning and Drafting' 65 *Harvard Law Review*, 773 (1952) (The company will be held to the laws of the

restrictions shareholders in close corporations may put in place to control the destiny of the shares of their company. These include absolute prohibitions against the transfer of shares, consent restraints and first option provisions and more express provisions limiting transfers to specified classes of persons, such as family members, and 'buy and sell' arrangements after death.¹⁴⁶ In Italy a central question for transfer restrictions is in which document they are included- the bylaws of a closely held corporation, which are binding on third parties, or in a separate agreement, which may have its own limitations.¹⁴⁷ Transfer restrictions can, however, be limited in time. In the SpA context transfer restrictions are only valid for five years from the incorporation of the firm or from the time they are introduced.¹⁴⁸ In the srl context transfer restrictions cannot have a term longer than two years from the incorporation of the firm or from the time the member obtained their shares.¹⁴⁹

Similar to transfer restrictions, buy-out provisions can be used to help protect shareholder in a closely held corporation. Shareholders in close corporations are usually key managers and day-to-day decision makers for the corporation's business. Therefore, a change of share ownership, such as the death of a shareholder, can have massive effects on the management of the corporation.¹⁵⁰ In order to protect the shareholder a close corporation may put an agreement in its bylaws that includes a list of events that would trigger a buyout, including who can purchase the shares, and how to determine the buyout price and payment terms.¹⁵¹ The buyout agreement will often include a shareholder's death as triggering termination of the shareholder's ownership in the corporation and could also include situations such as divorce.¹⁵² When one of these events is triggered, the buyout agreement will control how the shareholder's shares in the corporation are purchased and who has the right to purchase the shares.¹⁵³

state of incorporation, which determines the validity of restrictions on the transferability of stock); *see also* Model Bus. Corp. Act § 6.27 (Restriction on Transfer of Shares).

¹⁴⁶ For an overview see F. H.O'Neal, n 145 above, 773, 777 .

¹⁴⁷ *Comparative Corporate Law* n 22 above, 441-444. The Southern District of New York's discussion of the Italian 1972 shareholder agreement between Gucci family members is illuminative for a discussion of transfer restrictions. In holding that Paolo Gucci was no longer bound by the 1972 Shareholders Agreement, the court noted that Gucci family members had 'consciously and purposefully adopted a revised company by-law which prohibited use of the Gucci name only by shareholders of the company.' *Gucci v Gucci Shops, Inc.* n 111 above. Having sold his shares, Paolo Gucci was no longer a party nor bound to the agreement; had he not sold his shares, he still would have been. The same would apply to a provision restricting the transfer of shares: announcements in the bylaws would bind the person to whom Paolo Gucci sold his shares, whereas a separate agreement outside the bylaws may not.

¹⁴⁸ Art 2469, Italian Civil Code.

¹⁴⁹ Art 2355-bis, Italian Civil Code.

¹⁵⁰ J. Stone, 'Shareholder Buyout Agreement' *Small Business Chronicles*, available at <https://tinyurl.com/p4v89sd8> (last visited 20 September 2023).

¹⁵¹ *ibid*

¹⁵² *ibid*

¹⁵³ *ibid*

One US case which effectively illustrates the benefits of transfer restrictions in a family-owned close corporation comes from the Supreme Court of Indiana, *FBI Farms Inc v Moore*.¹⁵⁴ The close corporation in this case was formed and initially wholly owned by Ivan and Thelma Burger, their children Linda and Freddy, and the children's spouses.¹⁵⁵ FBI's board, which included Linda's husband Birchell Moore adopted several stock transfer restrictions.¹⁵⁶ The restrictions prohibited any stock transfers without board approval, and granted right of first refusal for any stock purchases first to the corporation, then to any shareholders, and finally to any blood member of the family.¹⁵⁷ Linda and Moore divorced in 1982. As part of the settlement, Linda acquired all of Moore's FBI shares, and Moore acquired a monetary judgment of over \$150,000 secured by a lien on Linda's stock.¹⁵⁸ Moore successfully executed on the lien and brought the stock to sheriff's sale, where he purchased it, and following this FBI attempted to cancel Moore's stock arguing that the restrictions were violated.¹⁵⁹ Moore then filed suit against FBI, seeking a declaratory judgment that the attempted cancellation was invalid, and that Moore owned the shares rightfully and free of the transfer restrictions.¹⁶⁰ The court ruled that in the context of family-owned close corporations, transfer restrictions

¹⁵⁴ 798 N.E.2d 440 (Ind. 2003) ('Indiana, like virtually all jurisdictions, allows corporations and their shareholders to impose restrictions on transfers of shares. The basic theory of these statutes is to permit owners of a corporation to control its ownership and management and prevent outsiders from inserting themselves into the operations of the corporation').

¹⁵⁵ *ibid* 442. 1.

¹⁵⁶ *ibid* 444 ('Indiana Code section 23-1-26-8 essentially mirrors Model Business Corporation Act § 6.27, which authorizes restrictions on the transfer of shares. The Indiana statute reads as follows: (a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of any class or series of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction. (b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 7(b) [26-7 26-7 Ind. Code 23-1- 26-7(b)] of this chapter. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction. (c) A restriction on the transfer or registration of transfer of shares is authorized: (1) to maintain the corporation's status when it is dependent on the number or identity of its shareholders; (2) to preserve exemptions under federal or state securities law; or (3) for any other reasonable purpose. (d) A restriction on the transfer or registration of transfer of shares may, among other things: (1) obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares; (2) obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares; (3) require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or (4) prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable ...').

¹⁵⁷ *ibid* 443.

¹⁵⁸ *ibid*

¹⁵⁹ *ibid*

¹⁶⁰ *ibid* 443, 444.

requiring board approval of all sales and granting rights of first refusal to family members are both reasonable and enforceable.¹⁶¹ The court recognized that family-run close corporations have a strong interest in preventing unwanted outsiders from gaining a stake in the business. As a result these corporations should be granted wide latitude to impose stock transfer restrictions.¹⁶² Thus, the right of first refusal given to the corporation is generally valid, and the corporation is permitted to give preference to family members.¹⁶³ While this reasoning shows how a close corporation created and owned by a small family group can be given wide latitude in crafting restrictions to protect itself from outsiders owning its company stock, it also raises issues for line-drawing. Family-specific transfer restrictions potentially undermine a narrow reading of a conflict and a broader reading of the duty of loyalty. A family member who is not an ex-husband or part of the family by marriage may sell their shares back to the corporation and no longer be a shareholder, as in Paolo Gucci's case. If transfer restrictions influence how the sphere of family is defined in a family fashion firm, any family member who is no longer a shareholder in a corporation may be defined as having interests that always run counter to the family fashion firms. At the same time as transfer restrictions and buy-out provisions may offer family members in a family fashion firm an exit strategy, they may also draw permanent enemy lines that compromise the family fashion firm ecosystem.

For this reason, more creative exit strategies may be beneficial. One such creative exit strategy is the formation of a foundation or not for profit corporation that is affiliated with the company but has an independent existence. In the United States, not for profit corporations are creatures of state statutes and are defined by the non-distribution principle. Trusts in the United States may often play a similar role, safeguarding assets for specific benefits beyond those ties to a corporate activity. Individuals who exercise control over a not-for-profit are not entitled to earnings from the not-for-profit's activities.¹⁶⁴ In Italy, most foundations are governed by

¹⁶¹ 798 N.E.2d 447 ("Several factors are relevant in determining the reasonableness of any transfer restriction, including the size of the corporation, the degree of restraint upon alienation; the time the restriction was to continue in effect, the method to be used in determining the transfer price of shares, the likelihood of the restriction's contributing to the attainment of corporate objectives, the possibility that a hostile stockholder might injure the corporation, and the probability of the restriction's promoting the best interests of the corporation").

¹⁶² *ibid* 446.

¹⁶³ *ibid* 449 (Court held that if a restriction is valid, it applies to both voluntary and involuntary transfers, and continues to apply even if family circumstances deteriorate after they are imposed).

¹⁶⁴ L.H. Mayor, 'Fiduciary Principles in Charities and Other Nonprofits', in E. Criddle et al eds, *The Oxford Handbook Of Fiduciary Law*, 103 (2019) ('State laws provide a variety of nonprofit legal forms: nonprofit corporations, charitable trusts, unincorporated nonprofit associations ('associations'), and, in some states, limited liability companies (LLCs). 1 These forms share what Henry Hansmann labeled the 'nondistribution constraint', a prohibition on distributing net earnings to the individuals who exercise control over the organization. 2 This restriction means that nonprofits do not have owners with a right to profits, distinguishing them from for-profit entities. This restriction also distinguishes nonprofits from "hybrid" legal forms designed for social enterprises that have both profit-seeking and social benefit purposes').

the Civil Code and the Code for the Third Sector and are also defined by their nonprofit purposes.¹⁶⁵ There is also the requirement to pursue ends of a social benefit.¹⁶⁶ Included in these social ends are cultural or artistic ones, including the valorization of cultural heritage, which is considered an activity in the general interests of the public.¹⁶⁷ For family fashion firms the decision to found or be affiliated with a foundation may be organic or strategic. The foundation may be closely affiliated with a brand's heritage or dedicate itself to other cultural and social activities. In addition, foundations born from a family fashion firm's brand heritage may signal that the firm's fashion and associated family narratives have evolved into cultural heritage.¹⁶⁸

The *Fondazione Ferragamo* provides, perhaps, the best example of a foundation closely connected to a family fashion firm's family and brand heritage. The foundation has a strategic, although institutionally separate, role in the Ferragamo family's management of Ferragamo SpA. Founded in 2013, the *Fondazione*

‘promote[s] and enhance[s] craftsmanship and made in Italy, through the exclusive performance of education and training activities for those who intend to operate in the world of fashion and design, and of the highest and most artistic forms of Italian craftsmanship, in line with the values, and the stylistic canons expressed in the work of Salvatore Ferragamo’.¹⁶⁹

Founding members of the *Fondazione* included Wanda Miletto Ferragamo, who was instrumental in conceiving the *Fondazione* before her death, Salvatore Ferragamo's children, Salvatore Ferragamo SpA, and the holding company with a majority of shares in Salvatore Ferragamo SpA, Ferragamo Finanziaria SpA.¹⁷⁰

A central part of the *Fondazione's* assets, or patrimony, is the historical archive

¹⁶⁵ The exception are bank foundations which are not governed by the Code for the Third Sector. For an overview of the foundation as a legal entity in Italian law see M. Ferrari, ‘Le fondazioni: la guida completa’ *Altalex*, 17 May 2021, available at <https://tinyurl.com/mtw2e26y> (last visited 20 September 2023).

¹⁶⁶ *ibid*

¹⁶⁷ *ibid* (citing to Art 5 of the Third Sector).

¹⁶⁸ For a discussion of how fashion corporation in Italy have used fashion curation as part of their firms' social ends and have used corporate institutions, including museums, to present their brand heritage as part of wider culture see M. Augello, *Curating Italian Fashion: Heritage, Industry, Institutions* (London: Bloomsbury, 2022) (analyzing this from a fashion studies perspective alone, although mentioning some pertinent parts of Italy's cultural heritage law while not analyzing how fashion donated by fashion companies to public institutions may already be cultural heritage under the law). For an analysis of fashion as cultural property under Italian law, including a comparison of Ferragamo objects in a private archive and those in the public Museo della Moda e del Costume in Florence see F. Caponigri, ‘Problematising’ n 82 above.

¹⁶⁹ *Fondazione Ferragamo Statute*, ‘Art 2 - Purpose’ *Fondazione Ferragamo*, <https://tinyurl.com/48577rxs> (last visited 20 September 2023); see also ‘Mission’ *Fondazione Ferragamo*, <https://tinyurl.com/cnyskkux> (last visited 20 September 2023).

¹⁷⁰ *Fondazione Ferragamo Statute*, ‘Art 8 - Founders, Promoters and Founders’ *Fondazione Ferragamo*, <https://tinyurl.com/48577rxs> (last visited 20 September 2023).

of Salvatore Ferragamo himself. The historical archive, as a cultural property,¹⁷¹ is preserved and enhanced, or valorized, by the Fondazione.¹⁷² As a not for profit entity, the foundation involves members of the Ferragamo family who are members of Salvatore Ferragamo SpA as officers, directors and shareholders, and those who may not be.¹⁷³ As such, the Foundation offers an avenue for family members who wish to participate in Salvatore Ferragamo's legacy without necessarily engaging in the family fashion firm's business activities. This offers an opportunity to preserve the family fashion firm ecosystem. Rather than allow individual family members' to weigh one angle of the family/fashion/firm triangle over another or be in deadlock as they seek a balance, the not-for-profit foundation provides an avenue to maintain equilibrium in business decisions. The foundation also allows the brand's heritage to be presented as cultural heritage and preserved as such under the law without weighing the company down with unnecessary preservation or valorization obligations which would compromise or unnecessarily extend its business activities.

The Fondazione Prada provides another model for creative exit strategies from a family fashion firm. With a distinct focus on contemporary art, the Fondazione's end is to valorize and promote culture, art and design in Italy and abroad, including through public exhibitions, museum activities, publications, and support of contemporary artists.¹⁷⁴ The foundation is chaired by Miuccia Prada, the granddaughter of Prada's founder, and Prada's current CEO and an Executive Director on the Prada SpA's board.¹⁷⁵ While the Prada Group maintains an extensive historical archive,¹⁷⁶ the archive is, unlike in the Ferragamo case, not part nor affiliated at all with the Fondazione Prada. Indeed, the Fondazione Prada's emphasis on contemporary art, photography, and design beyond fashion provides a distinct exit from Prada's business for any member of the Prada family. There may, of

¹⁷¹ Art 10(1), *Decreto Legge* n. 42/2004. See also the article on fashion archives in this Symposium by F. Caponigri and L. Palandri.

¹⁷² 'Mission' n 169 above ('Established in Florence on 15 March 2013, the Fondazione Ferragamo intends to promote art and craftsmanship through the memory of Salvatore Ferragamo's work and personality, encouraging public appreciation for his artistic qualities around the world and the crucial role he played in the history of not only twentieth century shoes, but international fashion as well. To achieve these aims, it is essential to protect and enhance Salvatore Ferragamo's historical archive, which contains various items including documents, patents and products that tell the story of his entire professional career. The Fondazione Ferragamo is at the forefront in managing and protecting its archive, which is made up of heterogeneous funds that are implemented each day. The Archive allows to protect and promote the Salvatore Ferragamo Group's historical-artistic heritage, which represents the memory of an entire industrial and social culture').

¹⁷³ Compare 'Fondazione Ferragamo's Structure' *Fondazione Ferragamo*, <https://tinyurl.com/b75hbsaz> (last visited 20 September 2023) with 'Corporate Governance' *Salvatore Ferragamo, SPA*, <https://tinyurl.com/29pk2a3t> (last visited 20 September 2023).

¹⁷⁴ 'Art 2 - Scopi' *Fondazione Prada Statute*, <https://tinyurl.com/4msddht3> (last visited 20 September 2023).

¹⁷⁵ 'Corporate Governance' *Prada Group*, <https://tinyurl.com/mjezuvdv> (last visited 20 September 2023).

¹⁷⁶ *Historical Archive* PRADA Group, <https://tinyurl.com/45eteb5f> (last visited 20 September 2023).

course, still be some cross-pollination between exhibits at Fondazione Prada and the activities of the business in light of current events and family relationships. In the same breath as Miuccia Prada has, for example, expressed her dedication to ‘understanding the new digital frontier’, industry publications have observed exhibitions on NFTs at the Fondazione Prada and the inclusion of NFTs in collaborations spearheaded by Miuccia’s son and the current Head of Marketing & Communications for Prada, Lorenzo Bertelli.¹⁷⁷ At the same time, the Fondazione Prada’s art exhibitions need not intersect with the design activities or value proposition of Prada SpA. Consider the Fondazione’s 2018 exhibit *Post Zang Tumb Tuuum. Art Life Politics: Italia 1918–1943* which critically examined the art system in Italy between the First and Second World Wars and engaged directly with Italy’s Fascist legacy.¹⁷⁸ In this case, the needs of the contemporary fashion industry may not be connected to a foundation’s and a family member’s activities. Engaging in a cultural sector separate from fashion through a foundation might provide two avenues of creative exit for the benefit of the family fashion ecosystem. First, like the Fondazione Ferragamo, it would allow a family member to exit Prada SpA and follow their own interests without changing the firm’s value proposition or extending its business activities. It might even provide a compelling retirement avenue.¹⁷⁹ Second, it would allow the fashion angle of the family/fashion/business triangle to support the family fashion firm. By allowing an archive to serve the ends of the company and not the ends of a foundation a family fashion firm might more easily use a founder’s archive for business ends, changing and reinterpreting according to the whims of fashion trends, without a concern for cultural relevance or legacy.

At the same time as foundations can provide ways to preserve a family fashion firm’s unique ecosystem and the balance between family, fashion, and business, a foundation can also fundamentally change a family fashion firm. This might especially happen when a founder’s legacy is uniquely tied up with both a company and a foundation. This seems to have been the case with Ratti SpA and the Fondazione Ratti. Founded by textile designer Antonio Ratti as a manufacturing company of silk ties and accessories that was both ‘creative and commercial’,¹⁸⁰ Ratti SpA united Ratti’s conception of design and production with his collecting of historic textile

¹⁷⁷ T. Blanks, ‘Miuccia, Raf and the Future of Prada’ *The Business of Fashion*, 24 February 2022, available at <https://tinyurl.com/yw8fs7ax> (last visited 20 September 2023); ‘Lorenzo Bertelli, BoF 500’ *The Business of Fashion*, <https://tinyurl.com/3rdpws56> (last visited 20 September 2023). See also Augello’s discussion of the links between fashion’s ‘ratification’ and the Fondazione Prada in M. Augello, n 168 above, 22-23.

¹⁷⁸ ‘Post Zang Tumb Tuuum. Art Life Politics: Italia 1918-1943’ *Fondazione Prada*, <https://tinyurl.com/mvf256xe> (last visited 20 September 2023).

¹⁷⁹ K. Chitrakorn, ‘Prada to name former Luxottica chief as group CEO’ *Vogue Business*, 6 December 2022, <https://tinyurl.com/a3bsc5tt> (last visited 20 September 2023).

¹⁸⁰ C. Colavita, ‘Antonio Ratti, Silk Innovator, Dead at 86’ *Women’s Wear Daily*, 15 February 2022, available at <https://tinyurl.com/v4v7w8vp> (last visited 20 September 2023)

fragments¹⁸¹ and his constant engagement with art and culture.¹⁸² For Ratti the company as well as Ratti the founder, the historic textile archive continuously played a crucial role in contemporary designs for clients.¹⁸³ Employees conducted their work in a 'humanistic' atmosphere,¹⁸⁴ and were apprised of cultural movements and attended theatrical performances.¹⁸⁵ Scholars of creative industries and business have characterized Ratti's legacy as an example of a close relationship between entrepreneurship and humanism that suggests a fundamentally ethical relationship between corporate culture and art. In these circumstances, the 'relationship between industry and culture' is mirrored in a relationship 'between attention and freedom'.¹⁸⁶ Today Ratti, SpA is a publicly traded company with a minority stake owned by the Marzotto Group.¹⁸⁷ Its CEO and Board Chairwoman is Donatella Ratti. At the same time the Fondazione Ratti which Antonio Ratti founded in 1985 is still in operation, preserving the historic textile archive and supporting contemporary art initiatives.¹⁸⁸ The Foundation is chaired by Antonio Ratti's other daughter Annie Ratti.¹⁸⁹ With the advent of benefit corporations in Italy in 2016 Ratti SpA changed its status to a benefit company in 2022.¹⁹⁰ The press release announcing this change noted the company's history of 'constant enhancement of the craftsmanship of its professionals' and included an express future commitment, as a benefit corporation, to

'(p)romote social and cultural initiatives, also through collaboration with businesses, communities, institutions and associations on topics of mutual interest in the field of innovation and research.'¹⁹¹

The corporate purposes of benefit corporations may seem uniquely attractive to family fashion firms like Ratti SpA that have historically seen culture and industry as fused. In this sense, foundations can also provide creative exit strategies for family fashion firms themselves. This may also reflect the history of the Italian

¹⁸¹ Today Ratti's historic textile collection is managed by the separate Ratti Foundation and parts of it have been declared cultural property by the Superintendency within the Ministry of Culture. L. Benedetti, *Textile as Art: Antonio Ratti entrepreneur and patron* (Ghent: MER. Paper Kunsthalle, 2017), 19-22. See also Fondazione Antonio Ratti, 'About', available at <https://tinyurl.com/mpr4azxs> (last visited 20 September 2023).

¹⁸² L. Benedetti, n 181 above. During his lifetime Antonio Ratti also funded the Ratti Textile Center at the Metropolitan Museum of Art.

¹⁸³ *ibid* 21.

¹⁸⁴ S.B. Curioni, 'Homer Faber-Homer Poeticus' in L. Benedetti ed, n 181 above, 24.

¹⁸⁵ L. Benedetti, n 181 above, 20; S.B. Curioni, n 184 above, 24 (comparing Ratti's role in an increased association between culture and business to Adriano Olivetti).

¹⁸⁶ S.B. Curioni, n 184 above, 25.

¹⁸⁷ 'Group Structure' *Marzotto SPA*, <https://www.marzottogroup.it/struttura-del-gruppo>.

¹⁸⁸ 'About' n 181 above.

¹⁸⁹ Fondazione Antonio Ratti, 'Who we are', <https://tinyurl.com/ykkmdvcm> (last visited 20 September 2023).

¹⁹⁰ 'Ratti assumed the status of a Benefit Company' *Ratti*, May 30, 2022, <https://tinyurl.com/4yczf5xm> (last visited 20 September 2023).

¹⁹¹ *ibid*

business context and recent legal changes. The Italian Corporate Governance Code, containing recommended rules for all companies listed on the Italian Stock Exchange, includes the standard that company directors pursue ‘sustainable success’ or the ‘creation of value in the long term to the benefit of shareholders, keeping into account the interests of the other stakeholders relevant for the corporation’.¹⁹²

VI. Conclusion

Family fashion firms operate in a unique ecosystem. The legacy and history of a family impact fashion designs, the production of fashion goods, and a brand’s promotional strategies. As a result, the business activities of a family fashion firm are tied to the needs of a specific family and the trends and styles of the fashion industry. A brand’s heritage builds on a family’s heritage while embracing its own fashion codes and symbols. The links between family, fashion, and business often present added value for business: family members can produce new designs, maintain a firm’s connection to its founder, and offer loyal stewardship. At the same time, the links between family, fashion, and business may present challenges for family fashion firms’ business activities. Family members might seem to put themselves in competition with the firm, second and third generations might wish to exit business activities, and founder’s descendants might fundamentally disagree with design directions, compromising a firm’s ability to stay relevant in the fashion industry. At the same time, a firm’s successful business strategy might make the firm and its fashion relevant to the public. In these cases, brand heritage can become cultural heritage. Partnerships between brands and the State can support current business strategies, like fashion shows in treasured cultural spaces. At the same time, cultural value in brand archives risks a company’s assets being declared cultural property. This may bring increased transaction costs and an expansion of business activities as duties of preservation and valorization are imposed on firms who own these assets beyond an individual family.

The law already offers flexible standards which enable fiduciaries in family fashion firms to consider these opportunities and concerns. 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. What is best may include parallel activities that prioritize the family and fashion corners of a firm. At the same time, some directors may define best interests in strict financial terms. The Italian duty of care rule leaves room for directors to compare their knowledge to that of other directors of companies in the same business sector. For some fiduciaries who are reluctant to be first movers or define best interests beyond financial gains, this comparative evaluation might open the door for the approval

¹⁹² M. Ventoruzzo, *Brief remarks* n 84 above, 2; for the full Corporate Governance Code see Italian Corporate Governance Code 2020, <https://tinyurl.com/bdnmrcuv> (last visited 20 September 2023), as published on the European Corporate Governance Institute website.

of beneficial business activities, including resale and upcycling connected to heritage. In contexts like the Italian one where culture and industry have historically been strongly connected, considering the needs of a business sector as part of an expansive understanding of what is in the best interests of the corporation seems to uniquely benefit the family fashion firm. Skeptical fiduciaries might lean on industry practice while best interests are understood as including parallel activities that benefit family narratives, build on fashion industry trends, connect to the brand heritage, and even link to a wider cultural heritage.

The most problematic facets of a family fashion firm often come from the family angle of the ecosystem. Family members of a fashion firm can be caught between a rock and a hard place tied to a firm because of the family connection but cast outside of it because of family dynamics. While a narrow scope of loyalty requires seeing conflicts in strict gain and loss terms to the company, redrawing the lines in conflicts involving fiduciaries and family members, especially in indirect conflicts, can support the family fashion firm's ecosystem. Fiduciaries who see loyalty to a firm's wider family, social and cultural context, and not just to a bottom line, can support reasoning and decision-making that privileges a long-term business sustainability grounded in family relationships and the fashion market. Outlining reasoning and parsing advantages can only help to redraw these lines. While a broader understanding of loyalty might raise problematic questions for who counts as family, it can also open doors for compelling firm futures. In these futures, family members are not the subject of ridicule or tragedy but may continue to support the dignity of a family fashion firm and its business ventures. In this sense, 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.

Despite our proposals for revised interpretations of the duty of care and the duty of loyalty based on heightened fiduciary duty rules, the nature of a closely held family fashion firm, and additional requirements in Italian fiduciary duties, some family members and firms may need to go in a different direction. This different direction may require exiting the business or, in some cases, changing the business. Transfer restrictions and buy out provisions provide tried and true opportunities for firms to buy back shares, allowing family members to pursue other ventures without fiduciary duties to the original, family-owned, corporation. Foundations, on the other hand, present a potentially new avenue to develop a brand's heritage and cultural heritage ventures alongside a firm's core business. Some Creative Directors and founders' descendants already take advantage of foundations to give life to their own hobbies, set the stage for a second chapter, or stay involved in a family fashion firm without necessarily embracing the business of fashion. Firms can also change the nature of their business, reincorporating as benefit corporations. The Italian context, again, provides impactful examples for firms considering their future. The prevalence of fashion foundations and their

embrace of sustainability in the context of the Italian fashion industry's cultural relevance offers a potential blueprint.

Fashion Law, American Style, began the 21st century analysis of how fashion and law influence each other. American style has provided answers for the negative spaces of intellectual property law and offered us a counter-narrative to the importance of intellectual property rights for fashion. It is, however, as yet unable to answer how family, fashion, and business might best work together under the law for the benefit of a family fashion firm ecosystem that is also grounded in brand and cultural heritage. Fashion Law, Italian Style seems to us to provide an answer. With heightened fiduciary duties applied to a landscape of closely held family firms producing fashion design objects, Italian rules offer ways to consider parallel activities in a wider cultural setting and reconceptualize indirect conflicts. In addition, fashion's increased acceptance as part of Italian cultural heritage and family fashion firms' close ties to cultural heritage through their own brand heritage is unparalleled in the United States. As a result, Italian fiduciary standards are inevitably applied to contexts where brand heritage meets cultural heritage. In these circumstances fiduciaries are called to evaluate facts, initiatives, and eventualities, like the declaration of a brand archive as cultural property, that are as yet unforeseen under the law in the United States. As family fashion firms continue to evolve around the world, especially in the United States, and as Fashion Law, American Style, addresses American fashion's cultural value, the Italian style of fiduciary duties in Fashion Law might prove illuminating.