

ACHIEVING TRANSPARENCY: USE OF CERTIFICATION MARKS TO CLEAN UP THE FASHION INDUSTRY'S SUPPLY CHAINS

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*"Injustice anywhere is a threat to justice everywhere."
– Martin Luther King, Jr.¹*

ABSTRACT

Shopping malls in the United States are filled with fashion apparel and accessories, attracting millions of consumers who spend billions of dollars each year. Around the world, in third world countries like Indonesia and Bangladesh, there are millions of women and children toiling in dangerous garment factories, for twenty-five cents an hour, trying to fulfill massive orders for "America." Retailers and manufacturers should increase their use of certification marks on the labeling of their products. The corporate action required to meet these rigorous standards of certification marks used to label products will help eradicate labor problems and create transparency in the supply chains.

The use of trademark law to help solve international human rights violations is not a topic covered extensively in scholarly writing. Child labor and sweatshops are problems that have existed for more than a hundred years. There are many articles on the causes of child labor and sweatshops, but the search for a feasible and effective solution continues. The United States is a first world country, yet because the fashion industry contracts with factories that use child labor and sweatshops, it remains one of the top violators of international labor standards.

This Note proffers an effective solution that aims at the heart of these companies: their brand, which is one of their most valuable assets, and their customers, whose perception of the brand largely determines that value. The use of certification marks – which are established and enforced by a

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1. Megan Healy McClung, *Young Lawyers Journal: Thoughts From the Chair: We Need More Legal Aid Attorneys*, 21 CHI. B. ASS'N REC., 44 (2007).

third-party organization – on apparel to certify the conditions under which the product was made would improve the lives and communities of factory workers, and provide transparency to consumers. The use of certification marks requires collaborative involvement from every stakeholder, from workers and consumers, to manufacturers and retailers. This Note proposes an achievable solution to a problem that has long faced our society.

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INTRODUCTION

Fashion is a \$1.75 trillion per year global industry.² More than \$370 billion was spent in 2014 in the United States,³ and \$49.3 billion in apparel alone was imported into the United States in 2015.⁴ The top five importers into the U.S. are China, Vietnam, Bangladesh, Indonesia, and India.⁵ Over 1.8 million people work in the U.S. fashion and apparel industry, with less than 145,000 of those jobs being in

2. STAFF OF J. ECON. COMM., 114TH CONG., THE ECON. IMPACT OF THE FASHION INDUSTRY COMM. PRINT (2015) [hereinafter Economic Impact of the Fashion Industry].

3. *Id.*

4. *Id.*

5. *Id.*

the manufacturing sector.⁶ Most manufacturing now occurs overseas.⁷

Many can identify with the American shopping experience. Whether it is a window display enticing shoppers to come inside, a coupon in the mail luring consumers to the mall, or an email about a big sale, Americans are continually bombarded with fashion advertising. The retail industry has trained consumers to look for the best deals, wanting top-quality brand name items for the lowest prices possible. Fashion seasons change so quickly that it can be difficult to find a coat during winter because stores are already featuring new spring lines. While some shoppers love the challenge of keeping up with the latest fashion trends, for others, it can seem like a full-time job.

Do consumers ever stop to consider how it is possible for the beautiful, hand-embroidered, luxurious-feeling shirt to cost less than \$20, or how their “one-of-a-kind” distressed designer jeans are made? Do consumers consider the mother or young girl in a factory sewing their shirts or spraying their jeans with a toxic chemical to give it a distressed look?⁸ Working space is often cramped, stuffy, and dimly lit.⁹ Sub-standard buildings with poor ventilation might have a fire evacuation map, but the doors are typically blocked by boxes and there may only be one or two fire extinguishers.¹⁰ The hours are long, it is difficult to get one day off a week, and the monthly pay is only for a portion of hours worked.¹¹ Even more difficult to imagine is that despite these persistently dangerous conditions, the predominantly female workforce is eager to keep the position because it is better than nothing.¹²

6. *Id.* at 2.

7. *Id.*

8. See, e.g., Justine Redman, *Inside a Bangladesh Garment Factory*, 9 CBS NEWS, <http://www.cbsnews.com/pictures/inside-a-bangladesh-garment-factory/9/> (last visited Dec. 8, 2016) (describing the potassium permanganate chemical as “a toxic substance that can damage the human nervous system.”).

9. See Pushpa Achanta, *Women Garment Workers Organize Against Inhumane Conditions in India*, WAGING NONVIOLENCE (Jan. 12, 2015), <http://wagingnonviolence.org/feature/women-garment-workers-organize-inhumane-conditions-northwest-india/>.

10. See Holly Williams, *CBS News Goes Undercover in a Bangladesh Clothing Factory*, CBS NEWS (May 22, 2013, 8:20 PM), <http://www.cbsnews.com/news/cbs-news-goes-undercover-in-a-bangladesh-clothing-factory>.

11. See *id.* One factory worker shared, “Last month, I worked 20 days, but they only paid me for 11 . . . If I question them, they yell at me.”

12. See Palash Ghosh, *Despite Low Pay, Poor Work Conditions, Garment Factories Empowering Millions of Bangladeshi Women*, INT’L BUS. TIMES (Mar. 25, 2014, 9:33 AM), <http://www.ibtimes.com/despite-low-pay-poor-work-conditions-garment-factories-empowering-millions-bangladeshi-women-1563419>.

American consumers are becoming increasingly aware of the injustices occurring in garment factories around the world.¹³ Consumer demand for transparency in the fashion industry's supply chains is steadily on the rise.¹⁴ Even when companies are committed to stopping labor abuses in their supply chains, efforts to remedy the problems often prove futile.¹⁵ Some designers provide transparency information from seed to shelf, but this is not yet industry standard.¹⁶ This Note is a call for American brands and retailers to become more actively involved in solving the myriad of problems that exist in their supply chains, particularly by labeling their products with certification marks. Using certification marks will strengthen their brand's reputation and consumer goodwill, resulting in increased brand value.

This Note proceeds in three parts. Part I provides a background on relevant aspects of trademark law, including certification marks and goodwill.¹⁷ Part I also illustrates the global supply chain landscape by generally discussing common labor problems,¹⁸ and finally takes a closer look with case studies on Levi Strauss and Gap's responses to the discovery of prohibited labor practices in their garment factories.¹⁹ Part II analyzes reasons why finding a solution is challenging, including the hurdles of achieving transparency²⁰ and inadequacies of corporate social responsibility ("CSR").²¹ Part III proposes the use of pre-existing and new certification marks as a regulatory tool over industry practices in the supply chains, and explains why this solution is a route toward achieving transparency.²²

I. SETTING THE STAGE: TRADEMARKS AND THE FASHION

13. See Leah Borromeo, *Will Transparency in the Fashion Industry Ever Become a Reality?*, THE GUARDIAN (July 15, 2013, 1:00 PM), <http://www.theguardian.com/sustainable-business/transparency-fashion-industry-reality>.

14. *Id.*

15. See, e.g., Gillian B. White, *All Your Clothes Are Made With Exploited Labor*, THE ATLANTIC (June 3, 2015), <http://www.theatlantic.com/business/archive/2015/06/patagonia-labor-clothing-factory-exploitation/394658/> (discussing Patagonia's efforts to stop human trafficking and other labor abuses in its supply chain, yet still finding continuing violations during recent internal audits).

16. See, e.g., EVERLANE, <http://www.everlane.com> (last visited Nov. 30, 2016) (see *infra* Part III.B).

17. See *infra* Part I.A.

18. See *infra* Part I.B.

19. See *infra* Part I.C–D.

20. See *infra* Part II.A.

21. See *infra* Part II.B.

22. See *infra* Part III.A–B.

INDUSTRY

A. *Overview of Trademarks and Goodwill*²³

Under the Lanham Act, a trademark is defined as any word, symbol, or combination thereof used “to identify and distinguish” the owner’s goods from the goods made or sold by others and “to indicate the source of the goods.”²⁴ Thus, a trademark’s two main functions are to be a goods-distinguisher and source-indicator.²⁵ The definition is framed in “the broadest of terms” to encompass any subject matter that is capable of being a source indicator.²⁶ Trademarks receive federal protection through registration with the U.S. Patent and Trademark Office, and registration can generally be renewed as long as the mark remains in use.²⁷

In *Abercrombie & Fitch v. Hunting World*, the Second Circuit established a spectrum of distinctiveness to determine the strength of a trademark and its degree of protection: (1) arbitrary or fanciful marks; (2) suggestive marks; (3) merely descriptive marks; and (4) generic marks.²⁸ A mark is arbitrary when a common word is applied in an unfamiliar way; for example, APPLE® for computers.²⁹ Fanciful marks are words invented solely for use as a trademark;³⁰ for example, GOOGLE® for Internet search engine services. Arbitrary and fanciful marks are inherently distinctive and accorded the strongest protection.³¹ A suggestive mark is one that requires imagination or thought to determine the relationship between the mark and the respective goods;³² for example, CHICKEN OF THE SEA® for tuna. Suggestive marks are also inherently distinctive, but not as strong.³³

A merely descriptive mark is one that conveys the immediate idea of an ingredient, quality, or characteristic of the goods;³⁴ for exam-

23. This Note will focus only on *goods* in the fashion industry. Therefore, service marks—a type of trademark used in connection with services—will not be discussed. However, the law set forth also applies to service marks.

24. Lanham Act § 45, 15 U.S.C. § 1127 (2012).

25. *See id.*

26. *See Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 162 (1995).

27. *See Trademark Manual of Examining Procedure* § 1601 *et seq.* (Oct. 2015) [hereinafter TMEP] (setting forth registration and post-registration processes).

28. *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2d Cir. 1976).

29. *See Little Caesar Enters., Inc. v. Pizza Caesar, Inc.*, 834 F.2d 568, 571 (6th Cir. 1987).

30. *See id.*

31. *See Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992).

32. *Zobondo Entm’t, LLC v. Falls Media, LLC*, 602 F.3d 1108, 1114 (9th Cir. 2010).

33. *See id.* at 1113.

34. *See Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985).

ple, BANK OF AMERICA® for banking services. Merely descriptive marks are the weakest type of mark and must acquire distinctiveness, also called “secondary meaning,” to receive federal protection.³⁵ The last category on the *Abercrombie* spectrum is generic marks, although there is no such thing as a generic trademark.³⁶ Genericism occurs when a mark becomes the common commercial name for the goods,³⁷ and therefore the mark loses its ability to function as a trademark.³⁸

Marks in the fashion industry are often strong marks, falling into the arbitrary, fanciful, or suggestive category.³⁹ Famous marks, such as LOUIS VUITTON®, receive additional protection benefits.⁴⁰ However, “[r]egardless of where a mark falls on the *Abercrombie* spectrum of distinctiveness, it will be eligible for protection only if it is used as a trademark.”⁴¹ This requirement is met when consumers are readily able to recognize that the mark is functioning as a source-identifier for specific goods.⁴² Again, if a mark becomes generic, it can no longer be protected as a trademark.⁴³

A certification mark is a type of trademark.⁴⁴ J. Thomas McCarthy, a renowned authority on trademarks, described certification marks as “special creatures” of trademark law.⁴⁵ A certification mark is used to identify or “certify” that the marked goods meet certain standards or specifications.⁴⁶ These standards may include charac-

35. See *Two Pesos, Inc.*, 505 U.S. at 769.

36. See TMEP § 1209.01(c) (“[G]eneric marks are incapable of functioning as registrable trademarks denoting source, and are not registrable. . .”).

37. A hypothetical example of genericism: The statement, “Please use the Google search engine to look that up” is a proper use of the GOOGLE®. However, the statement, “Please Google that” employs the mark not as a trademark but as a common commercial name for the good. If GOOGLE® becomes synonymous with “Internet search engine,” the mark could become generic.

38. See *Kellogg Co. v. Nat’l Biscuit Co.*, 35 U.S. 111, 117–18 (1938).

39. For example, ADIDAS®, NIKE®, COACH®, HOLLISTER CO.®, TARGET®, HANES®, RALPH LAUREN®, MICHAEL KORS®, J.CREW®, and L.L.BEAN®, when used on apparel and accessories, fall within one of these categories.

40. See Lanham Act § 43(c)(2)(A), 15 U.S.C. § 1125(c)(2)(A) (2015) (providing “a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark’s owner” and setting forth two causes of action for famous marks, namely, dilution by blurring and dilution by tarnishment).

41. Thomas R. Lee et al., *An Empirical and Consumer Psychology Analysis of Trademark Distinctiveness*, 41 ARIZ. ST. L. J. 1033, 1055 (2009).

42. See *id.*

43. See *supra* note 36.

44. See Lanham Act § 45, 15 U.S.C. § 1127 (2012).

45. J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 19:91 (4th ed. 2005).

46. See *supra* note 44.

teristics such as quality assurance, accuracy, geographic origin, raw materials, and method or mode of manufacture of goods.⁴⁷ The GOOD HOUSEKEEPING SEAL OF APPROVAL® is one example of a certification mark.⁴⁸ It represents *Good Housekeeping Magazine's* limited warranty for products that bear its seal.⁴⁹ Other familiar marks include the CE® certification mark indicating a product meets the European Commission's safety, health, and environmental requirements, and the WOOLMARK® logo used to certify goods made of 100% wool.⁵⁰ Part III of this Note will analyze two certification marks in detail—FAIR TRADE CERTIFIED® and GOOD-WEAVE®—to demonstrate how the required standards for use of these marks help solve some of the problems in the fashion industry's supply chains.⁵¹

Unlike trademarks, a certification mark is not used by the owner of the mark, but is used by individuals or businesses wanting to indicate that their goods meet certain standards.⁵² The mark owner has the responsibility of promulgating rules and regulations governing certification,⁵³ exercising control over use of the mark,⁵⁴ and ensuring the goods have been evaluated and meet the requisite standards.⁵⁵ For consumers, certification marks function as an “identifiable guarantee” that the goods bearing the mark meet these standards established and enforced by the mark owner.⁵⁶ As a matter of policy, owners have no discretion as to who may use their certification mark;⁵⁷ as such, any user who meets the certification criteria is permitted to use the mark.⁵⁸

47. See *id.*; *Fact Sheets: Certification Marks*, INT'L TRADEMARK ASS'N (June 2015) <http://www.inta.org/TrademarkBasics/FactSheets/Pages/CertificationMarks.aspx>, [hereinafter INTA Certification Fact Sheet].

48. INTA Certification Fact Sheet, *supra* note 47.

49. *Id.*

50. *Id.*

51. See *infra* Part III.A–B.

52. See INTA Certification Fact Sheet, *supra* note 47.

53. See TMEP §§ 1306.01(a), 1306.04(b).

54. See *id.* at § 1306.04(b)(i).

55. See generally Jamie Darin Prekert, *Certification Marks as Private Employment Regulation*, excerpt of *MANAGING THE LEGAL NEXUS BETWEEN INTELLECTUAL PROPERTY AND EMPLOYEES: DOMESTIC AND GLOBAL CONTEXTS* (Lynda J. Oswald & Marissa Anne Pagnattaro eds., 2015), <http://www.alsb.org/wp-content/uploads/2015/01/NP-2014-Certification-marks-as-private-employment-Prekert.pdf>.

56. *Id.* at 2.

57. See Lanham Act § 14, 15 U.S.C. § 1064(5)(D) (2012) (refusing to certify goods of any individual or business who maintains the standards which such mark certifies are grounds for cancellation).

58. *Id.*

In addition to functioning as a source indicator, a trademark symbolizes the owner's reputation and goodwill in its business, and the goods associated with the mark.⁵⁹ Goodwill is an important aspect of a business because it represents a trademark or brand's⁶⁰ value.⁶¹ Goodwill is the intangible asset that a brand owns; the property right is in the "'goodwill' represented by the mark," not in the mark itself.⁶² In the fashion industry, goodwill includes a company's reputation⁶³ and its brand popularity or loyalty among consumers.⁶⁴ The success of apparel companies "depends on evoking a positive emotional response from consumers," and thus "brand image is a core asset."⁶⁵

B. Problems in the Fashion Industry's Supply Chains

Common problems in the fashion industry's supply chains include child labor, forced labor, sweatshops, and unsafe manufacturing facilities.⁶⁶ In many developing countries, which are becoming major manufacturing hubs,⁶⁷ children begin working at young ages to help support their families.⁶⁸ The United Nations defines child la-

59. See *Hanover Star Milling Co. v. Metcalf*, 240 U.S. 403, 414 (1915) (stating that a "trademark is treated as merely a protection for the good-will . . . [of] an existing business").

60. "Today, 'brand' is used interchangeably with 'trademark' in many industries and in advertising circles in reference to a word trademark," and will be used interchangeably in this note. See A.G. LONDE, J. GILSON, *GILSON ON TRADEMARKS* § 1.02 (2010).

61. See *Hanover Star*, 240 U.S. at 412 (holding there is a "valuable interest in the good-will of [a person's] trade or business, and in the trade-marks adopted to maintain and extend it").

62. Robert G. Bone, *Hunting Goodwill: A History of the Concept of Goodwill in Trademark Law*, 86 B.U. L. REV. 547, 568 (2006) (citing *Smith v. Davidson*, 31 S.E.2d 477, 479-80 (Ga. 1944)).

63. See *id.* at 583.

64. See *id.* at 590-91.

65. Debra Cohen Maryanov, Comment, *Sweatshop Liability: Corporate Codes of Conduct and the Governance of Labor Standards in the International Supply Chain*, 14 LEWIS & CLARK L. REV. 397, 403 (2010).

66. See *Issues*, INT'L LABOR RIGHTS FORUM, <http://www.laborrights.org/issues> (last visited Dec. 8, 2016) (click "ISSUES" dropdown button to view issues—Child Labor, Forced Labor, Health & Safety, Living Wage, Migrant Labor, Precarious Work, Right to Organize & Bargain, Women's Rights—and select one for more details on a particular issue).

67. See, e.g., Dave Boyer, *Despite Obama's Praise for Higher Pay, The Gap Inc. has Spotty Record on Sweatshops*, WASH. TIMES (Mar. 16, 2014), <http://www.washingtontimes.com/news/2014/mar/16/despite-obamas-praise-for-higher-pay-gaps-has-spot/?page=all> ("Bangladesh is the second-largest exporter of apparel in the world, after China. Its minimum wage of about \$37 a month is the lowest in the world."); see also *Economic Impact of the Fashion Industry*, *supra* note 2, at 1 (stating that "many apparel manufacturing jobs have left the United States").

68. See *Child Labour: Overview*, UNITED NATIONS, <http://www.un.org/en/globalissues/briefingpapers/childlabour/> (last visited Nov. 29, 2016) [hereinafter UN Child Labor Overview]; see also *Child Labour*, INT'L LABOUR ORG., <http://www.ilo.org/global/topics/child->

bor as “work that children should not be doing because they are too young to work, or—if they are old enough to work—because it is dangerous . . . for them.”⁶⁹ Poverty is the root cause of child labor.⁷⁰ The harmful effects of child labor include not receiving an education, proper nutrition, or proper care.⁷¹ Forced labor occurs when workers are compelled to work, through the use of threats of violence or loss of employment, and paid little or nothing.⁷² Women, children, migrant, and indigenous people are most susceptible to the abuses of forced labor.⁷³

Workers of all ages and genders may be subjected to working in sweatshops, which are “commonly described as establishments employing workers at low wages, for long hours, under poor conditions.”⁷⁴ Thus, while a manufacturer may be in compliance with domestic labor laws, workers may still not receive a living wage,⁷⁵ or be paid for overtime hours.⁷⁶ Among the most commonly fired are pregnant women and those unwilling to work overtime.⁷⁷ Manufac-

labour/lang--en/index.htm (lasted visited Nov. 29, 2016) (stating that as of 2000, 168 million children are child laborers around the world).

69. See UN Child Labor Overview, *supra* note 68.

70. See Shima Baradaran & Stephanie Barclay, *Fair Trade and Child Labor*, 43 COLUM. HUM. RTS. L. REV. 1, 14 (2011).

71. See UN Child Labor Overview, *supra* note 68.

72. *Forced Labour, Human Trafficking and Slavery*, INT’L LABOUR ORG., <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (last visited Nov. 29, 2016) (describing forms of forced labor to include debt bondage, trafficking, prostitution, and sweatshops).

73. *Id.*

74. GAO, “SWEATSHOPS” IN THE U.S.: OPINIONS ON THEIR EXTENT AND POSSIBLE ENFORCEMENT OPTIONS 8 (1988), <http://www.gao.gov/assets/80/77185.pdf>. See, e.g., *Factory Collapse in Bangladesh*, INST. FOR GLOBAL LABOUR & HUMAN RIGHTS, <http://www.globallabourrights.org/campaigns/factory-collapse-in-bangladesh> (last visited Nov. 29, 2016) (stating that most workers were young women working thirteen to fourteen hours a day, over ninety hours a week, at twelve to twenty-four cents an hour).

75. A “living wage” is defined as a wage “sufficient to meet the basic living needs of an average-sized family in a particular economy.” See *Living Wage Definition*, ILO Thesaurus, INT’L LABOUR ORG., <http://www.ilo.org/thesaurus/default.asp> (last visited Nov. 29, 2016).

76. See *Human Rights and Business Dilemmas Forum: Living Wage*, THE GLOBAL COMPACT, <http://hrbdf.org/dilemmas/living-wage/#.Vkjjdd-r59Y> (last visited Nov. 30, 2016) (stating many countries do not have a statutory minimum wage, or if they do, it “[f]ails to provide for an adequate standard of living”).

77. *Gap Makes Work a Living Hell for Pregnant Women in Bangladesh Factory*, INT. FOR GLOBAL LABOUR & HUMAN RIGHTS (Oct. 3, 2013), <http://www.globallabourrights.org/press/gap-makes-work-a-living-hell-for-pregnant-women-in-bangladesh-factory> (reporting that “pregnant workers are illegally fired and are also denied their legal paid maternity leave”); see, e.g., *Cambodia: Labor Laws Fail to Protect Garment Workers*, HUMAN RIGHTS WATCH (Mar. 11, 2015), <https://www.hrw.org/news/2015/03/11/cambodia-labor-laws-fail-protect-garment-workers> (describing forms of retaliation to include “dismissals, wage deductions, and punitive transfers”).

turing facilities also pose a serious problem, as factories may be poorly constructed and not meet building codes, thus exposing workers to dangerous conditions.⁷⁸

The highly publicized factory collapse in Bangladesh in 2013 illustrates the tragedy that can result from the above described labor issues.⁷⁹ On April 24, 2013, at 8:00 A.M., over 3,000 workers refused to enter a garment factory because the building looked unsafe.⁸⁰ Workers were beaten, threatened with no pay for the month of April if they did not go to work, and compelled to go inside.⁸¹ Less than an hour later, at 8:45 AM, the electricity went out, large generators on the upper floors kicked on, and the building collapsed.⁸² Over 1,000 workers were killed and another 1,000 workers were severely injured.⁸³ The Institute for Global Labour and Human Rights called the incident the “deadliest disaster” in the fashion industry’s history.⁸⁴ This Bangladeshi factory, which manufactured clothing for U.S. brands such as Wal-Mart, The Children’s Place, and JCPenney, was engaged in sweatshop practices, forced labor, and subjected workers to a dangerous and unsafe facility.⁸⁵

These supply chain problems are present in the American fashion industry because most U.S. brands and retailers have factories overseas. It is becoming common practice to outsource manufacturing to factories in third world countries.⁸⁶ Gap, Inc., a multi-billion dollar brand, is an example of a company that contracts with independent suppliers around the world to do the bulk of its manufacturing.⁸⁷ American consumers’ desire to keep products at cheap prices further exacerbates the situation.⁸⁸

78. See, e.g., Jim Yardley, *Report on Deadly Factory Collapse in Bangladesh Finds Widespread Blame*, N.Y. TIMES (May 22, 2013), http://www.nytimes.com/2013/05/23/world/asia/report-on-bangladesh-building-collapse-finds-widespread-blame.html?_r=0 (reporting the building was “constructed with substandard materials and in blatant disregard for building codes”).

79. See *Rana Plaza: A Look Back, and Forward*, INT. FOR GLOBAL LABOUR & HUMAN RIGHTS (Apr. 24, 2014), <http://www.globallabourrights.org/alerts/rana-plaza-bangladesh-anniversary-a-look-back-and-forward> [hereinafter *Rana Plaza*] (stating “there were large and dangerous cracks in the factory walls”).

80. *Id.*

81. *Id.*

82. *Id.*; see also Yardley, *supra* note 78.

83. *Rana Plaza*, *supra* note 79.

84. *Id.*

85. *Id.*

86. Maryanov, *supra* note 65, at 399.

87. See Boyer, *supra* note 67.

88. *Id.*

The following two case studies involving Levi Strauss & Co. and Gap, Inc. demonstrate how companies respond to these types of violations and highlight some of the interplay between brand reputation and supply chain problems.

C. Case Study #1: Levi Strauss & Co.

In 1991, Levi Strauss & Co. discovered that two Bangladeshi garment factories were engaging in child labor practices, a violation of Levi's Terms of Engagement ("TOE").⁸⁹ The TOE establishes requirements for manufacturing suppliers and contract factories, sets employment standards, and addresses specific issues of child labor, hours, wages, and safety.⁹⁰ Levi faced a difficult situation; resolving child labor violations is challenging because many children must help support their family, and alternative occupations are usually worse than working at a garment factory.⁹¹

Levi could have terminated its contract with the factory and/or fired all the underage workers, as other companies had done.⁹² This would have saved "face" and prevented additional harm to the brand's reputation and goodwill. However, Levi recognized the complications of child labor in developing countries like Bangladesh, where it is "not uncommon for a child . . . to support an entire family on his or her wages."⁹³ Job loss has a detrimental effect on the entire family and may leave the child with no choice but to "turn to begging and prostitution."⁹⁴

89. *Case Study: Child Labor in Bangladesh*, LEVI STRAUSS & CO. (2010), http://www.levistrauss.com/wp-content/uploads/2014/01/Case-Study_Child-Labor-in-Bangladesh.pdf [hereinafter *Levi Case Study*] (defining a child as "an individual under the age of 15"); LEVI STRAUSS & CO., SUSTAINABILITY GUIDEBOOK (2013), <http://lscos3.amazonaws.com/wp-content/uploads/2014/01/LSCO-Sustainability-Guidebook-2013--December.pdf> [hereinafter TOE].

90. *Sustainability: Apparel Workers*, LEVI STRAUSS & CO., <http://www.levistrauss.com/sustainability/people/> (last visited Nov. 30, 2016); TOE, *supra* note 89.

91. Kathryn Manza, *Making Chocolate Sweeter: How to Encourage Hershey Company to Clean Up its Supply Chain and Eliminate Child Labor*, 37 B.C. INT'L & COMP. L. REV. 389, 409, 411-12 (2014) (discussing how children forced out of factories resorted to "stone-crushing, street hustling, and prostitution").

92. *See Levi Case Study*, *supra* note 89.

93. *See id.*

94. *See* Manza, *supra* note 91, at 412; *see also* Tierney Sneed, *Why Cleaning Up the Fashion Industry is so Messy*, U.S. NEWS & WORLD REP. (July 16, 2014, 12:01 AM), <http://www.usnews.com/news/articles/2014/07/16/efforts-to-clean-up-fast-fashion-supply-chains-face-a-tough-road> ("If [retailers] simply pull out because of the risk, they can cause more harm than good in local communities' says Karen Stauss, director of programs at Free the Slaves, an international anti-slavery group. She says it's better that retailers take a more 'surgical approach' — meaning that they work with factory owners to fix the specific la-

The approach taken by Levi was consistent with their brand values of “empathy, originality, integrity, and courage.”⁹⁵ Managers and consultants met with contractors to develop an “innovative plan,” which can be characterized as a sponsorship program.⁹⁶ The plan involved factories paying currently employed children their salary and benefits while the children attended school, and agreeing to offer them full-time employment upon their reaching a legal working age.⁹⁷ Additionally, Levi agreed to pay tuition and book expenses, and if nearby schools lacked capacity for more students, to rent space and hire a teacher.⁹⁸

Levi received widespread praise for implementing this solution;⁹⁹ as a result, the LEVI® brand and goodwill inevitably strengthened and increased in value.¹⁰⁰ Implementing a sponsorship program like Levi’s addresses “the root cause of child labor—poverty”—and allows children and their families to receive “much-needed income.”¹⁰¹ Equipping a child with education makes the child more marketable in the community while also protecting the family from future financial vulnerabilities.¹⁰²

D. Case Study #2: Gap, Inc.

Gap, Inc.¹⁰³ has found itself involved in a series of scandals over the years. Despite being “one of the best-known fashion brands” committed to social responsibility, the evidence of child labor and sweatshops in the company’s supply chain “tells a different story.”¹⁰⁴

bor and safety problems rather than end their relationships with the factory owners entirely.”).

95. See *Levi Case Study*, *supra* note 89.

96. See *Manza*, *supra* note 91, at 412.

97. *Levi Case Study*, *supra* note 89.

98. *Id.*

99. *Id.*

100. See *Manza*, *supra* note 91, at 413 (explaining that sponsorship programs “generate positive publicity” for the company).

101. *Id.* at 412.

102. *Id.* at 412–13 (explaining that “sponsorship programs can make these communities more lucrative by increasing school attendance, skilled labor, and incentives for other firms to invest more capital in the community”).

103. Gap, Inc. owns the brands GAP®, BABYGAP®, GAPKIDS®, BANANA REPUBLIC®, OLD NAVY®, ATHLETA®, and INTERMIX®. See generally GAP, INC., <http://www.gapinc.com/content/gapinc/html/aboutus/ourbrands.html> (last visited Dec. 9, 2016).

104. Dan McDougall, *Child Sweatshop Shame Threatens Gap’s Ethical Image*, *GUARDIAN* (Oct. 28, 2007), <http://www.theguardian.com/business/2007/oct/28/ethicalbusiness.india>.

In 2007, there were reports of child labor in a Delhi, India sweatshop, including pictures of children hand-embroidering GAPKIDS® clothing.¹⁰⁵ In response to this embarrassing and harmful press, Gap announced that it would refine its procedures to ensure its clothing was not manufactured by children.¹⁰⁶ The company also held an international conference to develop solutions for child labor-related issues,¹⁰⁷ and announced a \$200,000 grant to improve working conditions.¹⁰⁸ Gap reiterated its sponsorship program—education, continued wage, guaranteed employment upon reaching a legal working age—for the children discovered working in its supplier factories.¹⁰⁹ However, even with these remedial announcements and Gap’s commitment to eliminating child labor in the production of its clothing, the scandal still damaged the brand’s reputation.¹¹⁰ The fact that a British newspaper, *The Observer*, discovered the child labor violations, rather than Levi, likely contributed to this damage.¹¹¹ The head of policy at the non-profit group Save the Children criticized Gap for failing to meet its “responsibility to check working practices all the way along the supply chain, even as far as the fields where cotton is produced,” as Gap’s contracted factory subcontracted the work out to the sweatshop where the children were found.¹¹²

In 2010, the same British newspaper that discovered the child labor violations discovered more sweatshop conditions in a Delhi, India factory making GAP® brand clothing, including “excessive overtime,” underpayment, and threatened discharge of workers unwilling to work extra hours.¹¹³ Gap, which has Code of Vendor Conduct¹¹⁴ that does not permit such practices, took responsibility

105. Amelia Gentleman, *Gap Moves to Recover from Child Labor Scandal*, N.Y. TIMES (Nov. 15, 2007), http://www.nytimes.com/2007/11/15/business/worldbusiness/15iht-gap.1.8349422.html?_r=0.

106. *Id.*

107. *Id.*

108. *Id.*

109. See McDougall, *supra* note 104.

110. See Manza, *supra* note 91, at 408–09 (“Media exposure of sweatshop conditions in New Dehli and Indonesia, for example, soiled The Gap, Inc.[’s] . . . socially responsible image[.]”).

111. See Gentleman, *supra* note 105.

112. *Id.*

113. Gethin Chamerlain, *Gap, Next and M&S in New Sweatshop Scandal*, GUARDIAN, Aug. 7, 2010, <http://www.the-guardian.com/world/2010/aug/08/gap-next-marks-spencer-sweatshops> (some workers said they had to work up to sixteen-hour shifts and/or seven days a week).

114. *Code of Vendor Conduct*, GAP INC., 10 (2007), http://www.gapinc.com/content/attachments/sersite/COVC_070909.pdf.

by admitting to the wage and overtime violations.¹¹⁵ The company acknowledged that firing its supplier is not generally helpful and only causes more harm to the workers, so it once again implemented its sponsorship program.¹¹⁶ Gap pledged to end the overtime practices, and ordered the factory to take corrective action by compensating workers for all unpaid overtime and by reducing workers' hours.¹¹⁷

In 2010, in response to repeat scandals and in an effort to rebuild the brand image, Gap implemented a Human Rights Policy.¹¹⁸ One of the policy's purposes was to ensure that workers in the supply chain were "treated with fairness, dignity, and respect."¹¹⁹ In 2014, Gap raised its minimum wage for American workers, which received praise from President Obama.¹²⁰ Given its history of "selling apparel made in sweatshops halfway around the world," this decision was not well received by some.¹²¹ The Institute for Global Labour and Human Rights reported in 2013 that Gap was selling clothing manufactured in a Bangladeshi sweatshop.¹²² After Gap failed to implement a "comprehensive inspection and renovation program" in Bangladeshi factories that was announced in 2012, United Students Against Sweatshops heavily criticized Gap.¹²³ While Gap has attempted to "rebrand itself as a leader in ethical and socially responsible manufacturing,"¹²⁴ one nonprofit consumer group said, "[Gap] has a long way to go before it can be considered socially responsible."¹²⁵

115. Chamberlain, *supra* note 113 ("Gap admitted . . . [to the] violations and ordered its supplier to reduce working hours to within the legal limits and to refund workers who have been illegally underpaid.").

116. *Id.*

117. *Id.*

118. See generally, Gap, Inc. 2011/2012, *Social and Environmental Responsibility Report*, GAP INC., <http://www.gapincustainability.com/sites/default/files/2011-12%20Report.pdf> (last visited Dec. 9, 2016).

119. *Id.* at 17; see also GAP INC., *Human Rights Policy*, GAP INC. (2010), http://www.gapinc.com/content/attachments/sersite/HumanRightsPolicy_FINAL.pdf (containing actual policy).

120. Boyer, *supra* note 67.

121. *Id.*

122. *Id.*

123. *Id.*

124. McDougall, *supra* note 104.

125. Boyer, *supra* note 67.

II. DIFFICULTIES IN FINDING AN EFFECTIVE SOLUTION

Goodwill is one of a brand's most valuable assets, and it is vigorously protected through the enforcement of trademark rights.¹²⁶ Labor violations, such as those discussed in the Levi and Gap case studies, directly threaten the value of a brand. Counterfeiting, an issue common among luxury brands, has been linked to child labor and human trafficking.¹²⁷ Tackling these labor issues in the supply chain is no easy feat even for companies that establish strict compliance standards and act swiftly to remedy known violations.¹²⁸ There are two main challenges encountered when attempting to solve the fashion industry's supply chain problems. The first challenge is that, despite the many benefits that can result when companies offer supply chain transparency to their consumers, there are cons that are often enough to reduce the motivation to seek these benefits. The second challenge is overcoming the inadequacies of corporate social responsibility ("CSR") and codes of conduct.

A. Pros and Cons of Transparency

As consumers become more aware of the atrocities occurring in overseas garment factories, they are demanding transparency. Tim Gunn, a fashion consultant known for his mentorship on the reality television show *Project Runway*, said "[d]esigners and brands have a responsibility to provide transparency information to consumers."¹²⁹ Gunn further offers that while "[t]here is increased awareness in the fashion industry when it comes to the need for transparency," he is not "confident that this has translated into action."¹³⁰ Transparency

126. See generally, *World Intellectual Property Report: Brands – Reputation and Image in the Global Marketplace*, WIPO (2013), http://www.wipo.int/edocs/pubdocs/en/intproperty/944/wipo_pub_944_2013.pdf; see also *Trademark*, FINNEGAN, <http://www.finnegan.com/trademarkpractice/> (discussing the importance of trademark protection, and stating, "Successful companies rely on the power of their trademarks and brands to communicate the quality and distinctiveness of their products and services. Trademarks are often some of the most valuable assets of a company. Infringement or dilution of a mark can cost millions in revenue and goodwill.") (last visited Dec. 8, 2016).

127. Colleen Jordan Orscheln, Note, *Bad News Birkins: Counterfeit in Luxury Brands*, 14 J. MARSHALL REV. INTELL. PROP. L. 249, 259–61 (2015) (proposing that by stopping the counterfeiting of luxury goods, it will lower child labor, and result in a cleaner supply chain).

128. See *supra* Part I.D (Gap, Inc. case study showing that establishing high standards will not necessarily insulate a brand from repeat violations).

129. Stephanie Hepburn, *Tim Gunn Talks Supply Chain Transparency in Fashion*, HUFFINGTON POST (Aug. 18, 2016, 3:52 PM), http://www.huffingtonpost.com/stephanie-hepburn/tim-gunn-talks-supply-cha_b_7999754.html.

130. *Id.*

should encourage action because of benefits to stakeholders across the industry, including fashion companies, workers in their supply chains, and consumers.

1. *Benefits of transparency*

Transparency directly benefits fashion brands by increasing the strength of the brands' trademarks and protecting goodwill.¹³¹ The perceived failure to hold actors in the supply chain accountable can damage a brand's reputation,¹³² as demonstrated in the Gap example.¹³³ Transparency, however, will ultimately strengthen a brand's reputation because it incentivizes companies to clean up their supply chains in exchange for more positive brand recognition.¹³⁴ For example, one way a company can earn increased positive brand recognition among consumers is by using a certification mark on its products' labels that also bear the brand's trademark.¹³⁵ As explained in Part I, a company may only use a certification mark if it has met the requisite standards that permit such use, which likely entail some measure of supply chain cleanup.¹³⁶

Transparency also benefits companies by demonstrating corporate social responsibility ("CSR"):¹³⁷ it "assures consumers and investors that [global brands] abide by their publicly expressed commitment to social justice,"¹³⁸ and encourages companies "to focus on initiatives to improve labor conditions without trying to hide violations."¹³⁹ CSR, which usually includes codes of conduct, also allows companies to avoid burdensome government oversight.¹⁴⁰ However,

131. See Maryanov, *supra* note 65, at 404.

132. Manza, *supra* note 91, at 398; see also Massimiliano Bonacchi et al., *The Evolution of CSR in Gucci: From Risk Management to Stakeholder Engagement*, at 11, excerpted from *A STAKEHOLDER APPROACH TO CORPORATE SOCIAL RESPONSIBILITY: PRESSURES, CONFLICTS AND RECONCILIATION* (Adam Lindgreen et al. eds., 2012), <http://ssrn.com/abstract=2091184> (A "total transparency policy of sharing information in the supply chain generates . . . [a] reputational threat due to media exposure in case of information leakage about [sic] cases of non-compliance against [the brand's] policies.").

133. See *supra* Part I.D.

134. Manza, *supra* note 91, at 408.

135. See generally J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 19:90 (4th ed. 2005).

136. See *supra* Part I.A (defining and explaining certification marks).

137. See Maryanov, *supra* note 65, at 401.

138. *Id.* at 404.

139. *Id.* at 405.

140. *Id.* at 400.

CSR efforts to be more transparent are not a panacea; some of their own issues are discussed in the following section.¹⁴¹

Transparency also benefits millions of workers in the supply chain because it prompts action by fashion companies. In recent years, transparency has been promoted as a means to achieve better labor practices.¹⁴² Thus, transparency has the potential to improve the quality of life for those working in the supply chain.¹⁴³ One such example is factory disclosure; if brands and retailers know that the identity of their global suppliers will become public, they will pay closer attention to the working conditions in the manufacturing facilities where their products are made.¹⁴⁴ As with most business risks, companies will take steps to minimize exposure. Factory disclosure poses the risk of a brand and its product being associated with poor labor practices that may be occurring at supplier factories.¹⁴⁵ Disclosure also makes companies more susceptible to lawsuits alleging human rights violations, which can be damaging to a brand's reputation.¹⁴⁶ As an added benefit, in attempting to reduce this risk and avoid scandal, companies will gain more knowledge and insight about what is happening in their supply chain.¹⁴⁷ This knowledge is valuable because it allows companies to better select the suppliers they want to do business with—for example, suppliers who can be trusted to follow labor laws and the contracting brand's code of conduct—and to better monitor their labor practices.¹⁴⁸

Finally, another benefit of transparency is satisfying the demands of consumers, many of whom care whether their clothing is made in unsafe and unfair working conditions.¹⁴⁹ Providing consumers transparency allows them to make informed decisions and “vote with their shopping dollar” by choosing to purchase items manufac-

141. See *infra* Part II.B (discussing the inadequacies of CSR).

142. See David J. Doorey, *The Transparent Supply Chain: From Resistance to Implementation at Nike and Levi-Strauss*, 103 J. BUS. ETHICS 587, 587 (2011).

143. See *id.*

144. *Id.*

145. See *id.* at 591. For example, in the late 1990's, the Nike brand had become “synonymous with slave wages, forced overtime, and arbitrary abuse.” *Id.* at 591 (quoting John H. Cushman Jr., *Nike Pledges to End Child Labor and Increase Safety*, N.Y. TIMES (May 13, 1998), http://www.nytimes.com/1998/05/13/business/international-business-nike-pledges-to-end-child-labor-and-apply-us-rules-abroad.html?_r=0).

146. Manza, *supra* note 91, at 390.

147. Doorey, *supra* note 142, at 588.

148. *Id.*

149. Jens Hainmueller & Michael J. Hiscox, *The Socially Conscious Consumer? Field Experimental Tests of Consumer Support for Fair Labor Standards*, MASS. INST. TECH. POL. SCI. DEP'T, Working Paper No. 2012-15, May 2012, at 1.

tured in accordance with fair labor standards.¹⁵⁰ Many consumers have no desire to buy clothing and other fashion items manufactured in sweatshops or similarly abusive conditions.¹⁵¹ Consumers often express outrage toward companies that use child labor in the manufacturing process, and show admiration toward companies that work to improve industry standards for factory workers.¹⁵²

2. *Challenges to transparency*

One challenge to transparency is the added cost throughout the supply chain. Consequently, either fashion becomes more expensive or profits decrease. This is problematic because consumers want lower prices, and corporations want higher profits.¹⁵³ Consumers often consider price when determining whether to buy a new article of clothing, especially in the “fast fashion” industry, which is known for getting fashion’s latest trends to the mass market with a quick turnaround and at bargain prices.¹⁵⁴ Because profit is a top priority, companies must consider whether “improving labor standards in their supply chain is a profitable way to differentiate their products and their brand.”¹⁵⁵

Unfortunately, decreasing profits is rarely an option and increasing the cost of apparel is unlikely to have widespread success. An MIT and Harvard University study shows that although consumer demand for ethically made products is “growing rapidly,” sales of these products still represent only a small segment of the market.¹⁵⁶ In the fashion industry, there is evidence that “women shoppers interested in a higher priced item” are the one segment of consumers that substantially affect sales of products that are labeled with a certification mark or other information about the use of fair labor practices.¹⁵⁷ It is suggested that the long-term success of practices that increase transparency rely on the strength of consumer demand.¹⁵⁸ Supporters dismiss the idea that transparency in the supply chains

150. *See id.* at 1.

151. *See* Doorey, *supra* note 142, at 591.

152. Hainmueller & Hiscox, *supra* note 149, at 1.

153. Maryanov, *supra* note 65, at 399.

154. *See* Sneed, *supra* note 94; *see* Hainmueller & Hiscox, *supra* note 149, at 13.

155. Hainmueller & Hiscox, *supra* note 149, at 1.

156. *Id.*

157. *Id.* at 2.

158. *Id.* at 12; *see also* Bruno Pieters, Op-Ed. *Conscious Consumers Are the Key to Ethical Fashion*, BUS. OF FASHION (Apr. 29, 2015, 11:00 AM), <http://www.businessoffashion.com/articles/opinion/op-ed-conscious-consumers-are-the-key-to-ethical-fashion>.

is a “fad” that will pass as quickly as most fads do in fashion.¹⁵⁹ Additionally, there is no solid evidence that a broader segment of consumers—for example, consumers in the market for lower priced items—will actually buy the often premium priced “transparent” clothing.¹⁶⁰

Another challenge is the lack of strong legal enforcement mechanisms. There is no comprehensive law that requires U.S. fashion companies to be transparent about foreign supply chain activity or to provide consumers with transparency information. The California Transparency Supply Chain Act (“CTSPA”), which became effective in 2012, applies to certain companies doing business in California.¹⁶¹ CTSPA requires five disclosures relating to the “efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale” to be posted on a retailer’s website.¹⁶² The CTSPA does not actually require companies to follow the disclosures; rather, the Act’s “teeth” come from the pressure that failure to implement any changes will damage a brand’s reputation.¹⁶³ Overall, this law is limited in its applicability and effectiveness. Instead, the transparency benefits outlined above are generally a result of self-governance and regulation.

While there are several benefits to transparency, there are often enough cons to dissuade companies from seeking these benefits. Transparency can increase the strength of a brand’s trademarks and goodwill, as well as demonstrate corporate social responsibility; however, this is only one way that a company can achieve these benefits. There is little doubt that transparency would improve the working conditions and lives of supply chain workers, but as we have learned, consumer demand for cheap clothing and corporate desire for large profits can tip the scales in the other direction. Finally, while transparency appeals to society’s demand for more information, there is not enough follow-through from consumers’ wallets. As the push for transparency continues, there is hope that one day it will become a standard practice in the fashion industry.¹⁶⁴

159. Hainmueller & Hiscox, *supra* note 149, at 1.

160. *See id.*

161. California Transparency Supply Chain Act (“CTSPA”), CAL. CIV. CODE § 1714.43(a) (Deering 2016).

162. *Id.* at § 1714.43(a)–(c).

163. *See Manza, supra* note 91, at 403.

164. *See Hepburn, supra* note 129.

B. Inadequacies of Corporate Social Responsibility

Corporate social responsibility (“CSR”) has been broadly defined as “an organi[z]ation’s commitment to operate in an economically and environmentally sustainable manner while recogni[z]ing the interests of its stakeholders.”¹⁶⁵ A more applicable definition for this Note would include a third “e” – ethically. CSR is a voluntary commitment driven by a company’s “understanding and acknowledgment of its moral responsibilities regarding the impacts of its activities and processes on society.”¹⁶⁶ Common values promoted through CSR include “business ethics, professional skills, environment, health and safety, cooperation, stakeholders, human rights, diversity, and equal opportunities.”¹⁶⁷

In response to consumer criticism, major fashion brands have implemented corporate and vendor codes of conduct¹⁶⁸ that establish labor standards for their international suppliers.¹⁶⁹ While it appears beneficial on paper, corporate self-regulation has failed in practice.¹⁷⁰ Sweatshops are prohibited in virtually every code of conduct, yet they still exist.¹⁷¹ As fashion brands fail to meet their own internally established standards, consumers, public interest groups, and non-governmental organizations campaign for legal reform.¹⁷² However, legal reform is generally slow, difficult, and costly.

Codes of conduct are most commonly limited in success because of operational challenges in monitoring and enforcement.¹⁷³ Monitoring the compliance of factory suppliers is a necessary step toward solving supply chain problems, but many codes of conduct do not have a system that actively monitors labor conditions.¹⁷⁴ Even when

165. Kenneth Amaeshi et al., *Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? Clarifications, Exceptions, and Implications*, 81 J. BUS. ETHICS 223, 224 (2008).

166. Bonacchi, *supra* note 132, at 3.

167. *Id.* at 8.

168. See, e.g., LEVI STRAUSS & CO., SUSTAINABILITY GUIDEBOOK (2013), http://www.levistrauss.com/wp-content/uploads/2014/01/LSCO-Sustainability-Guidebook-2013_-_December.pdf (setting forth the company’s Global Sourcing and Operating Guidelines); LEVI STRAUSS & CO., WORLDWIDE CODE OF BUSINESS CONDUCT (2012), <http://www.levistrauss.com/wp-content/uploads/2014/01/WORLDWIDE-CODE-of-business-conduct.pdf> (setting forth standards and guidance for conducting business).

169. Maryanov, *supra* note 65, at 399–400.

170. *Id.*

171. See *id.* at 407–09.

172. See *id.* at 399–400.

173. *Id.* at 409–12.

174. *Id.* at 409 n.45 (citing Joe Phillips & Suk-Jun Lim, *Their Brothers’ Keeper: Global Buyers and the Legal Duty to Protect Suppliers’ Employees*, 61 RUTGERS L. REV. 333, 338–39 (2009)).

there are monitoring systems on paper, courts may find that it has no legal contractual significance. For example, in the class action suit of *Doe v. Wal-Mart*, the Ninth Circuit Court of Appeals held that Wal-Mart's code of conduct "[did] not create a duty . . . to monitor the suppliers," but merely "reserved the right to inspect the suppliers."¹⁷⁵ The code of conduct text, which plaintiffs relied on, stated: "Wal-Mart will undertake affirmative measures, such as on-site inspection of production facilities, to implement and monitor said standards."¹⁷⁶

In addition, self-monitoring can create a lack of "objectivity, accuracy, and transparency."¹⁷⁷ When companies self-monitor or hire independent monitors, objectivity becomes problematic because they have a direct interest in obtaining a report that their factories are in compliance.¹⁷⁸ One response has been collaborative monitoring initiatives, such as the Fair Labor Association ("FLA").¹⁷⁹ Established in 1998, FLA is comprised of "socially responsible companies, colleges and universities, and civil society organizations" that collectively implement a code of conduct, monitoring system, and certification system.¹⁸⁰ FLA's mission is to protect workers' rights by (1) setting standards for codes of conduct, (2) monitoring and reporting to ensure accountability, and (3) providing guidance and support for compliance.¹⁸¹ The transparency concerns can be resolved by factory disclosure.¹⁸²

The second operational challenge is enforcement. While fashion companies may document the "poor" labor conditions in their supplier factories, there has been only slight progress in remedying violations.¹⁸³ When a supplier violates the code of conduct, enforcement options often include terminating contracts or engaging with the supplier to remedy the problem.¹⁸⁴ Companies are hesitant to terminate the contract because of the risk of harm to workers and the communities that would result from their job loss.¹⁸⁵

175. *Doe v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681-82 (9th Cir. 2009).

176. *Id.* at 681.

177. Maryanov, *supra* note 65, at 409.

178. *Id.*

179. *Id.* at 410.

180. See FAIR LABOR ASS'N, <http://www.fairlabor.org> (last visited Dec. 8, 2016).

181. *Protecting Workers' Rights Worldwide*, FAIR LABOR ASS'N, <http://fairlabor.org/our-work> (last visited Dec. 8, 2016).

182. See Maryanov, *supra* note 65, at 409-10; see also *supra* Part II.A.1 (discussing benefits of factory disclosure).

183. See Maryanov, *supra* note 65, at 411.

184. *Id.* at 412.

185. *Id.*; Sneed, *supra* note 94.

At the other end of the enforcement spectrum is engaging with suppliers that are consistently non-compliant, but this is not particularly appealing either.¹⁸⁶ The supplier-engagement-remedy option calls for transparency, exposing the brand to public criticism or potential litigation, and requires financial investment, which cuts into profits.¹⁸⁷ The Levi case study is a good model of how to successfully engage with the supplier—albeit the risks and costs—and shows why it is the better avenue for enforcing codes of conduct.¹⁸⁸ Nevertheless, CSR and codes of conduct have yet to eliminate sweatshops, which have unfortunately been thriving since the 1800's.¹⁸⁹

III. PROPOSAL: USE OF CERTIFICATION MARKS AS A REGULATORY TOOL

“Fast fashion,” a buzzword in the industry, “is characterized by short production and distribution lead-times, smaller product runs, and a focus on trendy product designs.”¹⁹⁰ In a recent segment on HBO's *Last Week Tonight*, John Oliver discussed how trendy clothing is cheaper than ever, but companies pumping out this clothing in record time continue to violate fair labor standards.¹⁹¹ This Note proposes the increased use of certification marks as a regulatory tool in overseas garment factories and the overall supply chain so that brands can develop a consistent pattern of transparency, accountability, and sustainability.

A. Increased Use of Existing Certification Marks

The two main certification marks used in the garment and textile industry are FAIR TRADE CERTIFIED® and GOODWEAVE®. Fair Trade USA, a non-profit organization, has long used its certification mark to certify cotton as well as agricultural products such as coffee,

186. Maryanov, *supra* note 65, at 412.

187. *Id.*

188. See *supra* Part I.C (Levi case study).

189. Amanda Wilson, *Sweatshops: A Dirty History of Discrimination and Ignorance*, ATL. INT'L STUDIES ORG., <http://atlismta.org/online-journals/0506-journal-government-and-the-rights-of-individuals/sweatshops/> (last visited Dec. 8, 2016) (“The term [sweatshop] began to be associated with the practice of garment workers, described as sweated labour in the 1830s. The sweatshop was first defined in the 1890s.”).

190. Economic Impact of the Fashion Industry, *supra* note 2, at 5.

191. Last Week Tonight, *Last Week Tonight With John Oliver: Fashion*, YOUTUBE (Apr. 26, 2015), <https://www.youtube.com/watch?v=VdLf4fihP78> (“It’s not an accident the third time . . . [i]t’s a pattern of reckless behavior which has to be addressed!”).

tea, and cocoa.¹⁹² GoodWeave, another non-profit, uses its certification mark to certify hand-woven rugs.¹⁹³ These “prominent ethical product labeling initiatives” seek to support and protect factory workers’ human rights by prohibiting child and forced labor, establishing certain workplace labor standards, and setting wages and working hours standards through a certification program.¹⁹⁴

1. *Fair Trade Certified® certification*

The mission of Fair Trade USA includes: (1) enabling farmers to obtain “a fair price for their harvest, help[ing] workers create safe working conditions, provid[ing] a decent living wage[,] and guarantee[ing] the right to organize” and (2) encouraging American consumers to “vote with their dollar” to cause a “fundamental shift in the way companies do business and create a historic opportunity to reward companies that embrace sustainability.”¹⁹⁵ The Fair Trade Certified® label can now be used on an array of products ranging from food and plants to apparel, home goods, and sports balls.¹⁹⁶ There are unique certification criteria depending on the type of product that companies seek to label;¹⁹⁷ however, the same Fair Trade Certified® green, black, white, and gray-colored square logo is generally used.¹⁹⁸

To gain access to the Fair Trade Certified® mark, a company must register its products and packaging, pay licensing fees, and adhere to applicable trade, factory, and compliance standards.¹⁹⁹ Fair Trade USA explains that a company’s use of the certification mark is the “end result of a rigorous global inspection and monitoring system.”²⁰⁰ The Fair Trade Certified Apparel and Home Goods program

192. Hainmueller & Hiscox, *supra* note 149, at 3.

193. *Id.* at 1.

194. *Id.* at 3.

195. *About Fair Trade USA: Mission/Values*, FAIR TRADE USA, <http://fairtradeusa.org/about-fair-trade-usa/mission> (last visited Dec. 8, 2016).

196. *Products and Partners*, FAIR TRADE USA, <http://fairtradeusa.org/products-partners> (last visited Dec. 8, 2016).

197. *See Resources: Logos & Labels*, FAIR TRADE USA, <http://fairtradeusa.org/resources/logos-labels> (last visited Dec. 8, 2016).

198. *See Certification and Your Business: Standards Download Center*, FAIR TRADE USA, <http://fairtradeusa.org/certification/standards/download-center> (last visited Dec. 8, 2016).

199. *See Certification and Your Business*, FAIR TRADE USA, <http://fairtradeusa.org/certification> (last visited Dec. 8, 2016).

200. *Certification and Your Business: Label Products*, FAIR TRADE USA, <http://fairtradeusa.org/certification/label-usage> (last visited Dec. 8, 2016).

is the first of its kind that allows consumers to directly affect the cotton farmers and factory workers who manufacture these products.²⁰¹

The trade standards for apparel and home goods set forth the scope of certification, labeling options, and fair trade premiums for importers, brands, and retailers interested in purchasing and selling Fair Trade Certified® products.²⁰² The Fair Trade Factory Certification labeling option is the most comprehensive, as companies must agree to inspections and compliance with the factory standards, which is based on the International Labor Organization (“ILO”) core labor standards.²⁰³ A more limited option is Fair Trade Certified Materials, which allows companies that purchase Fair Trade Certified® cotton for manufacturing to use the certification mark for this material.²⁰⁴ The last option is Fair Trade Certified Factory and Material, which permits certification labeling of all certifiable raw materials in addition to the manufacturing process, although the final product may include elements that are not Fair Trade Certified®.²⁰⁵ Fair trade premiums must be paid to farmers for Fair Trade Certified® cotton and workers for outsourcing manufacturing to a Fair Trade Certified® factory.²⁰⁶ The standards also seek to establish a long-term stable relationship between the brand, buyers, and suppliers.²⁰⁷ Finally, the standards outline trade requirements, which include rules for contracting with factories and Fair Trade Certified® producers.²⁰⁸

The factory standards for apparel and home goods contain detailed requirements for factories interested in manufacturing Fair Trade Certified® products.²⁰⁹ The core labor standards require compliance with workplace conditions, applicable national laws and industry standards.²¹⁰ The certification process entails an application,

201. See *Products Partners: Apparel and Home Goods*, FAIR TRADE USA, <http://fairtradeusa.org/products-partners/apparel> (last visited Dec. 8, 2016).

202. FAIR TRADE USA, FACTORY STANDARD FOR APPAREL AND HOME GOODS 2 (2014), http://fairtradeusa.org/sites/all/files/wysiwyg/filemanager/FTUSA_TradeStandardAHG_1.1_EN_102513.pdf.

203. *Id.* at 3.

204. *Id.* (suggesting that more Fair Trade Certified® materials may be available in the future, but currently cotton is the only option).

205. *Id.*

206. See *id.*

207. See *id.* at 4.

208. See *id.* at 4–5.

209. FAIR TRADE USA, COMPLIANCE CRITERIA FOR FACTORY STANDARD FOR APPAREL AND HOME GOODS (2014) [hereinafter Fair Trade Factory Standards], http://fairtradeusa.org/sites/all/files/wysiwyg/filemanager/FTUSA_FactoryStandardAHG_1.2_EN_03062014.pdf.

210. *Id.* at 3.

pre-assessment, and on-site audit.²¹¹ Once a factory certification is granted, which permits use of the Fair Trade Certified® mark, it is valid for eighteen months and may be renewed during the second year.²¹² Fair Trade USA emphasizes that this initial vetting process and subsequent auditing “entails a high level of transparency and traceability in [a company’s] global supply chains.”²¹³

An overview of the requirements imposed by the factory standards includes: appointing an officer responsible for handling the facilities’ Fair Trade matters;²¹⁴ having management systems that progressively promote “continuous improvement and compliance” with the Fair Trade standards;²¹⁵ ensuring that workers’ children have access to primary education;²¹⁶ creating a system for worker participation, transparency, and financial accountability;²¹⁷ promoting economic development through fair treatment,²¹⁸ working hours, and a living wage;²¹⁹ demonstrating social responsibility by not using child or forced labor, and providing a safe and healthy working environment;²²⁰ and developing an environmental plan that monitors sustainability and addresses hazardous materials and waste management.²²¹

Finally, use of the Fair Trade Certified® mark by a factory—company owned or a contracted supplier—manufacturing apparel and home goods involves rigorous audits.²²² The compliance criteria largely track the factory standards.²²³ For each standard there is cor-

211. *Certification and Your Business: Register*, FAIR TRADE USA, <http://fairtradeusa.org/register> (last visited Dec. 8, 2016).

212. *Fair Trade Factory Standards*, *supra* note 209, at 4.

213. *Certification and Your Business*, FAIR TRADE USA, <http://fairtradeusa.org/certification> (last visited Dec. 8, 2016).

214. *Fair Trade Factory Standards*, *supra* note 209, at 5 (stating the Fair Trade Officer is “responsible for the overall coordination of the Fair Trade program in the company, the grievance and complaints processes, and for ensuring all necessary communications”).

215. *Id.*

216. *Id.*

217. *See id.* at 5–6.

218. *Id.* at 7 (“The company shall treat all personnel with dignity and respect. The company shall not engage in or tolerate the use of corporal punishment, mental or physical coercion, or verbal abuse of personnel. No harsh or inhumane treatment is allowed.”).

219. *See id.* at 7–9 (outlining the minimum standards of a normal work week, overtime, consecutive working days, holidays, base and overtime wages, and paid time off).

220. *See id.* at 9–14 (describing other social responsibility provisions to include freedom to collectively bargain, non-discrimination, and women’s rights).

221. *Id.* at 14.

222. FAIR TRADE USA, COMPLIANCE CRITERIA FOR THE FACTORY STANDARD FOR APPAREL AND HOME GOODS 1 (2014), http://fairtradeusa.org/sites/all/files/wysiwyg/filemanager/FTUSA_AHGFactory_CC_1.2v1_EN_03062014.pdf.

223. *See id.*

responding compliance criteria against which factories are audited and the year by which criterion must be fulfilled.²²⁴ Most criteria require compliance before initial certification will issue.²²⁵ For example, the requirement to protect children and young persons from child labor, which falls under the social responsibility standard, has eighteen requirements that must be fulfilled pre-certification or within the first year post-certification.²²⁶ A sample criterion is that “[t]he factory provides an orientation program for all managers, supervisors, and workers on the company’s policies and procedures on child labor.”²²⁷

As demonstrated, the trade, factory, and compliance standards certainly have their benefits. The Fair Trade Certified Apparel and Home Goods program, like other Fair Trade USA certification programs, is also attractive to fashion companies because it is entirely voluntary.²²⁸ Because the Fair Trade Certified® mark can be used for products made from certified materials and/or in certified facilities,²²⁹ companies can gradually implement this certification mark as part of their CSR efforts. By purchasing Fair Trade Certified® cotton and obtaining certification for one factory at a time, accountability and transparency increase,²³⁰ and this is one step toward helping eradicate the problems plaguing the fashion industry’s supply chains.

2. *GoodWeave® Certification*

The mission of GoodWeave is to “stop child labor in the carpet industry and to replicate its market-based approach in other sectors.”²³¹ While GoodWeave’s certification initiative is not used to label fashion,²³² it provides a model for successfully implementing a certification mark in the textile industry. The principles on which this model is based can be applied to the garment industry, where child labor is also a problem.²³³

224. *Id.*

225. *See id.* at 1–31 (showing that most criteria must be fulfilled by year zero).

226. *See id.* at 11–12.

227. *Id.* at 11.

228. *See* Hainmueller & Hiscox, *supra* note 149, at 3.

229. *See* FAIR TRADE USA, LABEL USE GUIDE 1–5, http://fairtradeusa.org/sites/default/files/wysiwyg/filemanager/FTUSA-Label_Use_Guide-v16.pdf (last visited Dec. 8, 2016).

230. *See Certification and Your Business*, *supra* note 211.

231. GOODWEAVE, <http://www.goodweave.org/home.php> (last visited Nov. 30, 2016).

232. *See About GoodWeave*, GoodWeave, <http://goodweave.org/about> (last visited Nov. 30, 2016).

233. *See supra* Part I.B (explaining the issues of child labor in the fashion industry).

The certification standards for use of the GoodWeave® mark are exceptionally rigorous.²³⁴ Rug exporters and importers must be “licensed under the GoodWeave certification program and sign a legally binding contract to adhere to GoodWeave’s no-child-labor standard; allow unannounced random inspections by local inspectors; and pay a licensing fee that helps support GoodWeave’s monitoring, inspections, and educational programs.”²³⁵ As of 2016, the certification standards have been expanded to “prohibit forced and bonded labor.”²³⁶ The education program frees children from the weaving looms and fully sponsors their education through grade ten or the age of eighteen, whichever comes first,²³⁷ which is comparable to the sponsorship program in the Levi case study.²³⁸ To prevent counterfeit labeling, each GoodWeave® label has a unique number to trace its origin.²³⁹

GoodWeave International (“GWI”), a member of the International Social and Environmental Accreditation and Labeling (“ISEAL”) Alliance,²⁴⁰ sets the GoodWeave® certification standard.²⁴¹ The GoodWeave Standard is broad, covering “all workers and workplaces,” “all operations,” and “all processing activities” from receipt of raw materials to completion of the finished product, including even subcontracted processes.²⁴² There are limits though, as the raw material supply chain is not included in the Standard.²⁴³ Rug and carpet producers are responsible for their subcontractors’ adherence to the standards.²⁴⁴ As with almost every certification mark, producers must also adhere to trademark usage policies.²⁴⁵

234. See *Child-Labor-Free Certification*, GOODWEAVE, http://www.goodweave.org/about/child_labor_free_rugs (last visited Nov. 30, 2016).

235. *Id.*

236. *The GoodWeave Standard*, GOODWEAVE, <http://www.goodweave.org/standard> (last visited Nov. 30, 2016) [hereinafter GOODWEAVE].

237. *Schools and Opportunities*, GOODWEAVE, http://www.goodweave.org/about/schools_education_opportunities (last visited Nov. 30, 2016).

238. See *supra* Part I.C (explaining Levi’s sponsorship program).

239. *Child-Labor-Free Certification*, *supra* note 234.

240. *Id.* (ISEAL is a “global association for sustainability standards whose Codes of Good Practice are seen as global references for developing and implementing credible standards”).

241. GOODWEAVE, *supra* note 236; GOODWEAVE INT’L, GENERIC INTERNATIONAL STANDARD FOR RUG PRODUCERS (2016) [hereinafter GOODWEAVE RUG STANDARD], <http://www.goodweave.org/uploads/GoodWeave-Generic-Intl-Standard-v3-0.pdf>.

242. GOODWEAVE RUG STANDARD, *supra* note 241, at 3.

243. *Id.*

244. *Id.* at 3–4.

245. See GOODWEAVE INT’L, GOODWEAVE INTERNATIONAL (GWI) TRADEMARK POLICY, 4–8 (2013), http://www.goodweave.org/uploads/GoodWeave_TM_Policy_6.2_2013.pdf (setting forth guidelines for the use of GoodWeave®). Including possession of a valid trademark li-

GWI structured the standards around three certification principles: (1) no child labor is allowed;²⁴⁶ (2) no forced or bonded labor is allowed;²⁴⁷ and (3) conditions of work are documented and verifiable, meaning transparency is a requisite to verifying compliance.²⁴⁸ Similar to the Fair Trade Certified® certification standards and compliance criteria,²⁴⁹ there are corresponding certification requirements for each principle. Included in the standard, but not yet a requisite for GoodWeave® certification,²⁵⁰ are “Progress Principles,” which guide producers in how “to address the root causes of child labor by improving lives in weaving communities.”²⁵¹

As the GoodWeave® certification mark expands its standards—from the recent prohibition of forced and bonded labor²⁵² to the expected inclusion of Progress Principles²⁵³—there will hopefully be positive results for the mark, such as increased usage by producers in the rug and carpet industry, prominence in the marketplace as an effective certification program, and a stronger influence on consumers. Still, one positive result that is certain is the workers and children in the rug industry’s supply chain will receive additional labor protections and an improved quality of life.²⁵⁴

B. Create A New Certification Mark

Developing a new certification mark would also contribute to eliminating the myriad of problems in the fashion industry’s supply chains, especially if designed specifically for the industry. While the Fair Trade Certified® mark has recently become an option for certifying apparel and home goods, the mark remains widely associated

cense, no modifications to the mark’s design and application of label to qualified contract product. *Id.* at 4–8.

246. *Id.* at 6–7 (clarifying child labor and setting forth certification requirements).

247. *Id.* at 8–9 (clarifying forced and bonded labor and setting forth certification requirements).

248. GOODWEAVE RUG STANDARD, *supra* note 241, at 10 (explaining transparency policy and setting forth certification requirements).

249. *See supra* Part III.A.1.

250. GOODWEAVE RUG STANDARD, *supra* note 241, at 11 (“However, GoodWeave . . . intends to bring these principles into the scope of the certification in future revisions of the Standard.”).

251. *Id.* at 11.

252. GOODWEAVE, *supra* note 236.

253. GOODWEAVE RUG STANDARD, *supra* note 241, at 11.

254. *See Children’s Stories*, GOODWEAVE, http://www.goodweave.org/children_stories_list.php?cid=15 (last visited Nov. 29, 2016) (discussing benefits resulting from GoodWeave® certification and providing a link to stories of some who were positively affected).

with agricultural products like sugar, coffee, and chocolate.²⁵⁵ American shopping malls are filled with apparel and accessories; a distinct certification mark on the labels of these products could have real and lasting benefits.

Imagine the terms “Certified Transparent” incorporated into a simple, yet stylish logo. It would appear on hangtags, price tickets, and marketing materials as stores advertised that they sell Certified Transparent™ apparel. As the respect of the mark increased in the marketplace, consumers would not only search for the latest sale or good deal, but would be looking for stores offering certified products. This hypothetical may seem impossible to some stakeholders in the fashion industry, but it could become a reality in the twenty-first century.

Everlane is one company that has taken the seed to shelf approach.²⁵⁶ Everlane® is a trademark, but the brand is a great example of transparency in the fashion industry and provides a foundation upon which a new certification mark could be created.²⁵⁷ The online boutique offers high quality men’s, women’s, and children’s clothing, shoes, bags, and accessories at competitive prices.²⁵⁸ The company is founded on “radical transparency,” which it describes as knowing your factories, knowing your costs, and always asking why.²⁵⁹

Know your factories. Everlane searches for the best factories around the world, seeks to build personal relationships with the owners, and visits its factories often.²⁶⁰ The company takes this hands-on approach because it believes it “is the most effective way to ensure a factory’s integrity.”²⁶¹ Everlane also has “stringent workplace compliancy paperwork,” although these documents are not available on its website.²⁶² Factories are displayed on Everlane’s website through an interactive map, and if a customer selects one,

255. See *About Fair Trade USA: Mission/Values*, *supra* note 195.

256. See Susan Berfield, *Can Everlane Make Ethical Chic?*, Bloomberg (Dec. 2, 2015), <http://www.bloomberg.com/features/2015-everlane-ethical-fashion/>; *About*, EVERLANE, <http://www.everlane.com/about> (last visited Nov. 29, 2016) [hereinafter *About Everlane*].

257. See Berfield, *supra* note 256.

258. See EVERLANE, <http://www.everlane.com/mini-collection> (last visited Nov. 29, 2016).

259. *About Everlane*, *supra* note 256.

260. *Id.*; Stephanie Clifford, *Some Retailers Say More About Their Clothing’s Origins*, N.Y. TIMES (May 8, 2013), A1, <http://www.nytimes.com/2013/05/09/business/global/fair-trade-movement-extends-to-clothing.html> (stating how Michael Preysman, Everlane’s chief executive and founder, says he looks for factories that are independently certified).

261. *About Everlane*, *supra* note 256.

262. *Id.*

he or she can learn more about that particular factory.²⁶³ Factory descriptions include information such as the number of employees, date of establishment, how the factory was selected, products produced, materials used, and pictures.²⁶⁴

Know your costs. Everlane provides transparent pricing; something that was once, and perhaps still is, unthinkable.²⁶⁵ The company believes customers “have the right to know what their products cost to make.”²⁶⁶ It reveals the true cost, traditional retail mark-up, and Everlane’s mark-up for each product.²⁶⁷ For example, the cost breakdown for “The Cashmere Cropped Crew” is \$31.59 for materials, \$1.60 for hardware, \$12.87 for labor, \$1.82 for duties, and \$0.67 for transport, with a true cost of \$48.²⁶⁸ Traditional retail for this cashmere sweater would be \$240, but Everlane’s price is \$115.²⁶⁹ One reason why the brand can keep its mark-up down is because it is an online-only boutique, and does not have the expense of brick-and-mortar stores.²⁷⁰

Always ask why. Everlane describes the company as having a “passion for pushing boundaries and challenging conventions.”²⁷¹ It has a culture where the norm is to “dissect every single decision . . . at every level of the company.”²⁷² Everlane targets consumers who ask “how” and “where” questions when shopping, and has adopted this questioning mentality internally.²⁷³ There is a growing consumer demand for supply chain transparency information, and the Everlane® brand is an example of how a company can successfully respond.²⁷⁴ Ultimately, Everlane’s approach to transparency can be used as a building block in the creation of a new certification mark for apparel.

263. *Our Factories*, EVERLANE, <https://www.everlane.com/factories> (last visited Nov. 29, 2016) [hereinafter *Everlane Factories*].

264. *Id.*

265. *About Everlane*, *supra* note 256; Clifford, *supra* note 260 (discussing that Everlane is one of the retailers that are “doing what was once unthinkable, handing over information about exactly how, and where, their products were made”).

266. *About Everlane*, *supra* note 256.

267. *See, e.g., Sweaters & Sweatshirts*, EVERLANE, <https://www.everlane.com/collections/womens-sweaters> (last visited Dec. 8, 2016).

268. *Id.*

269. *Id.*

270. *See About Everlane*, *supra* note 256.

271. *Id.*

272. *Id.*

273. *See id.*

274. *See Clifford*, *supra* note 260.

CONCLUSION

The United States' fashion industry remains one of the top violators of international labor standards by using overseas child labor and sweatshops to manufacture cheap and trendy products. The common labor problems in the supply chains continue to exist because the selective remedying by companies is not sufficient to eliminate the problems. The Levi case study demonstrates that a positive outcome is achievable; but the Gap case study is a reminder that even a leading global fashion brand can find itself in multiple labor scandals.

A solution is desired and demanded by society, but finding one that is effective proves quite difficult. A policy of transparency across the fashion industry's supply chains would ultimately have a domino effect of benefits. Not only does transparency benefit the company by bolstering the brand and its goodwill, it directly helps solve the labor issues, improves the quality of life for factory workers, and satisfies consumer questioning. However, transparency comes with financial costs, legal and reputational risks, and there is no comprehensive legal scheme requiring brands to be transparent. CSR and codes of conduct, in theory, seem like viable solutions, but since companies struggle to implement and enforce these codes of conduct due to operational challenges, CSR is not as powerful of an option as it appears.

Trademark law has been posed and advocated as an achievable and effective solution. Certification marks can be used as a regulatory tool to oversee garment factories in the supply chain. Current certification marks, like Fair Trade® and GoodWeave®, can be expanded to have a greater effect. In addition, a new certification dedicated specifically to the fashion industry can be created. The radically transparent Everlane® brand, and its hands on approach, provides helpful guidance for how a company can be transparent, accountable, and sustainable.

As the world's leading brands become stronger and more valuable, the lives and well-being of supply chain workers will become more healthy, safe, and purposeful. The use of trademark law may only be part of the solution to the problems facing the fashion industry. However, because it has the potential to be a win-win solution for all involved stakeholders, it is a solution that comes with high recommendation.