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# The Laws of Fashion: Then and Now - Q&A with Karen Artz Ash

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As one of the pioneers of "fashion law" as a practice, Karen Artz Ash has a unique perspective on the multitude of legal issues involved in the fashion industry. Successful brands rely on counsel adept at navigating a myriad of legal and business issues, from intellectual property assets and finance to real estate, supply chain, manufacturing, and, more recently, ESG trends and emerging technology.

The *Katten Kattwalk* launched 10 years ago, debuting its first issue in late 2013. In that time, the industry has faced enormous challenges, none more dramatic than the global COVID-19 pandemic. In the Q&A that follows, Karen reflects on the last decade of fashion law and considers what's ahead for the industry.

- With your background in practice over the last 40-plus years, what do you see as the most significant changes post-pandemic in the fashion industry, especially following the shuttering of so many retail storefronts and a sharp rise and reliance on online sales?

  The industry has seen tremendous ups and downs, particularly for retail businesses. There seems to be more consistent strength for high-level designer brands and above, but it's been a bit more challenging for value-oriented, mid-market brands. There is also a good deal of sensitivity surrounding sustainability, so fast fashion companies face other challenges related to the dollars they are competing for, along with social significance and waste.

  Now, retailers are trying to find their path to see what works while trying to be more creative about reaching a broader range of consumers and attracting the biggest market possible. I've noticed that many brands have expanded their target age demographic to appeal to more customers, while other companies have chosen to consolidate their brands through huge transactions. However, there have also been several high-profile bankruptcies, so there's much to shake out here.

On the consumer side, today's buyers are being challenged by pressures of inflation, student debt, and a general feeling of uncertainty around the cost of goods and living. All these social and economic factors contribute to one's ability to have disposable income and afford essential items. Yet, at the end of the day, we all need and want accessories and clothing. This means there is still plenty of opportunity for brands looking to connect with consumers.

- Social media has become a powerful advertising and branding tool. How do you think its growth has impacted the fashion industry and how companies operate?

  Advertising and promotion for brands, particularly lifestyle brands, have continued to evolve and change dramatically. I teach a fashion law course at New York Law School. At the beginning of each year, I ask my students what they consider when determining what to buy or from whom, where they shop (whether online or at brick-and-mortar stores), and who they're influenced by. The students, who are in their twenties, respond differently every year. This year, they said they were "so done" with celebrities and influencers and that they turn to their friends to help with decision-making. Unlike past students who relied on influencers for inspiration, they felt that influencers could not be trusted because they are often compensated for promotions or use their platforms to promote themselves. Plus, they were not at all interested in what celebrities have to say or what brands they wear.

  Because of this change in mindset, social media interactions between brands and everyday people have taken center stage. But I think celebrities, especially entertainers, can still be a good draw to attract young consumers. For example, Korean pop stars are promoting in Asia and the United States, which is different from what we've seen in the past. And, if something is compelling about a celebrity, such as their beauty or great skin, they may be able to persuade consumers to wear a certain look more than a brand itself could.

- There's no denying artificial intelligence (AI) and emerging technology will impact many sectors of our society. What impact will AI have on how fashion companies design, sell and market their products?

  We've already seen some change, especially in the beauty industry, where AI gives people a sense of their appearance before choosing certain makeup. However, the level of impact remains to be seen. There was an expectation that other digital concepts like Non-Fungible Tokens (NFTs) or the "metaverse" would rise in popularity within the industry, but I haven't seen much materialize yet. There was an initial flurry of activity, and many embraced it, just less so than we thought. Sometimes, it's a matter of timing and how things come together that makes all the difference.

- Brands play on a global stage. How are fashion companies rethinking how they protect their trademarks in today's evolving landscape?

  As trademark legal practitioners, we know that, unlike the protections afforded by common law rights and registration in the United States, many foreign jurisdictions can be vastly different. They have systems that accord senior rights to a first-to-file for registration, without consideration for other facts and factors surrounding the use and ownership of a mark. Consequently, we encourage our clients to seek immediate priority and registration rights upon the selection of a new mark, even if business plans do not ultimately materialize or change. The initial investment is always smaller than having to battle with a third party over the right to use a mark and give effect to expansion plans for a particular mark or product category. We feel it is less optimal to take a "wait and see" approach as business plans develop. If brands are slow to seek protection, third parties could jump in and seize those rights. This could frustrate the implementation of plans and result in additional, far greater costs than the minor cost of making an earlier filing.

  We must also ensure constant vigilance in the marketplace, whether it's in the "metaverse," online or on social media. All commercial outlets, filing offices, domain name registries and social media postings should be monitored regularly to identify infringing activity so that appropriate enforcement measures can be taken promptly.

- What are some industry-wide legal trends you're focused on now compared to a decade ago – what keeps your clients up at night?

  The public companies constantly need to maintain a strong bottom line and project earnings that they exceed rather than fall below, which always has a ripple effect on what they do. Everybody is concerned about the cost of raw materials, production and marketing, especially during the pandemic when supply chain issues meant there was low inventory. In response, clients ramped up production. The result was too much inventory, so prices had to drop along with profit margins. Brands must always figure out whether they are going to be price elastic or if they're going to have lower-level goods that bear their mark in some way, shape or form.

  Brand owners are also thinking about promotion and engagement with consumers via social media. They're considering how to stay on top of things without becoming stale or accidentally associating with an entertainer or influencer who has publicly gone off the rails. Clients must always be conscious of how messages are communicated on social media platforms so things don't spiral. It used to be that you had your set of designs, your style, your runway shows and traditional ads in fashion magazines. The approach today is much more complex and multifaceted.

- You've previously observed a trend toward less traditional approaches to fashion that embraced unique individuality. Have we moved away from athleisure to brighter, bolder designs, and how has the fashion industry responded to these changing trends?

  There is a need for constant reinvention. Mature designer brands must stay relevant. What might have been relevant years ago may no longer resonate with younger customers. Designers now must find a balance between formal and athleisure styles. We're all returning to the office, but people are not dressing for the office. On the other hand, if you walk down the street, people are much more dressed up than they have been over the last few years. Again, it's about finding that balance between anticipating fashion needs/desires and reconciling with the reality of day-to-day life. But no one has a crystal ball.

- While you noted that no one has a crystal ball, if you did have one, what do you think it would say about brands and fashion law 10 years from now?

  We will all still be here – all still excited about creating beautiful new things and new media tools to engage with consumers. We will all be part of a greater, interconnected network of businesses and professionals working to clean up the environment to make our planet a safer place for future generations, while joining together to celebrate our differences. Style will not be homogenous, with no single aesthetic. Rather, there will be a medley of different styles to choose from. I have great optimism for the industry and look forward to meeting the challenges as a supporting legal professional.

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To read The *Katten Kattwalk* | Issue 26, please click here.

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