

STITCHING UP CONSUMER PROTECTION: THE CASE FOR FTC INTERVENTION IN FAST FASHION'S PRACTICES

by Ruchi B. Patel

Ruchi B. Patel is a 2025 cum laude graduate of Elisabeth Haub School of Law at Pace University.

SUMMARY

This Article explores the significant, detrimental implications of the intellectual property (IP), environmental, and human rights harms created by fast fashion. Fast fashion takes advantage of gaps in U.S. copyright and trademark law; is a leading contributor to waste, greenhouse gases, and microplastic pollution; and allows for continuation of human rights violations, including labor exploitation and unfair wages. The Article (1) examines the current U.S. legal landscape across IP, federal and state actions, and corporate self-governance to highlight the gaps enabling these problems to persist; (2) offers a look into how environmental and human rights harm is directly linked to consumer injury in the United States by discussing specific detrimental impacts at the national level; and (3) proposes that the Federal Trade Commission use its broad statutory authority to regulate the unfair business practices of the fast fashion industry.

A meaningful part of the human experience is choosing how we present ourselves to the rest of the world. This can be done in various ways, such as sharing one's personality, culture, or ideologies. It can also be done through fashion, a fundamental form of self-expression, albeit a potentially expensive one. Social groups and interactions heavily influence fashion, returning us to personality, culture, and ideologies. The experience and significance of fashion are cyclical.

Fashion propels the development of identity and drives social progress.¹ It is a way to express and advo-

Author's Note: The author would like to dedicate this Article to all who listened to her talk endlessly about a paper she was writing for her law review. She thanks her family and friends. She especially thanks her mentors and professors at Haub Law, Prof. Smita Narula, Prof. Josh Galperin, and Dean Horace Anderson, for their guidance and detailed feedback. She also thanks Emily Borich, Counsel at Foster Garvey PC, for her time and discussions that inspired the author's recommendation of Federal Trade Commission intervention, and the Pace Environmental Law Review's Research and Writing Editor, Patricia McKee, for her review and feedback. She thanks everyone who took the time to read and comment on the Article.

1. Sarah B. Tkhayet, *The Politics of Fashion: An Exploration of Clothing's Complex Role as the Fabric of Our Socio-Political Existence*, YALE GLOBALIST

cate for freedom—take, for instance, the use of fashion in multi-wave feminism.² Each wave of feminism utilized fashion to gain attention to its cause.³ However, fashion can also be a source of stagnation that “upholds and creates vehicles of oppression.”⁴ This is demonstrated by the evolution of *fashion* into *fast fashion*. Now, fast fashion has become a symbol of environmental degradation and human rights violations.

Discussing fast fashion on an international scale is complex.⁵ While an international-level discussion of supply chain issues would be helpful, it lends itself to branching out too many times, creating a complicated web.⁶ A more digestible discussion and analysis involves examining fast fashion through a national lens, in this instance from a U.S. law and policy perspective.

(June 5, 2023), <https://globalist.yale.edu/2022-2023-issues/the-politics-of-fashion-an-exploration-of-clothing-complex-role-as-the-fabric-of-our-socio-political-existence/>; see also Vikas Shah, *The Role of Fashion in Human Culture*, THOUGHT ECON. (Oct. 19, 2023), <https://thoughteconomics.com/the-role-of-fashion-in-human-culture/>.

2. See Tkhayet, *supra* note 1.

3. *Id.* (expressing the views of Prof. Jane Lynch of Yale University from her course “In Ordinary Fashion,” providing the link between fashion and politics).

4. *Id.*

5. See Alexa Maratos, *The Fast Fashion Industry: Formulating the Future of Environmental Change*, 40 PACE ENV'T L. REV. 391 (2023).

6. *Id.*

This Article identifies, examines, and analyzes U.S. law and policy to highlight the underregulation of fashion and fast fashion, which ultimately perpetuates harmful practices that affect consumers. This examination informs my conclusion that current U.S. legal authorities support intervention by the Federal Trade Commission (FTC) to more comprehensively mitigate the harms of fast fashion through addressing consumer injury and promoting U.S. consumer protection.

The Article is divided as follows. Part I provides an overview of the emergence and a brief history of fashion, and introduces the various problems associated with fast fashion, including intellectual property (IP), environmental, and human rights issues. Part II describes the current fragmented approach to U.S. law and policy in the fashion industry, revealing the gaps that allow fast fashion to continue harmful practices and highlighting the need for more targeted regulation by the FTC. Part III provides a detailed background on the FTC and its legal authority, explaining that the Commission is empowered by the U.S. Congress through the Federal Trade Commission Act⁷ (FTC Act) to regulate “unfair or deceptive acts or practices in or affecting commerce . . .” and to “seek monetary redress and other relief for conduct injurious to consumers.”⁸ Part IV outlines the test the FTC uses to determine consumer injury under §5 of the FTC Act,⁹ and how the harms produced by the fast fashion industry satisfy that test.

Part IV also recommends that the FTC can and should use its §5 authority to regulate the fast fashion industry and combat detrimental injury to U.S. consumers. Given the broad scope of the authority granted the FTC by statute, the Article argues for an additional regulatory approach under *unfair* acts or practices, in addition to the Commission’s focus on *deceptive* acts or practices relating to false advertisement and greenwashing. As a result of the FTC’s broad statutory authority, the Article proposes that it directly seek monetary redress and relief for specific consumer harm caused by unfair acts or practices done by fast fashion companies, then shift to broader rulemaking, specifically tailored to large businesses in fast fashion. Part V concludes.

I. Fast Fashion: Conception, History, and Consequences

A. Industrial Turn in the Fashion Industry

Fashion used to be a slower, infrequent, and intentional process. Adding to one’s closet was a practical endeavor “driven by seasonal changes and growing pains.”¹⁰ However, introducing an industrialized approach to producing

garments via sweatshops was “the beginning of the end of [the slow era].”¹¹ In the 1960s, fashion companies started catering to trends, causing textile mills to emerge across developing nations.¹² The allure of cheaper production and greater profits began to overshadow the quality of the product and the working conditions of those making the product.¹³ This was the birth of “low-quality, mass-produced” clothing.¹⁴ Not long after, in 1989, the *New York Times* coined the term *fast fashion*.¹⁵

Computers introduced the option of online shopping, which was another force in increasing textile consumption. Between 2000 and 2015, clothing production doubled.¹⁶ The State of Fashion Report of 2019 asserted the fast fashion industry was experiencing an awakening among consumers.¹⁷ They demanded more socially responsible behavior from fashion retailers, including fast fashion companies.¹⁸ However, sustainability efforts slowed with the start of the COVID-19 pandemic in early 2020.¹⁹ Shutdown made consumers desire a safer and more convenient way to shop.²⁰

B. Intellectual Property, Social Media, and Technology Exploitation

Besides cheap production and offshoring, the industry has two *other* foundational pillars: stolen IP²¹ and expansive reliance on artificial intelligence (AI)²² to track social media influencers and trends.²³ The designer dream suddenly became available to more socioeconomic groups as a much cheaper copy. To keep profits high, the production level relies on trendy demands from “a growing middle class

7. 15 U.S.C. §§41 et seq.

8. FTC, *Federal Trade Commission Act*, <https://www.ftc.gov/legal-library/browse/statutes/federal-trade-commission-act> (last visited Mar. 3, 2026).

9. 15 U.S.C. §45.

10. See Storm Birch, *The History of Fast Fashion*, OCEAN GENERATION (Aug. 31, 2023), <https://oceangeneration.org/the-history-of-fast-fashion/>.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*; see also Anne-Marie Schiro, *Fashion: Two New Stores That Cruise Fashion’s Fast Lane*, N.Y. TIMES (Dec. 31, 1989), <https://www.nytimes.com/1989/12/31/style/fashion-two-new-stores-that-cruise-fashion-s-fast-lane.html> (referencing the current fast fashion giant, Zara, one of the leading creators and contributors of the fast fashion industry).

16. See Katie Curtis-Smith, *The Impact of Fashion on People and Planet: What We Purchase*, OCEAN GENERATION (Aug. 25, 2023), <https://oceangeneration.org/impact-of-fashion/> (units sold went from 50 billion to 100 billion by 2015).

17. See Harsh Gautam, *Introduction of COVID-19 to Fast Fashion*, INDIAN INST. ART & DESIGN (Mar. 2, 2022), <https://www.iiad.edu.in/the-circle/introduction-of-covid-19-to-fast-fashion/>.

18. *Id.*

19. *Id.*

20. See Angela Covalli, *The Impact of Online Shopping Trends and the Rise of Fast Fashion*, MEDIUM (Sept. 22, 2023), <https://medium.com/@ascovalli/the-impact-of-online-shopping-trends-and-the-rise-of-fast-fashion-5036bc71a74d>.

21. IP is an integral part of the fast fashion problem because larger companies can take advantage of the gaps in IP and mass produce designs without it being illegal. Part II will thoroughly detail the lack of U.S. law and policy in IP, particularly in copyright and trademark, demonstrating that U.S. IP law has not kept pace with the fast fashion industry.

22. See Theus, *infra* note 42, at 634.

23. See Abigail M.M. McCann, *Social Media: One of Fast Fashion’s Biggest Influencers*, 2 STUDENT J. INFO. PRIV. L. 70, 81 (2024); see also Theus, *infra* note 42.

population with disposable income.”²⁴ Big corporations have marketed themselves toward lower/middle socioeconomic groups at the expense of designers’ IP.²⁵

One of the biggest fast fashion brands, Shein, reportedly “has become notorious for stealing designs from small and independent fashion businesses.”²⁶ Shein and other brands apparently use AI “to collect data, like pictures from social media posts, to search for product characteristics and relate those characteristics to sales value.”²⁷ After acquiring designs, Shein relies heavily on microtrends²⁸ created by social media influencers who can reach expansive audiences to sell its products.²⁹ Fast fashion companies thus exploit the consumers’ desire to be on trend by leveraging influencers’ large followings and serving them a constant platter of sponsored and promotional videos and posts, product placement, and haul videos³⁰: “In 2020, while the sales of American fashion brands declined by 20%, Shein . . . saw sales rise by 150%.”³¹

C. Environmental and Human Rights Exploitation

Finally, the success of fast fashion can be attributed to “an accelerated supply chain cycle.”³² This is what makes fashion *fast*. After the industry creates consumer demand through social media,³³ it meets those demands by mass-producing

low-priced and low-cost products.³⁴ Human rights violations occur during production because of “poor working conditions for low-wage factory laborers.”³⁵ One instance is the 2013 collapse of the Rana Plaza in Dhaka, Bangladesh, killing 1,134 workers.³⁶ Environmental harms occur after the products have been released to market through multiple avenues, such as water pollution and overconsumption, textile waste, carbon emissions, and chemical contamination.³⁷ These harms are numerous and constant.

The supply chain is *vast* and fragmented.³⁸ Therefore, there is ample margin for error, fraud, and exploitation. Specifically, within the United States, there is enough textile waste to fill the Mall of America, the largest shopping mall in the country, *every six days*.³⁹ Regulation is necessary and critical in this industry, but currently sparse.⁴⁰ Without more meaningful regulatory intervention, the fashion industry is set to account for “more than 25% of the world’s global carbon budget by 2050.”⁴¹

II. The Fragmented U.S. Law and Policy Landscape Is Ineffective in Overseeing Fast Fashion

Fast fashion companies are exploiting gaps in U.S. IP law and policy compliance to use important features of fashion designs without facing liability.⁴² In addition, the rapid advancement and use of technology significantly impact the ability to keep pace with the growing volume of IP infringement.⁴³ Unlike in the European Union (EU), there is no expansive fashion or fast fashion oversight in U.S.

24. See Maratos, *supra* note 5 (quoting Manon Huckle, *When It Comes to Cleaning Up Its Act, Fast Fashion Is No Fast Fix*, FASHION L. (Sept. 6, 2021), <https://www.thefashionlaw.com/when-it-comes-to-cleaning-up-its-act-fast-fashion-is-no-fast-fix/> [https://perma.cc/7N73-XUA7]).

25. See Yasmine Modaresi, *The Exploitative Nature of the Fast Fashion Industry, and How We Need to Change as Consumers*, MEDIUM (Sept. 2, 2022), <https://yasminemodaresi.medium.com/the-exploitative-nature-of-the-fast-fashion-industry-and-how-it-can-change-2e4039bec1b3> (“It’s ironic, really, that these companies target poorer people to consume products made by the poorest and most disenfranchised people on the planet.”).

26. See Maggie Quiroz, *Fast Fashion: A Thorough Examination on Human Rights Violations in Bangladesh and Global Environmental Degradation 8* (Master’s thesis, Chapman University 2024), https://digitalcommons.chapman.edu/cgi/viewcontent.cgi?article=1026&context=international_studies_theses; see also Angela Hamilton, *5 Times Shein Has Copied Designs From Independent Fashion Brands*, ECO CLUB (Apr. 8, 2022, updated on May 24, 2023), <https://ecoclubofficial.com/shein-stealing-designs-independent-fashion-brands/>; see also Ellie V. Bramley, “*Details I Made, They Made*”—Designers Hit Back at Shein’s Imitation Game, GUARDIAN (Sept. 2, 2023), <https://www.theguardian.com/business/2023/sep/02/details-i-made-they-made-designers-hit-back-at-sheins-imitation-game>.

27. See Carolyn W. Martin & Margaret Horstman, *AI and Copyright in the Fashion Industry*, LUTZKER & LUTZKER LLP (June 30, 2021), <https://www.lutzker.com/ai-and-copyright-in-the-fashion-industry/>; see also Theus, *infra* note 42, at 634 (“AI has become, and will continue to be, an integral part of the fashion industry.”).

28. See Anna Mikhaylyants, *TikTok Core: The Fashion World of Today*, HARV. CRIMSON, <https://www.thecrimson.com/article/2023/3/9/tiktok-aesthetics-microtrends-fast-fashion-style/>.

Microtrends are fashion fads that experience a surge in popularity before often falling off just as quickly. Their brief life cycle consists of an introduction to the fashion realm of TikTok from popular creators, a quick rise to popularity, acceptance from audiences through For You Page algorithms and comments, a following decline in popularity, and eventually a sad death when the microtrend inevitably goes out of style and is seen as so-last-week or “cheugy.”

29. See McCann, *supra* note 23, at 84.

30. *Id.*

31. See Covalli, *supra* note 20.

32. See Maratos, *supra* note 5, at 397.

33. See Alex Crumbie, *What Is Fast Fashion and Why Is It a Problem?*, ETHICAL CONSUMER (Apr. 9, 2024), [\[ing/what-fast-fashion-why-it-problem\]\(#\) \(stating that “fast fashion brands are not simply reacting to consumer demand, they are also creating it”\).](https://www.ethicalconsumer.org/fashion-cloth-</p>
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34. See Maratos, *supra* note 5, at 397.

35. See Tima Bansal & Gareth Gransauil, *Why Fast Fashion Has to Slow Down*, MIT SLOAN MGMT. REV. (Nov. 18, 2021), <https://sloanreview.mit.edu/article/why-fast-fashion-has-to-slow-down/>.

36. *Id.*

37. *Id.*; see also Kathryn Horvath, *How Many Clothes Are Too Many?*, PIRG (May 10, 2024), <https://pirg.org/articles/how-many-clothes-are-too-many/> (stating that Americans dispose of about 17 million tons of clothing yearly and 65% of clothing is thrown out within 12 months).

38. See Maratos, *supra* note 5, at 396 (stating that companies may be under the impression that they have 1,000 suppliers, but in reality, it is close to 50,000 sub-suppliers); see also IMRAN AMED ET AL., *THE STATE OF FASHION 2025: CHALLENGES AT EVERY TURN 123* (2024), <https://www.mckinsey.com/-/media/mckinsey/industries/retail/our%20insights/state%20of%20fashion/2025/the-state-of-fashion-2025-v2.pdf>.

39. See Janet Domenitz, *What’s the Problem With Fast Fashion?*, PIRG (Aug. 7, 2023, updated June 30, 2024), <https://pirg.org/articles/whats-the-problem-with-fast-fashion/>.

40. See Maratos, *supra* note 5, at 408 (specifying that the United States has no fashion industry-specific regulation in its federal legislative system); see generally The Fashion Act, *Backgrounder*, <https://www.thefashion-act.org/backgrounder> (last visited Mar. 3, 2026) [hereinafter *The Fashion Act*]; see also Karis Stephen et al., *Pumping the Brake on Fast Fashion*, REGUL. REV. (Mar. 19, 2022), <https://www.theregreview.org/2022/03/19/saturday-seminar-pumping-the-brakes-on-fast-fashion/>.

41. See *The Fashion Act*, *supra* note 40.

42. See Susannah Theus, *U.S. Copyright Law Is Fashionably Late to Regulating IP Compliance in the Fashion Industry*, 85 LA. L. REV. 605, 613 (2025) (stating that a detrimental gap exists in U.S. copyright law that is a cause for an increasing amount of copyright infringement present at fast fashion companies).

43. *Id.*

federal law, regulation, or policy; only proposed measures exist.⁴⁴ Although the federal government regulates the discrete harms of fast fashion across multiple agencies, this scheme is holistically disjointed and ineffective.⁴⁵ The current U.S. oversight of fast fashion is a patchwork of state action and self-governance.⁴⁶

The following section examines the U.S. legal landscape—IP law, federal and state action, and self-governance—to illustrate that current fashion oversight is too fragmented and narrowly focused.⁴⁷ This analysis supports the Article’s argument that the current U.S. approach significantly contributes to the ongoing environmental and social issues caused by fast fashion, and calls for more comprehensive intervention by the FTC of its unfair business practices.⁴⁸

A. IP Law Gaps: The First and Critical Missing Link

For roughly three decades, there has been a consistent echo within legal scholarship on the fashion community: the gaping hole in IP regimes for protecting fashion designs.⁴⁹

An unassuming but important reason for the fast fashion industry’s continued mass production and overconsumption is the weak U.S. IP laws.⁵⁰ This is the first and critical missing link in the chain of events that has led to the current environmental and human rights impacts, ultimately harming U.S. consumers.⁵¹ The collective framework of these IP laws⁵² establishes the foundation for the legal protection of fashion designs in the United States.⁵³

Unfortunately, this framework leaves gaps in design protection for all types of distinctive designs.⁵⁴ Thus, if the design does not fit within one of the established IP frameworks, it remains vulnerable to IP theft, as seen in the fast fashion industry.⁵⁵ The vulnerability in IP protection has led to notable fast fashion brands—Zara (Inditex), H&M, Shein, Forever 21, Fashion Nova, and Urban Outfitters—facing criticism from independent designers for allegedly copying their original designs and selling them at lower prices without repercussion.⁵⁶

44. See Maratos, *supra* note 5 (specifying that the United States has no fashion industry-specific regulation in its federal legislative system); see also *Fast Fashion Waste: Navigating Compliance in a Shifting Landscape*, DUNNINGTON BARTHOLOW & MILLER LLP (Sept. 19, 2025), <https://dunnington.com/fast-fashion-waste-navigating-compliance-in-a-shifting-landscape/> (stating that the EU passed a landmark law targeting fast fashion and there is no federal counterpart in the United States, but there are a few in the works); see also Meaghan Collgan Hembree et al., *Sustainable Fashion Law Update: Critical Legislation and Compliance Requirements for 2025*, HOLLAND & KNIGHT (Apr. 2, 2025), <https://www.hklaw.com/en/insights/publications/2025/04/sustainable-fashion-law-update-critical-legislation>.

45. See discussion *infra* Section II.B.

46. See Brittany Sierra & Sustainable Fashion Forum, *Who’s Regulating Fashion When Washington Won’t?*, WEEK/END: SUSTAINABLE FASHION NEWS (Feb. 5, 2025), <https://thesustainablefashionforum.substack.com/p/whos-regulating-fashion-when-washington-wont>; see also Megan Romano, *Curtailing the Fast Fashion Industry: A Growing Number of State Legislatures Introduce Bills Regulating Fashion Waste*, GEO. ENV’T L. REV. (Sept. 23, 2025), <https://www.law.georgetown.edu/environmental-law-review/blog/curtailing-the-fast-fashion-industry-a-growing-number-of-state-legislatures-introduce-bills-regulating-fashion-waste/> (stating that state legislatures have been advancing bills targeting fast fashion in the absence of comprehensive federal legislation); see also *Fast Fashion Waste: Navigating Compliance in a Shifting Landscape*, *supra* note 44 (stating “in the absence of federal action, states have stepped in”).

47. See discussion *infra* Sections II.A-D.

48. See *id.*; see also discussion *infra* Parts IV-VI.

49. For examples of legal scholarship over the last 30 years highlighting the stagnation in IP law protecting fashion designs, see Theus, *supra* note 42, at 616 (2025) (stating the United States does not provide *sui generis* protections over clothing). See also Julia Krzeminski, *Slowing Down Fast Fashion: How Improved Intellectual Property Law Can Protect Designers and Promote Sustainability*, 31 J. INTELL. PROP. L. 269, 279 (2024) (arguing IP protections available in fashion remain mainly unchanged since the Fashion Originator’s Guild in 1932 and citing Kal Raustiala & Christopher Sprigman, *The Piracy Paradox: Innovation and Intellectual Property in Fashion Design*, 92 VA. L. REV. 1687, 1775-77 (2006)); Keyon Lo, *Stop Glorifying Fashion Piracy: It Is Time to Enact the Innovative Design Protection Act*, 21 CHI.-KENT J. INTELL. PROP. 159, 174 (2021) (mentioning the failure of the current IP scheme in the United States to protect fashion designs); Lauren E. Purcell, *A Fashion Flop: The Innovative Design Protection and Piracy Prevention Act*, 31 J.L. & COM. 207, 209 (2012-2013) (stating there is currently no IP law protections for fashion designs); Raustiala & Sprigman, *supra* at 1690 (stating that the few IP legal commentators on fashion uniformly criticize the current IP regime for failing to protect apparel designs); S. Priya Bharathi, *There Is More Than One Way to Skin a Copycat: The Emergence of Trade Dress to Combat Design Piracy of Fashion Works*, 27 TEX. TECH L. REV. 1667, 1670

(emphasizing the failure of current U.S. domestic law and policy to protect the fashion industry from design pirates).

50. See Spencer N. Kluth, *Stealing More Than Just Designs: Utilizing Environmental Law as a Remedy to Design Piracy by Fast Fashion Brands*, 83 OHIO STATE L.J. 785, 787 (2022).

51. See *supra* Section I.B; see also discussion *infra* Section II.A examining the vulnerabilities in IP protections that allow fashion design appropriation.

52. See Theus, *supra* note 42, at 615 n.59 (citing the various federal IP laws as follows: U.S. CONST. art. I, §8, cl. 8 (IP Clause); 17 U.S.C. §§101-1511 (Copyright Act); 35 U.S.C. §§1-390 (Patent Act); U.S. CONST. art. I, §8, cl. 3 (Commerce Clause); 15 U.S.C. §§1051-1141 (Lanham Act)).

53. See Theus, *supra* note 42, at 616 (stating “IP is fundamental to the fashion industry’s success.”).

54. See Lo, *supra* note 49, at 174 (mentioning the failure of the current IP scheme in the United States to protect fashion designs).

55. *Id.*

56. For examples of criticism against these fast fashion brands and their imitation game, see Suzy Hansen, *How Zara Grew Into the World’s Largest Fashion Retailer*, N.Y. TIMES (Nov. 9, 2012), <https://www.nytimes.com/2012/11/11/magazine/how-zara-grew-into-the-worlds-largest-fashion-retailer.html> (writing that Inditex is a pioneer of imitating fashion designs and changing their design just enough to avoid copyright laws). See also Waiyee Yip, *H&M Has Been Accused of Ripping Off Queer Asian American Designer Chet Lo by Selling Clothes That Are Strikingly Similar to His Signature Spiky Knitwear Designs*, BUS. INSIDER (Apr. 27, 2022), <https://www.businessinsider.com/hm-called-out-for-copying-chet-lo-spiky-knitwear-designs-2022-4> (reporting on Designer Chet Lo’s Instagram post calling out H&M for replicating and selling his spiky sweater design); Bramley, *supra* note 26 (quoting New York based designer, Tracy Garcia, who stated, “It’s my design that is being mass produced. Because of my design, people are being exploited to create this dress.”); Annetta Konstantinides, *A Woman Who Launched Her Own Tie-Dye Brand After Losing Her Job Is Accusing Forever 21 of Ripping Off Her Design and Selling It for Half the Price*, BUS. INSIDER (Sept. 8, 2020), <https://www.businessinsider.com/designer-says-forever-21-copied-her-shirt-design-2020-9> (reporting on California designer, Amber Richele, accusing Forever 21 of copying one of her tie-dye designs and selling it for half the price); Makenna Underwood, *Fashion Nova Faces Design Theft Allegations*, HOW. UNIV. NEWS SERV. (Mar. 21, 2024), <https://hunewsservice.com/variety/lifestyle/fashion-nova-faces-design-theft-allegations/> (reporting on Fashion Nova’s continued accusations of design theft of designer Anifa Mvuemb’s brand Hanifa); Unicolors, Inc. v. Urban Outfitters, Inc., 853 F.3d 980 (9th Cir. 2017) (decided for summary judgment of copyright infringement under 17 U.S.C.S. §504(b) on behalf of Unicolors and against Urban Outfitters).

1. Gap in Copyright Law Protection for Fashion Designers

An essential legal framework available to the fashion industry is copyright protection.⁵⁷ Derived from the Intellectual Property Clause of the U.S. Constitution, the Copyright Act provides the foundational framework for copyright law.⁵⁸ Three elements must be satisfied to secure copyright protection for original work of authorship.⁵⁹ Unlike in literary, musical, and architectural works, it is harder to secure copyright protection for processes, ideas, and methodologies that primarily encompass fashion designs and clothing.⁶⁰

An important limitation under *copyright* law is that clothing does not fall under one of the eight categories that protect creative works.⁶¹ “For example, a designer’s physical sketch of a shirt design may be protected. This protection, however, does not necessarily preclude others from creating physical garments that resemble the sketch or a sketch of a similar shirt design altogether.”⁶² This is because copyright protection does not extend to useful articles, and clothing is considered a useful article.⁶³

To overcome this limitation, a feature of a fashion design on clothing can be protected if it is pictorial, graphic, or sculptural (PGS) and if the PGS feature is separate and can exist apart from its utilitarian aspects.⁶⁴ Unfortunately, many fashion design features lack PGS features.⁶⁵ They mainly have three-dimensional shapes or arrangements that are left vulnerable to fashion pirates.⁶⁶

Determining whether aesthetic features are separable from their utilitarian function was split among courts for many years, with lower courts adopting a multitude of approaches.⁶⁷ This inconsistency among courts went on until 2017, when the U.S. Supreme Court sought to unify conflicting approaches in *Star Athletica v. Varsity Brands*.⁶⁸

The Court affirmed the U.S. Court of Appeals for the Sixth Circuit decision, and held:

An aesthetic feature of a useful article is eligible for copyright protection if it (i) can be perceived as a two or three-dimensional work of art separated from the useful article, and (ii) would qualify as a protectable PGS work either on its own or in some other medium if imagined separately from the useful article.⁶⁹

This decision was a massive win for fashion designers in the United States.⁷⁰ Fashion designers are now able to protect certain creative elements they incorporate into their clothing.⁷¹

However, a problem persists—the “perception” and “imagination” parts of the test remain open to interpretation and have led to conflicting analysis and decisions in cases decided post-*Star Athletica*.⁷² Additionally, the Court maintains in its decision that “copyright protection does not extend to the physical dimensions, shape, and cut of a fashion article.”⁷³ Despite this newly established avenue of fashion copyright protection, the reality is that there is still no *sui generis* protection. Thus, for those in fashion whose designs do not meet this test for copyright protection,⁷⁴ their IP is ripe for the picking by fast fashion companies. This ultimately has a seismic impact on the environment and society, harming U.S. consumers.⁷⁵

2. Unsuccessful Reforms to the Copyright Act

Over the last decade, U.S. fashion lobbyists have demonstrated their understanding of the need for more expansive IP protection for fashion designs.⁷⁶ They have proposed three different bills to Congress: (1) the Design Piracy Prohibition Act,⁷⁷ (2) the Innovative Design Protection and Privacy Prevention Act,⁷⁸ and (3) the Innovation Design Protection Act.⁷⁹ All of these bills attempted to give fash-

57. Theus, *supra* note 42, at 617.

58. *Id.* at n.69 (citing U.S. CONST. art. I, §8, cl. 8; 17 U.S.C. §§102-05).

59. The three elements of an original work of authorship are (1) independently created, (2) minimally creative, and (3) fixed in a tangible form. *Id.* at n.70 (citing 17 U.S.C. §102).

60. *See id.* at 617 (citing Copyright Alliance, *Can You Copyright Fashion Designs?*, <https://copyrightalliance.org/faqs/copyright-fashion-designs/> (last visited Mar. 3, 2026)).

61. *See Lo, supra* note 49, at 181; *see also* 17 U.S.C. §§102, 102(a) (2020); *see also* Krzeminski, *supra* note 49, at 282 (stating that clothing design is not under the umbrella of creative works that can obtain copyright protection).

62. *See* Theus, *supra* note 42, at 617.

63. *See* 17 U.S.C. §101; *see also* Krzeminski, *supra* note 49, at 283 (defining useful article as “an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information[]” by citing *Varsity Brands, Inc. v. Star Athletica, LLC*, 799 F.3d 468, 481 (6th Cir. 2015), and Copyright.gov, *Useful Articles*, <https://copyright.gov/register/va-useful.html> (last visited Mar. 11, 2026), which lists clothing under useful articles examples).

64. *See Lo, supra* note 49, at 181; *see also* Sahara Farzaneh, *Cultural Appropriation of Traditional Garment Designs in the Post-Star Athletica Era*, 37 CARDOZO ARTS & ENT. L.J. 415, 432 (2019); *see also* 17 U.S.C. §101(2020).

65. *See Lo, supra* note 49, at 181.

66. *Id.*

67. *Id.* at 182 (citing Christopher P. Bussert, *Copyright Law: A Review of the Separability Test and a Proposal for New Design Protection*, 10 RUTGERS COMPUT. & TECH. L.J. 59, 69-88 (1983)).

68. *See id.* at 182 n.173; *see also* *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405 (2017).

69. *See Star Athletica, L.L.C.*, 580 U.S. at 424.

70. *See* Krzeminski, *supra* note 49, at 284.

71. *Id.*

72. *See* Theus, *supra* note 42, at 621 n.111 (citing examples such as *Puma SE v. Forever 21, Inc.*, No. CV17-2523, 2017 WL 4771004 (C.D. Cal. June 29, 2017) and *Silvertop Assocs., Inc. v. Kangaroo Mfg., Inc.*, 319 F. Supp. 3d 754 (D.N.J. 2018), *aff'd*, 931 F.3d 215 (3d Cir. 2019)) (both cases mention a gap in the test for aesthetic features).

73. *See id.* at 621 (citing *Star Athletica, L.L.C.*, 580 U.S. at 407, 424).

74. *See id.* (stating “designers in the U.S. are still left without holistic protection options for their designs, as clothing products are still considered useful articles”).

75. As explained in Section II.A, existing copyright law fails to safeguard fashion designs holistically. The recommendation in Part IV discusses the environmental and social issues that result and aims to close that gap.

76. *See* Theus, *supra* note 42, at 629.

77. *See* John Zarocostas, *The Role of IP Rights in the Fashion Business: A US Perspective*, WIPO MAG. (Aug. 3, 2018); *see also* Design Piracy Prohibition Act, H.R. 2196, 111th Cong. (2009), <https://www.congress.gov/bill/111th-congress/house-bill/2196/text>.

78. *See* Zarocostas, *supra* note 77; *see also* Innovative Design Protection and Piracy Prevention Act, H.R. 2511, 112th Cong. (2011), <https://www.congress.gov/bill/112th-congress/house-bill/2511/all-info>.

79. *See* Zarocostas, *supra* note 77; *see also* Innovative Design Protection Act, S. 3523, 112th Cong. (2012), <https://www.congress.gov/bill/112th-congress/senate-bill/3523/all-info>.

ion designs *sui generis* protection and to remove ambiguity among courts by eliminating the separability test⁸⁰ decided in *Star Athletica*.⁸¹ Unfortunately, due to a lack of consensus, none of these bills were passed.⁸² However, an important takeaway is that there were significant lobbying efforts and enthusiasm for a more holistic approach to protecting fashion designs.⁸³

While it is encouraging to see U.S. fashion lobbyists' efforts as a sign of the increasing need for stronger IP protection, especially since U.S. copyright laws provide "the most viable option available to U.S. designers," fashion designs still remain vulnerable to fast fashion companies that face no liability.⁸⁴ This is a critical gap in U.S. law and policy that continues to perpetuate the environmental and social harms of fast fashion.

3. Gaps in Other U.S. IP Protections for Fashion Designers

Trademark law, though a cornerstone of IP protection, leaves significant gaps in protecting the creative labor behind fashion design. Under *trademark* law, the Lanham Act provides federal protection for a word, name, symbol, device, or any combination thereof that distinguishes a good or service from those manufactured or sold by others.⁸⁵ Some brands have enjoyed trademark protections by embedding logos and distinctive markings on their products, which affords them a path to remedy or injunctive relief against copycats.⁸⁶ The narrow scope of this statute does not include the protection of aesthetic features.⁸⁷ The fast fashion industry takes advantage of this deficiency in trademark law by targeting small and independent designers who do not generally incorporate trademarks into their designs.⁸⁸

Under *trade dress* law, the Lanham Act provides trade dress protection for fashion designs.⁸⁹ This doctrine allows for the protection of a "fashion item as defined by its overall appearance and design, including: size, shape, color, and texture."⁹⁰ One would assume this gives fashion designers stronger protections for their creations.⁹¹ However, the trade dress designation usually falls short at the

non-functional requirement.⁹² Few established brands have successfully secured trade dress protections.⁹³ Of these, the protections pertain to specific design configurations rather than to the entire appearance.⁹⁴ Pursuing trade dress protections is costly and time-intensive, making it impractical for fashion designers to pursue.⁹⁵

Finally, *patent* law offers another potential avenue of protection through the design patent doctrine.⁹⁶ The doctrine affords protections to a manufactured product that is new, original, and ornamental.⁹⁷ The design must also be novel and nonobvious.⁹⁸ The downside to the design patent protections is that proving all five elements of the doctrine is time-consuming, expensive, and burdensome.⁹⁹ For example, proving novelty and nonobviousness requires passing the *ordinary observer* test,¹⁰⁰ which "asks a hypothetical ordinary observer to test the obviousness of designs over the prior art."¹⁰¹ The designer would have to prove their design is not obviously similar to any prior designs out there.¹⁰² Fashion will always have some overlap, which makes it notoriously difficult for designers to secure design patent protection for their creations.¹⁰³

It has taken decades of conversation in the fashion community to reach a point where it acknowledges and advocates stronger IP protection, yet it still falls short.¹⁰⁴ The fast fashion business model thrives on corporations' ability to exploit the gaps in these IP laws, and they have been doing so without consequence or regulation.¹⁰⁵ The barriers to IP protection that fashion designers encounter hinder their ability to defend themselves against fast fashion companies that realize they can escape the consequences of theft.¹⁰⁶ A direct result is consumer harm associated with the fast fashion industry, as the mass production of its clothing is linked to environmental degradation and human rights violations.¹⁰⁷

80. See *supra* note 69 and accompanying text.

81. See Theus, *supra* note 42, at 629 (citing Zarocostas, *supra* note 77, and stating these proposed amendments to the Copyright Act were comparable to the current design protections in the EU); see generally The Fashion Law, *Copyright Legislation for Fashion Designs (Proposed)*, <https://www.thefashionlaw.com/resource-center/copyright-legislation-for-fashion-designs-proposed/> (last visited Nov. 11, 2025).

82. See Zarocostas, *supra* note 77; see also The Fashion Law, *supra* note 81.

83. See Theus, *supra* note 42, at 630; see also The Fashion Law, *supra* note 81 (stating "... the ongoing push reflects the growing recognition of fashion as a form of creative expression deserving of legal safeguards ...").

84. See Theus, *supra* note 42, at 630.

85. See Lo, *supra* note 49, at 175; see also 15 U.S.C. §1127 (2018).

86. See Lo, *supra* note 49, at 175; see also Emily S. Day, *Double-Edged Scissor: Legal Protection for Fashion Design*, 86 N.C. L. REV. 237, 248-49 (2007).

87. See Lo, *supra* note 49, at 175.

88. *Id.*

89. *Id.* at 176.

90. *Id.*

91. *Id.*

92. *Id.* at 176 ("... a trade dress must be nonfunctional, distinctive, and used in commerce as a source identifier."); see also Karina K. Terakura, *Insufficiency of Trade Dress Protection: Lack of Guidance for Trade Dress Infringement Litigation in the Fashion Design Industry*, 22 U. HAW. L. REV. 569, 593 (2000).

93. See Lo, *supra* note 49, at 176 n.113.

94. *Id.*

95. See *id.* at 177 (citing Ronald Coleman, *Fashion Dos: Acknowledging Social Media Evidence as Relevant to Proving Secondary Meaning*, 106 TRADEMARK REP. 776, 776, 782 (2016)).

96. *Id.* at 178 (the design patent protection lasts 15 years).

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* (citing Sarah Burstein, *The Patented Design*, 83 TENN. L. REV. 161, 174 (2015)).

102. *Id.*

103. *Id.* at 179.

104. See discussion *supra* Section II.A.

105. See Lo, *supra* note 49, at 175, n.101 (citing *Innovative Design Protection and Piracy Prevention Act: Hearing on H.R. 2511 Before the H. Subcomm. on Intell. Prop., Competition, & the Internet*, 112th Cong. 4 (2011), containing the following statement from Lazaro Hernandez, "As a result, the U.S. has become a haven for copyists who steal designers' ideas and sell them as their own with no fear of consequences.").

106. See *supra* Section II.A.

107. See *id.*; see also discussion *supra* Section I.C; see also discussion *infra* Part IV.

B. Federal Fashion Oversight Beyond IP: Limited Regulation and Unestablished Laws

Beyond the vulnerability in IP protection, no federal law exists to oversee fast fashion.¹⁰⁸ The main federal fashion oversight exists across multiple agencies that narrowly address specific harms within and caused by fast fashion, such as deceptive practices, environmental pollution, and labor violations.¹⁰⁹ Additionally, federal fashion oversight reforms remain proposed, but unenacted.¹¹⁰

1. Environmental and Human Rights Oversight

The U.S. initiative to combat climate change and facilitate environmental protection is relatively recent. The U.S. government introduced environmental protection laws on the federal level in the 1970s.¹¹¹ President Richard Nixon signed the National Environmental Policy Act (NEPA) and subsequently created the U.S. Environmental Protection Agency (EPA).¹¹² EPA regulates environmental issues ranging from pollution in the air, surface water, and groundwater to plastic and other waste.¹¹³ The existing U.S. federal environmental scheme is inadequate to police the large-scale overproduction and overconsumption linked to the fast fashion industry.¹¹⁴

In 2023, the American Circular Textiles Group sent a letter to EPA urging it to focus its attention on the impact of textiles on environmental health, human well-being, and climate change.¹¹⁵ Although extended producer responsibility (EPR) laws are gaining traction across U.S. states,¹¹⁶ federal agencies play a critical role in addressing fashion waste through legislation.¹¹⁷ The enactment of federal policy would “harmonize national textile collection targets and the allocation of funds for textile reuse and recycling logistics, infrastructure, market development and innovation [].”¹¹⁸ It would benefit textile waste initiatives if EPA provided tangible support through funding and infrastructure development.¹¹⁹

The Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA), and the Clean Water Act (CWA) are examples of some U.S. environmental laws.¹²⁰ A significant obstacle to these laws is that they only apply to manufacturers operating in the United States.¹²¹ However, many garments in the fast fashion industry sold in the country are made outside the United States.¹²² Therefore, environmental statutes that target pollution, waste, and conservation do not apply to “fast fashion consumed in the United States.”¹²³ Moreover, U.S. environmental laws are not applied broadly, enabling fast fashion companies to exploit trade loopholes and ignore environmental initiatives. This continues to cause ecological damage, ultimately impacting U.S. consumers.

2. The FTC’s Current Role in Environmental Harm Regulation

Woven into the fabric of fashion is the problem of misleading labeling by fast fashion retailers, the practice known as greenwashing.¹²⁴ It is challenging to trust and assess whether a fashion brand or retailer is genuinely taking the necessary steps to be environmentally conscious, or simply providing a statement or label that claims they are.¹²⁵ Fortunately, the FTC has planned its Green Guides¹²⁶ to focus its regulation on large corporations that engage in greenwashing. It took public comment on the issue from December 2022 to April 2023.¹²⁷ However, the Commission has yet to come out with the finalized update.¹²⁸

The biggest pitfall of the Green Guides is that they are not legally binding. However, they are a strong interpretive tool for the FTC’s enforcement against unfair or deceptive practices under §5 of the FTC Act.¹²⁹ An update to the Green Guides “would give the agency stronger legal cases against polluters by clarifying when companies’ decep-

108. See *Fast Fashion Waste: Navigating Compliance in a Shifting Landscape*, *supra* note 44.

109. See *infra* Section II.B.i-iii.

110. See *Fast Fashion Waste: Navigating Compliance in a Shifting Landscape*, *supra* note 44; see also discussion *infra* Section II.B.iii.

111. William Kepner, EPA and a Brief History of Environmental Law in the United States, International Visitor Leadership Program (June 15, 2016), https://cfpub.epa.gov/si/si_public_record_Report.cfm?Lab=NERL&dirEntryId=319430.

112. *Id.*

113. *Id.*; see generally Deanne Toto, *Group Calls for EPA to Include Textiles in Efforts to Address Plastic Waste*, WASTE TODAY MAG. (Aug. 3, 2023), <https://www.wastetodaymagazine.com/news/group-calls-for-epa-to-include-textiles-in-plastic-waste-effort/>.

114. See Katrina L. Wilkinson, *A Legal Solution to a Fast Fashion Problem*, 11 ARIZ. J. ENV’T L. & POL’Y 186, 203 (2020-2021), <http://hdl.handle.net/10150/675241>.

115. Rachel Kibbe, American Circular Textiles Group, EPA Plastics Comment Letter 1 (July 31, 2023).

116. See *EPR for Textiles in the USA*, ELLEN McARTHUR FOUND. (Sept. 25, 2024), <https://www.ellenmacarthurfoundation.org/epr-for-textiles-in-the-usa>.

117. See Toto, *supra* note 113.

118. *Id.*

119. *Id.*

120. See Wilkinson, *supra* note 114.

121. *Id.*

122. *Id.*; see also The Patriot Act With Hasan Minhaj, *The Ugly Truth of Fast Fashion*, YOUTUBE (Nov. 25, 2019), <https://www.youtube.com/watch?v=xGF3ObOBbac>.

123. *Id.*

124. See Peter Pears et al., *Greenwashing: Navigating the Risk*, HARV. L. F. ON CORP. GOVERNANCE (July 24, 2023), <https://corpgov.law.harvard.edu/2023/07/24/greenwashing-navigating-the-risk/> (emphasizing that there is not one harmonious definition of greenwashing, but broadly speaking, it is creating the impression through false labeling or advertising that a process, product, or service is more environmentally friendly than it is).

125. See Maratos, *supra* note 5, at 407.

126. See FTC, *Environmentally Friendly Products: FTC’s Green Guides*, <https://www.ftc.gov/news-events/topics/truth-advertising/green-guides> (last visited Mar. 3, 2026) (stating that the Green Guides are “designed to help marketers avoid making environmental claims that mislead consumers”).

127. See Paul A. Davies et al., *The Future of Green Marketing: Anticipated Changes to the FTC’s Green Guides 1-2*, LATHAM & WATKINS (June 27, 2023), <https://www.lw.com/admin/upload/SiteAttachments/The-Future-of-Green-Marketing-Anticipated-Changes-to-the-FTCs-Green-Guides.pdf>.

128. See Shawane L. Lee, *Renewable Energy Claims Under Scrutiny: Preparing for the Updated FTC Green Guides*, UTIL. DIVE (Sept. 19, 2024), <https://www.utilitydive.com/news/renewable-energy-environmental-marketing-claims-ftc-green-guides/726921/> (stating that the update was initially anticipated to release in early 2024).

129. *Id.*

tive marketing around sustainability and environmental responsibility violates federal law.”¹³⁰ Finally, the guides focus on regulating *deceptive* practices, but the regulation of *unfair* practices has not been implemented for the most part.¹³¹ Part IV of this Article argues for the FTC to start regulating under the test of *unfair* business practices in addition to its efforts against *deceptive* practices.

3. Proposed, but Unenacted Federal Action

Recognizing the exploitation within the garment industry, Congress has begun considering legislation aimed at promoting accountability and establishing the United States in responsible apparel production. In May 2022, the Fashion Accountability and Building Real Institutional Change Act (FABRIC Act)¹³² was proposed by Sen. Kirstin Gillibrand (D-N.Y.) and Rep. Carolyn Maloney (D-N.Y.), paralleling the California Garment Worker Protection Act (Garment Act).¹³³ The Garment Act “ended the practice of paying garment workers per piece, making brands responsible for wage violations in California factories, regardless of whether they are located within the state.”¹³⁴ The FABRIC Act seeks to do the same by aiming to promote accountability in the garment industry and establish the United States as a leader in responsible apparel production.¹³⁵

The main pillars of the FABRIC Act include “combatting sub-minimum wages, establishing new liability measures for workplace violations, introducing record keeping and transparency measures, and creating a Domestic Garment Manufacturing Support Program.”¹³⁶ The FABRIC Act also seeks to amend the Fair Labor Standards Act of 1938,¹³⁷ by setting new protections for laborers and workers against abuses by the industry.¹³⁸ It was expected that the FABRIC Act would face strong opposition. Although

the Act was introduced in 2022, it was stalled after facing pushback from the apparel industry’s organizations.¹³⁹ The bill was revised and formally reintroduced in September 2023 by Senator Gillibrand and Rep. Jerry Nadler (D-N.Y.).¹⁴⁰ The bill is supported by many U.S. Senate and U.S. House of Representatives cosponsors, brands, labor unions, and nonprofit organizations.¹⁴¹

The FABRIC Act is the only federal legislative proposal in the United States aimed at protecting garment workers, and is one of the few federal legislative proposals impacting fast fashion.¹⁴² This federal legislation is critical to improving practices in the fashion industry, especially among fast fashion brands and manufacturers.¹⁴³ While the FABRIC Act primarily addresses unfair wages and safeguards for garment workers, it has a cascading and direct impact on economic prosperity and environmental sustainability.¹⁴⁴ Senator Gillibrand advocates taking bold action at the federal level to change the American garment industry through passage of the FABRIC Act.¹⁴⁵ However, “[g]iven the current Republican trifecta in the House, Senate, and White House, the chances of this bill passing are slim, as past support for the bill was overwhelmingly Democratic. Some senators have reached out to try to garner bipartisan support, but have yet been unsuccessful.”¹⁴⁶

Further, in March 2024, the Americas Trade and Investment Act (Americas Act)¹⁴⁷ was introduced in Congress with bipartisan support,¹⁴⁸ aiming “to promote and incentivize trade, investment, and ‘people-to-people’ partnerships across a newly-established Americas Partnership with Latin American and Caribbean countries.”¹⁴⁹ Though not explicitly targeted at fast fashion, the Americas Act will likely have a downstream effect on the fashion industry.¹⁵⁰ The bill includes key apparel and textile provisions that have the potential to weaken the dominance of fast fashion giants like Shein and Temu by closing the de

130. See Tom Perkins, “A Sea of Misinformation”: FTC to Address Industry Greenwashing Complaints, *GUARDIAN* (May 4, 2023), <https://www.theguardian.com/environment/2023/may/04/federal-trade-commission-industry-recycle-regulation>.

131. See Michael Pertschuk et al., FTC, FTC Policy Statement on Unfairness (Dec. 17, 1980), <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness> [hereinafter FTC Policy Statement on Unfairness] (issuing this policy statement as a response to clarify and differentiate “consumer unfairness” from “unfair competition” and “false or deceptive advertising”).

132. See Fashioning Accountability and Building Real Institutional Change Act, H.R. 8473, 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/house-bill/8473>; see also Fashioning Accountability and Building Real Institutional Change Act, S. 4213, 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/senate-bill/4213>.

133. See Eileen Fisher Foundation, *US Proposal for a Fashion Accountability and Building Institutional Change Act (FABRIC) Act*, HEY FASHION!, <https://www.heyfashion.org/legislation-tracker/fashioning-accountability-and-building-real-institutional-change-fabric-act> (last visited Mar. 11, 2026); see also Lauren Schenkman, *The FABRIC Act Reintroduced in Senate to Protect Garment Workers’ Wages*, FASHIONDIVE (Sept. 15, 2023), <https://www.fashiondive.com/news/FABRIC-act-reintroduced-senate-Gillibrand/693846/>; see also Council of Fashion Designers of America, Recent and Proposed Legislation Impacting the U.S. Fashion Industry (2025), https://cfda.com/wp-content/uploads/2025/02/SFA-Fashion-Policy-Leg_Impact_FINAL-1.pdf.

134. See Schenkman, *supra* note 133.

135. See Eileen Fisher Foundation, *supra* note 133.

136. *Id.*

137. *Id.*

138. *Id.*

139. See Schenkman, *supra* note 133.

140. *Id.*; see also Council of Fashion Designers of America, *supra* note 133, at 5.

141. See Schenkman, *supra* note 133; see also Council of Fashion Designers of America, *supra* note 133, at 7 (outlining the key congressional players and external stakeholders supporting this bill).

142. See *Fast Fashion Waste: Navigating Compliance in a Shifting Landscape*, *supra* note 44 (stating “(the FABRIC Act) is the first major federal bill targeting the fashion industry”).

143. See Schenkman, *supra* note 133 (quoting Senator Gillibrand, who states, “. . . The popularization of the fast fashion business model has perpetuated abuse of an already underpaid and overworked workforce, promoting profits over people, overconsumption, and rampant wage theft.”).

144. *Id.*

145. *Id.*

146. See Council of Fashion Designers of America, *supra* note 133, at 6.

147. See Americas Trade and Investment Act, S. 3878, 118th Cong. (2024), <https://www.congress.gov/bill/118th-congress/senate-bill/3878>.

148. See Council of Fashion Designers of America, *supra* note 133, at 8 (stating bipartisan support from “Senator Bill Cassidy (R-LA), Senator Michael Bennet (D-CO), Congresswoman Maria Elvira Salazar (R-FL), and Congressman Adriano Espaillat (D-NY)”).

149. *Id.*

150. *Id.*

minimis trade loophole.¹⁵¹ The bill is currently awaiting committee action.¹⁵²

Last, in February 2025, the Voluntary Sustainable Apparel Labeling Act¹⁵³ was introduced by Reps. Sean Casten (D-Ill.) and María Elvira Salazar (R-Fla.).¹⁵⁴ The bill seeks to establish a voluntary, sustainable labeling program at EPA, with EPA setting the label content and verification requirements and the companies choosing product or packaging placement.¹⁵⁵ The labeling program will enable apparel producers to “showcase the work they’ve done to reduce their carbon footprint[,] while empowering consumers with more information to shop more sustainably.”¹⁵⁶ However, a prominent deficiency in the proposal is that it is a *voluntary* program; companies are not mandated to participate.

A common setback to all these federal proposals is that they have yet to pass. Unlike these proposed bills, the FTC already has statutory authority to address *unfair* business practices, and it should take this novel federal action to combat the harms of the fast fashion industry.

C. State Fashion Oversight: Patchwork Innovation and Limited Impact

In the absence of comprehensive federal oversight, states like New York and California have taken the lead in experimenting with their own approaches to fashion industry reform.

1. New York: Fashion Sustainability and Social Accountability Act

New York City is undeniably a hub for fashion in the United States, and a leader in trends worldwide.¹⁵⁷ New York

is one of the few states to introduce legislation targeting fashion, including fast fashion brands, targeting retailers and producers with over \$100 million in global revenues.¹⁵⁸ The Fashion Sustainability and Social Accountability Act (Fashion Act)¹⁵⁹ aims to consolidate various policies and regulations that exist separately into a single framework. While the Green Guides focus on deception, the Fashion Act focuses on disclosure and due diligence.¹⁶⁰

A considerable information gap lies in fast fashion retailers’ supply chain, and the Fashion Act would be the first glimpse into the industry’s business practices. Further, the Act requires prevention and mitigation by the company or retailer to address adverse impacts in their operations, supply chain, and business relationships.¹⁶¹ Not only that, for the first time, companies must address environmental, social, and animal welfare impacts based on science rather than company standards.¹⁶² The New York attorney general and the public can bring civil action against companies for violations, and any penalties collected, up to 2% of annual revenue, will be put in an environmental justice fund.¹⁶³

The Fashion Act is one of the few significant calls to action for the fashion industry in the United States at either the state or federal level. On March 13, 2025, the Act was amended and recommitted to the New York State Assembly Consumer Affairs and Protection Committee. On January 7, 2026, the bill was referred to the Consumer Affairs and Protection Committee and is currently in review.¹⁶⁴ The Fashion Act could inform the way the FTC enforces against *unfair* business practices. The Commission has broad authority; it should use it. Collective action can produce impactful change to reduce, reverse, and improve adverse environmental and social impacts.

2. California: Transparency in Supply Chain Act and Responsible Textile Recovery Act

In 2012, California passed the Transparency in Supply Chain Act (Transparency Act) to target retailers and

151. See generally *id.* at 10 (stating “President Trump has repeatedly expressed his desire to increase domestic manufacturing and decrease reliance on China, but has not commented publicly on this Act.”); see also The Fashion Law, *Fashion/Retail Legislation Tracker*, <https://www.thefashionlaw.com/fashion-retail-legislation-tracker/> (last visited Nov. 11, 2025) (stating President Donald Trump signed an executive order directing U.S. Customs and Border Protection to implement a suspension of duty-free de minimus treatment for import under \$800, which is the “most sweeping change to U.S. de minimis trade policy in decades, eclipsing pending congressional proposals”).

152. See generally Council of Fashion Designers of America, *supra* note 133, at 10.

153. See Voluntary Sustainable Apparel Labeling Act, H.R. 1239, 119th Cong. (2025), <https://www.congress.gov/bills/119th-congress/house-bill/1239>.

154. See The Fashion Law, *supra* note 151.

155. *Id.*

156. *Id.*

157. See Colleen Baum et al., *At a Crossroads: New York’s Status as a Global Fashion Capital*, MCKINSEY & CO. (Sept. 4, 2024), <https://www.mckinsey.com/industries/retail/our-insights/at-a-crossroads-new-yorks-status-as-a-global-fashion-capital> (stating “New York City has one of the country’s highest concentrations of fashion sales, talent, and employment.”); see also PARTNERSHIP FOR NEW YORK CITY, *AT A CROSSROADS: NEW YORK CITY’S STATUS AS A GLOBAL FASHION CAPITAL 4* (2024), <https://pfnyc.org/research/at-a-crossroads-new-york-citys-status-as-a-global-fashion-capital> (“New York’s status as a global trendsetter is exemplified in the fashion industry where it is preeminent in American sportswear, streetwear, and prep.”).

158. See Seoryung Park, *New York, It’s Time to Act: The New York Fashion Act and Fashion Workers Act*, FASHION & L.J. (Feb. 8, 2024), <https://fashionlawjournal.com/new-york-its-time-to-act-the-new-york-fashion-act-and-fashion-workers-act/>.

159. See Maratos, *supra* note 5, at 409 (stating the bill was sponsored by Sen. Alessandra Biaggi (D-NY) and Assembly Member Dr. Anna Kelles and “drafted with the help of various nonprofit organizations and key actors of the industry”).

160. *Id.* at 409.

161. *Id.*; see also Roxanne Robinson, *Fashion Industry Reacts to New York Sustainability Legislation That Could Upend Transparency Practices*, FORBES (Jan. 11, 2022), <https://www.forbes.com/sites/roxannerobinson/2022/01/11/fashion-industry-reacts-to-new-york-sustainability-legislation-that-could-upend-transparency-practices/>.

162. See Maratos, *supra* note 5, at 410; see also Robinson, *supra* note 161; see also Eileen Fisher Foundation, *supra* note 133.

163. See Maratos, *supra* note 5, at 412; see also Eileen Fisher Foundation, *supra* note 133.

164. See Eileen Fisher Foundation, *New York Fashion Act*, HEY FASHION!, <https://www.heyfashion.org/legislation-tracker/fashion-sustainability-and-social-accountability-act-or-fashion-act> (last visited Mar. 11, 2026); see also A.B. A4631A, 2025-2026 Leg., Reg. Sess. (N.Y. 2025), <https://www.nysenate.gov/legislation/bills/2025/A4631/amendment/A>.

manufacturers making over \$100 million in profits and to uncover and remedy slavery and human trafficking in the state.¹⁶⁵ The Transparency Act seeks to highlight the crimes of illegal and unethical labor hidden in retailers' supply chains.¹⁶⁶ It is the state legislature's intent to require large retailers and manufacturers to disclose their anti-slavery and human trafficking efforts in supply chains, helping consumers make informed purchasing decisions and supporting companies with responsible practices.¹⁶⁷ The Transparency Act requires disclosure of companies' efforts in five areas: verification, audits, certification, internal accountability, and training.¹⁶⁸ Although focused on human rights harms, this California law was a critical blueprint for drafting California's Responsible Textile Recovery Act and New York's Fashion Act, which both tackle environmental concerns in tandem with human rights harms.¹⁶⁹

In 2024, Gov. Gavin Newsom signed Senate Bill 707,¹⁷⁰ the Responsible Textile Recovery Act (Textile Act).¹⁷¹ This legislation makes California the first state to implement a law addressing textile waste. The Textile Act allows producers to bear responsibility for the costs related to their products' life cycles.¹⁷² This responsibility includes the disposal, management, upcycling, reuse, and repair of textile waste.¹⁷³

Other states, such as Massachusetts, New Jersey, Rhode Island, and Washington, have also enacted and proposed legislation in 2025 to address textile and apparel issues.¹⁷⁴ This legislation, taken together, specifically aims to target the supply chain and producers, where little regulation exists.¹⁷⁵ Despite the states' innovative solutions to the harms of fast fashion, they have a limited large-scale impact unless a majority of states follow suit. There needs to be broader intervention to help close the gap, regulate

fast fashion more effectively, and deter the industry's harmful behavior.¹⁷⁶

D. Corporate Self-Governance: An Ineffective Gap Filler

Corporations in the United States are periodically given leeway to regulate their actors, but it is not always the best decision for the consumer.¹⁷⁷ "Legally, fast fashion corporations are *not* required to be sustainable."¹⁷⁸ The corporation decides whether to implement policies prioritizing social and environmental accountability¹⁷⁹; U.S. law and policy do not require it.¹⁸⁰ Most of the environmental and human rights harms caused by the fast fashion industry are also regulated by the companies themselves.¹⁸¹

Corporate Social Responsibility (CSR)¹⁸² aims to "combat environmental issues such as sustainability, pollution, and carbon footprints as well as social issues such as human and animal welfare, gender gaps, and unfair labor practices."¹⁸³ On the surface, these goals are synonymous with the goal of government regulation of the fast fashion industry. However, when fashion executives were surveyed, only 10% saw sustainability as a growth opportunity.¹⁸⁴ There is no consensus among the fashion industry on environmental and human rights initiatives to combat the harms their industry is producing.¹⁸⁵ Absent more stringent regulations in the fast fashion industry, any self-regulation will likely be insufficient due to the inconsistency in CSR initiatives.

Additionally, the fast fashion industry is quick to implement CSR initiatives because it will make them more desirable to specific stakeholders.¹⁸⁶ The tool they use to do this

165. See Maratos, *supra* note 5, at 414; see also State of California Department of Justice, *The California Transparency in Supply Chains Act*, <https://oag.ca.gov/SB657> (last visited Mar. 2, 2026) (discussing California's State Bill 657).

166. See Maratos, *supra* note 5, at 414; see also State of California Department of Justice, *supra* note 165.

167. *Id.*

168. *Id.*

169. *Id.*

170. See S.B. 707, 2023-2024 Reg. Sess. (Cal. 2024).

171. See Vicky Yuan, *A Closer Look at California's Recently Passed Responsible Textile Recovery Act of 2024*, HOLLAND & KNIGHT (Oct. 17, 2024), <https://www.hklaw.com/en/insights/publications/2024/10/a-closer-look-at-californias-recently-passed-responsible>.

172. *Id.*

173. *Id.*

174. See The Fashion Law, *supra* note 151 (tracking state legislation, including New Jersey—PFAS in Consumer Products Including Apparel (A5600); Rhode Island—Textile Recycling & Education (H 5293 / S 324) (Enacted); Massachusetts—An Act to establish environmental accountability in the fashion industry (H.1032) (HD.4220); Washington—Textile EPR (HB 1420); Washington Fashion Sustainability and Social Accountability Act (HB 1107)).

175. See Megan Doyle, *Legislation Is Coming for Fashion's Supply Chains. Are You Ready?*, VOGUE BUS. (Jan. 8, 2024), <https://www.voguebusiness.com/story/sustainability/legislation-is-coming-for-fashion-supply-chains-are-you-ready> (quoting Urska Trunk, campaign manager at the Changing Markets Foundation, who states that there is a lack of legislative incentive for supply chains to change their practices, and 2024 marks the first time that the industry will be regulated).

176. See discussion *infra* Part IV.

177. See Alexandra L. Bernard, *The Hidden Costs Behind Cheap Clothing: Addressing Fast Fashion's Environmental and Humanitarian Impact*, 25 VAND. J. ENT. & TECH. L. 541, 555 (2023) (demonstrating that industry in the United States, including the fashion industry, supports self-regulation).

178. See Breanne Parker, *Fast Fashion, Consumer Complicity, & Corporate Accountability*, HARV. L. SCH. SYSTEMIC JUST. J.: CRITICAL CORP. THEORY COLLECTION, July 2021, at 8.

179. *Id.*

180. *Id.*

181. *Id.*

182. See *id.* (CSR initiatives hold corporations socially accountable to themselves, their stakeholders, and the public).

183. *Id.*

184. See Bernard, *supra* note 177, at 556 (this survey population was 300 executives); see also Brooke Roberts-Islam, *The State of Fashion Report—Sustainability Is No Longer Top Priority*, FORBES (Jan. 8, 2021, updated Jan. 10, 2021), <https://www.forbes.com/sites/brookerobertsislam/2021/01/08/the-state-of-fashion-report-sustainability-is-no-longer-top-priority/>.

185. See Bernard, *supra* note 177, at 556 (mentioning a study of 29 fashion brands that think voluntary CSR initiatives are insufficient to slow mass production of textiles); see also Press Release, Changing Markets Foundation, *Faster Fashion: Growing Use of Polluting Textiles Revealed* (Sept. 17, 2024), <https://changingmarkets.org/press-releases/faster-fashion-growing-use-of-polluting-textiles-revealed-2/> ("A survey of 50 companies by the Changing Markets Foundation has found that major fashion brands are increasing their use of polluting synthetic textiles, deepening their commitment to fast fashion despite growing environmental concerns.")

186. See Xiaoqian Lu et al., *How Does Young Consumers' Greenwashing Perception Impact Their Green Purchase Intention in the Fast Fashion Industry? An Analysis From the Perspective of Perceived Risk Theory*, 14 CONTEMP. ISSUES APPLIED ECON. & SUSTAINABILITY J. 3 (2022).

is greenwashing,¹⁸⁷ because it provides a competitive edge. The widespread use of this tool among fast fashion companies may lower costs and boost profits by making them attractive to consumers and investors, ultimately improving their bottom line.¹⁸⁸ However, these gaps in regulation “can have a negative impact on the sustainability of society as a whole.”¹⁸⁹

III. The Statutory Authority of the FTC

A. Introduction

Since fast fashion’s inception, the weak U.S. IP laws and U.S. government agency oversight have yet to succeed in curbing the industry’s contribution to current environmental and human rights problems.¹⁹⁰ The harms produced by the industry are constant and expansive, and there is little indication of it slowing down. Because of the current fashion consumption in the United States, it would be foolish to think that the industry can be shut down entirely.¹⁹¹

This Article seeks to help close the gap in current U.S. law and policy by calling on the FTC to regulate the unfair business practices in the fast fashion industry through cease-and-desist orders and monetary redress, then shift to broader rulemaking after gaining more experience and expertise. Specifically, the rules should be curated and tailored to regulate larger businesses rather than small and medium sized ones. Implementing this recommendation to the current regulatory framework will incentivize the fast fashion industry to improve its sustainability standards and ethical criteria in producing clothes and textiles, and promote accountability. To inform this recommendation, the FTC Act, §5 of the Act,¹⁹² and the FTC’s policy statement on unfairness¹⁹³ must first be explained and examined.

B. Statutory Framework of the FTC Act

1. Overview of the FTC Act

Congress established the FTC Act, and it is the primary statute that empowers the FTC, among other things, to prevent unfair methods of competition and unfair or deceptive business practices in or affecting commerce.¹⁹⁴ The Act grants the FTC the authority to identify and address such practices.¹⁹⁵ The Commission is empowered to fulfill its goals by gathering and compiling information, conducting investigations, seeking monetary redress or equitable relief, prescribing rules and establishing requirements, and mak-

ing reports and legislative recommendations to Congress and the public.¹⁹⁶

Additionally, the Act’s broad scope and adaptable standards permit the Commission to efficiently address new, evolving, and emerging unfair business practices.¹⁹⁷ Within the Act’s scope, the FTC plays a vital role in protecting consumers from unfair business practices by granting the Commission expansive authority to investigate, enforce, and regulate.

2. Section 5 of the FTC Act

Understanding the full extent of the FTC’s broad investigative, enforcement, and rulemaking authority is essential to understanding how the FTC can hold the fast fashion industry accountable.

Section 5 of the FTC Act declares unfair or deceptive acts or practices in or affecting commerce unlawful.¹⁹⁸ “The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations . . . from using . . . unfair or deceptive acts or practices in or affecting commerce.”¹⁹⁹ The Act outlines that the term “‘unfair or deceptive acts or practices’ includes such acts or practices involving foreign commerce that (i) cause or are likely to cause reasonably foreseeable injury within the United States; or (ii) involve material conduct occurring within the United States.”²⁰⁰

The FTC has investigative authority to request and compile information necessary to prosecute any person, partnership, or corporation engaging in unfair or deceptive acts or practices in or affecting commerce. If the Commission has “reason to believe” that consumer protection law “is being or has been violated,”²⁰¹ it has the authority to seek monetary redress for conduct injurious to consumers.²⁰² It is important to note that the FTC’s trade regulation rules allow the Commission to create rules and pursue legal enforcement and remedies.²⁰³

3. FTC’s Policy Statement on Unfairness in §5 of the FTC Act

The FTC is actively pursuing violations against large fashion companies for false advertising and greenwashing²⁰⁴;

187. See Pears et al., *supra* note 124.

188. *Id.*

189. See Lu et al., *supra* note 186, at 3.

190. See *supra* Part II discussing the current fragmented U.S. law and policy and the gaps it leaves behind in overseeing fast fashion.

191. See Maratos, *supra* note 5 (specifying that the United States has no fashion industry-specific regulation in its federal legislative system).

192. See 15 U.S.C. §45.

193. See FTC Policy Statement on Unfairness, *supra* note 131.

194. 15 U.S.C. §§41-58.

195. See *id.* §45.

196. See *id.* §46.

197. See *Luria Bros. & Co., Inc. v. Federal Trade Comm’n*, 389 F.2d 847, 861 (3d Cir. 1968); see also *Federal Trade Comm’n v. National Lead Co.*, 352 U.S. 419, 428 (1957) (referencing *Jacob Siegel Co. v. Federal Trade Comm’n*, 327 U.S. 608 (1946), where the Supreme Court held that the FTC is afforded wide latitude and discretion to determine necessary remedy to eliminate unfair or deceptive [business] practices).

198. See 15 U.S.C. §45(a)(1) (also known as §5(a) and §5(a)(1) of FTC Act).

199. *Id.* §45(a)(2) (also known as §5(a)(2) of FTC Act).

200. *Id.* §45(a)(4)(A) (also known as §5(a)(4)(A) of FTC Act).

201. See FTC, *A Brief Overview of the Federal Trade Commission’s Investigative, Law Enforcement, and Rulemaking Authority*, <https://www.ftc.gov/about-ftc/mission/enforcement-authority> (revised July 2025).

202. See 15 U.S.C. §57b (also known as §19 of the FTC Act).

203. See 15 U.S.C. §57a (also known as §18 of the FTC Act).

204. Press Release, FTC, FTC Uses Penalty Offense Authority to Seek Largest-Ever Civil Penalty for Bogus Bamboo Marketing From Kohl’s and

however, that is pursuant to the *deceptive* practices portion of the FTC Act. The Commission has yet to use its enforcement authority to pursue *unfair* business practices, as opposed to deceptive business practices,²⁰⁵ in regulating commercial clothing and textiles, specifically within the fast fashion industry, for consumer protection. The test used for *deceptive* business practices is not the same as, nor applicable to, *unfair* business practices.²⁰⁶ This policy statement²⁰⁷ is in response to a letter by two senators requesting “the Commission’s views on cases under Section 5 ‘not involving the content of advertising,’²⁰⁸ and its views as to ‘whether the Commission’s authority should be limited to regulating false or deceptive commercial advertising.’”²⁰⁹

“Section 5 of the FTC Act prohibits, in part, ‘unfair . . . acts or practices in or affecting commerce.’”²¹⁰ The statute was deliberately framed in general terms, and could not possibly have a comprehensive list of what falls under “unfair.”²¹¹ Further, the meaning and application of the Act²¹² has evolved and developed, and will continue to do so subject to judicial review.²¹³ The original legislative intent, which was created for “unfair methods of competition,” remains relevant to the statute’s meaning.²¹⁴ However, it is not the only intent of the legislature; unfairness, in the context of trade practices,²¹⁵ is also relevant when reading the statute plainly.

Interpreting §5 of the FTC Act, along with these factors of unfairness, supports the argument that the FTC has the legal authority to hold the fast fashion industry accountable. Recently, the Commission has tackled fast

fashion companies for their deceptive practices,²¹⁶ but not for their unfair practices. It is part of the role of the FTC to identify unfair trade practices with “the expectation that the underlying criteria [will] evolve and develop over time.”²¹⁷ The broadness of the meaning of unfairness supports a far-reaching application of the FTC’s enforcement authority.²¹⁸ I argue that the Commission should use its authority to regulate unfair practices in the fast fashion industry, in addition to its already established regulation on deceptive practices. This would be a critical step in creating and promoting accountability in commercial clothing and textiles that contribute to environmental and human rights problems.

IV. Applying the FTC’s Unfairness Test to Fast Fashion

This part will outline the criteria the FTC uses to determine unfairness, and will make connections to establish that the harms produced by the fast fashion industry satisfy these criteria. This demonstrates that the FTC has the authority to regulate the industry, and it is critical that it takes steps (adjudication and rulemaking) to do so.

By 1964, enough cases had been decided to enable the Commission to identify three factors that it considered when applying the prohibition against consumer unfairness: (1) whether the practice injures consumers, (2) whether it violates established public policy, and (3) whether it is unethical or unscrupulous.²¹⁹

In the following sections, I will explain the legal standards demonstrating the Commission’s authority to regulate and penalize fast fashion companies for unfair business practices. Specifically, I will focus on how their existing consumer protection frameworks can be applied to address the fast fashion industry’s large-scale environmental and human rights harms within the United States.

A. Consumer Injury

To support a finding of unfairness under the factor of consumer injury, the unfair practice must satisfy three subsets: (1) it is substantial; (2) it must not be outweighed by

Walmart (Apr. 8, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-uses-penalty-offense-authority-seek-largest-ever-civil-penalty-bogus-bamboo-marketing-kohls>.

205. See Federal Trade Comm’n v. Pukke, 53 F.4th 80, 104 (4th Cir. 2022) (defining, in accordance with sister circuits, deceptive acts or practices as “[1] a representation, omission, or practice that [2] is likely to mislead consumers acting reasonably under the circumstances, and [3], the representation, omission, or practice is material.”).

206. See Federal Reserve Board, *Federal Trade Commission Act Section 5: Unfair or Deceptive Acts or Practices*, in CONSUMER COMPLIANCE HANDBOOK (2008), <https://www.federalreserve.gov/boarddocs/supmanual/cch/200806/ftca.pdf> (“The legal standards for unfairness and deception are independent of each other; depending on the facts, an act or practice may be unfair, deceptive, or both.”).

207. See FTC Policy Statement on Unfairness, *supra* note 131.

208. *Id.*

209. *Id.*

210. *Id.* (referred to as “consumer unfairness jurisdiction”—the statute was deliberately framed in general terms and could not possibly have had a comprehensive list of what is *unfair*).

211. See *id.* at n.5 (referencing H.R. CONF. REP. NO. 1142, 63d Cong., 2d Sess., at 19 (1914) (citing “If Congress ‘were to adopt the method of definition, it would undertake an endless task.’ In 1914, the statute was phrased only in terms of ‘unfair methods of competition,’ and the reference to ‘unfair acts or practices’ was not added until the Wheeler-Lee Amendment in 1938.”)).

212. See FTC Policy Statement on Unfairness, *supra* note 131.

213. The FTC regulation based on unfairness in the fast fashion industry would be a critical step in developing judicial inclusion and exclusion in this sector of commercial clothing and textiles that contributes to environmental and human rights problems.

214. See FTC Policy Statement on Unfairness, *supra* note 131, n.5; see also H.R. CONF. REP. NO. 1142, 63d Cong., 2d Sess., at 19 (1914).

215. Trade practices are part of business practices, and I will use them interchangeably throughout the Article to describe the FTC’s role in regulating them.

216. See, e.g., Decision and Order, Fashion Nova, LLC, Docket No. C-4759 (Mar. 18, 2022); Decision and Order, Lions Not Sheep, Docket No. C-4772 (July 28, 2022); Stipulated Order and Judgment for Civil Penalties, Permanent Injunction, and Other Relief, U.S. v. Khol’s, Inc., Case No. 22-cv-964 (JDB) (May 4, 2022); Stipulated Order and Judgment for Civil Penalties, Permanent Injunction, and Other Relief, U.S. v. Walmart, Case No. 1:22-cv-00965 (Apr. 8, 2022). These cases show the Commission has taken an interest in regulating the fashion industry and knows it has the authority to do so.

217. See FTC Policy Statement on Unfairness, *supra* note 131.

218. See *id.* (The Supreme Court observed as early as 1931 that the ban on unfairness is not entirely clear because it does not have a precise definition.); see also *The FTC’s Use of Unfairness Authority: Its Rise, Fall, and Resurrection*, FTC (May 30, 2003), <https://www.ftc.gov/news-events/news/speeches/ftcs-use-unfairness-authority-its-rise-fall-resurrection>.

219. Federal Trade Comm’n v. Sperry & Hutchinson C., 405 U.S. 223, 244-45 n.5 (1972) (The circuit courts have concluded that this quotation reflected the Supreme Court’s own views.). See also Spiegel, Inc. v. Federal Trade Comm’n, 540 F.2d 287, 293 n.8 (7th Cir. 1976); Heater v. Federal Trade Comm’n, 503 F.2d 321, 323 (9th Cir. 1974).

any countervailing benefits to consumers that the practice produces; and (3) it is an injury that consumers themselves could not reasonably have avoided.²²⁰

1. Substantial—Is the Injury to Consumers of the Fast Fashion Industry Substantial?

The injury cannot be only trivial, speculative, emotionally harmful,²²¹ or subjective.²²² In most cases, the Commission is looking for monetary harm when determining substantial injury, but “an injury may be sufficiently substantial . . . if it does a small harm to a large number of people, or if it raises a significant risk of concrete harm.”²²³ Additionally, evidence of unnecessary health and safety risks could support a finding of substantiality for purposes of unfairness.²²⁴ A combination of significant risk of concrete harm and unnecessary health and safety risks make a solid case for satisfying the standard for substantiality.

Consumers of the fast fashion industry are usually from high-income countries, like the United States, but they are also from low- to middle-income communities within the United States.²²⁵ The reality is that most consumers do not know how much their purchases impact others in the causal chain.²²⁶ The fast fashion industry does not make this known. This is because they have an easy and ample tap into the interests of lower- and middle-income communities from which to profit. Not all consumers have grasped the gravity of their purchases’ impact on the rapidly progressing climate and environmental crisis,²²⁷ inhumane labor exploitation²²⁸ of developing economies, harm to the human consumer, and the stolen IP of creatives²²⁹ in the United States. Although there is no specific monetary harm to show substantial injury to consumers, the com-

bined environmental, human rights, and IP harms pose a significant risk of concrete harm to consumers.

The impact of purchasing clothes from the fast fashion industry may not be causing *immediate* injury to purchasers. However, with a zoomed-out lens, the large-scale and voluminous purchasing of cheap clothing produced by fast fashion is causing substantial injury to consumers. There are undeserved health and safety risks because “harsh chemicals used in manufacturing create potential health hazards for workers and consumers.”²³⁰

More specifically, the garments consumers buy from these fast fashion giants “contain a variety of harmful chemicals including PFAS, azo dyes, phthalates, and formaldehyde.”²³¹ These chemicals are known to cause risks of “irritation; respiratory, developmental, and reproductive problems; and certain cancers.”²³² In the last 20 years, the number of garments produced has doubled, and global consumption has increased by 400%, with no indication of slowing down because of the lack of regulation among fast fashion companies.²³³ Therefore, the health and safety risks have also increased exponentially, indicating that the injury to consumers of the fast fashion industry is substantial.

a. Fabric Production and Consumption

Different fabrics, from synthetic to animal-based, are directly harmful to the environment, which, in turn, is detrimental to humans and consumers of those fabrics. These fabrics are highly prevalent in the fast fashion supply chain and industry.²³⁴ The use of these fabrics causes substantial injury to consumers because it presents a significant risk of concrete harm as well as unnecessary health and safety risks. This supports satisfaction of the substantiality element necessary to prove that the fast fashion industry is engaging in an unfair business practice that injures consumers. This is essential for my recommendation that the FTC expand its reach in regulating unfair business practices occurring in this industry beyond its regulation of greenwashing claims.

i. Polyester

A significant problem associated with clothing production is the use of polyester,²³⁵ which is especially prevalent in

220. See FTC Policy Statement on Unfairness, *supra* note 131.

221. *Id.* (“Emotional impact and other more subjective types of harm [on its own] will not ordinarily make a practice unfair.”).

222. *Id.*

223. *Id.* at n.12.

224. *Id.* at n.15 (stating the example of Philip Morris, Inc., 82 F.T.C. 16 (1973) (respondent had distributed free-sample razor blades in such a way that they could come into the hands of small children) (consent agreement)).

225. KAREN SHEDLOCK & STEPHANIE FELDSTEIN, AT WHAT COST? UNRAVELING THE HARMS OF THE FAST FASHION INDUSTRY 10 (2023), https://www.biologicaldiversity.org/programs/population_and_sustainability/pdfs/Unraveling-Harms-of-Fast-Fashion-Full-Report-2023-02.pdf.

226. See Rashmila Maiti, *The Environmental Impact of Fast Fashion, Explained*, EARTH.ORG (Feb. 3, 2026) (“. . . the industry’s problems are often overlooked by consumers.”); see also Tara Donaldson, *If Consumers Still Don’t Understand What Fast Fashion Is, Can They Help Minimize Its Impact?* (Aug. 10, 2021), <https://wwd.com/feature/what-is-fast-fashion-what-isnt-clothing-environmental-impact-1234897189/> (stating that many consumers still do not understand what fast fashion is, so they cannot be expected to adjust their shopping habits to avoid it).

227. *The Environmental Costs of Fast Fashion*, UN ENV’T PROGRAMME (Nov. 24, 2022), <https://www.unep.org/news-and-stories/story/environmental-costs-fast-fashion> (explaining large amounts of textiles are dumped and incinerated every second and plastic fibers and toxic dyes are polluting the oceans).

228. *Id.*

229. See Sharon Pruitt-Young, *Why Indie Brands Are at War With Shein and Other Fast Fashion Companies*, NPR (July 20, 2021), <https://www.npr.org/2021/07/20/1018381462/why-indie-brands-are-at-war-with-shein-and-other-fast-fashion-companies> (stating that Shein is consistently scrutinized for copying designs from indie designers).

230. See SHEDLOCK & FELDSTEIN, *supra* note 225, at 10.

231. *Id.* (referencing Cindy Chen, *Toxic Clothing: Fast Fashion and How to Avoid It*, FASHINNOVATION (Apr. 16, 2022), <https://fashioninnovation.nyc/totoxic-clothing/>).

232. *Id.*

233. *Id.* at 3; see also STEPHANIE FELDSTEIN ET AL., SHEAR DESTRUCTION: WOOL, FASHION AND THE BIODIVERSITY CRISIS 31 (2021), https://www.biologicaldiversity.org/programs/population_and_sustainability/pdfs/shear_destruction_final_report.pdf.

234. See Chen, *supra* note 231.

235. See Kathryn Horvath, *Most of Our Clothes Are Made From Fossil Fuels: Here’s Why That’s a Problem*, PIRG (Feb. 12, 2024), <https://pirg.org/articles/most-of-our-clothes-are-made-from-fossil-fuels-heres-why-thats-a-problem/> (demonstrating that polyester is considered a fossil fuel fabric).

the fast fashion industry.²³⁶ Polyester is a synthetic fabric acquired from oil.²³⁷ In 2015, 70 million barrels of oil were consumed to produce polyester, and 342 million barrels per year were consumed to produce synthetic mixture fabric.²³⁸ Producing these synthetic fabrics²³⁹ contributes to environmental harm through greenhouse gases and microplastics that “are now being found in human organs, raising alarming health concerns for the public.”²⁴⁰

There is a significant risk of concrete harm and unnecessary health and safety risks to U.S. consumers because microplastics from polyester have been linked to numerous health conditions and diseases.²⁴¹ The fast fashion industry shows no signs of decreasing the use of these fabrics²⁴²: “International fashion brands are doubling down on their use of synthetic fibres—a key driver of microplastic pollution—while employing distraction and delay tactics to protect their fast fashion business model.”²⁴³ Thus, the FTC’s intervention is necessary to curb the substantial harm to consumers occurring at an alarming rate, which currently has minimal governmental oversight.

236. See SHEDLOCK & FELDSTEIN, *supra* note 225, at 6; see also *Fast Fashion’s Addiction to Synthetic Fibres*, ETHICAL CONSUMER (Apr. 6, 2021), <https://www.ethicalconsumer.org/fashion-clothing/fast-fashion-addiction-synthetic-fibres>:

Urška Trunk from the Changing Markets Foundation describes how Fast Fashion has revolutionised how we produce and buy clothes. Their recent report “Fossil fashion: the hidden reliance of fast fashion on fossil fuels”, revealed that the industry has become dangerously dependent on synthetic fibres, such as polyester, which have become the backbone of the “pile them high, sell them cheap” business model.

237. See *Fast Fashion’s Addiction to Synthetic Fibres*, *supra* note 236.

238. SHEDLOCK & FELDSTEIN, *supra* note 225, at 6 (citing James Conca, *Making Climate Change Fashionable—The Garment Industry Takes on Global Warming*, FORBES (Dec. 3, 2015) and *The New Plastics Economy: Rethinking the Future of Plastics*, ELLEN McARTHUR FOUND. (Dec. 31, 2015), <https://www.ellenmacarthurfoundation.org/the-new-plastics-economy-rethinking-the-future-of-plastics>).

239. “Petrochemicals, in fact, were estimated to be responsible for 62% of global textile fibers.” See SHEDLOCK & FELDSTEIN, *supra* note 225, at 6; see generally TEXTILE EXCHANGE, PREFERRED FIBER & MATERIALS MARKET REPORT 2021 (2021), https://textileexchange.org/app/uploads/2021/08/Textile-Exchange_PREFERRED-Fiber-and-Materials-Market-Report_2021.pdf.

240. See Press Release, *supra* note 185; CHANGING MARKETS FOUNDATION, FASHION’S PLASTIC PARALYSIS: HOW BRANDS RESIST CHANGE AND FUEL MICROPLASTIC POLLUTION (2024), <https://changingmarkets.org/report/fashions-plastic-paralysis/>.

241. See CHANGING MARKETS FOUNDATION, *supra* note 240:

Microplastics from textiles like nylon and polyester have been linked to impaired lung tissue repair, worsened lung damage from conditions such as Covid-19 and chronic inflammation. This inflammation is known to contribute to diseases like cancer, heart disease, asthma, and diabetes, as well as intestinal issues and irritable bowel disease. Microscopic plastic particles in blood vessels are also connected to a heightened risk of stroke, heart attack and premature death.

242. See *id.* (Eleven of 23 international clothing brands and retailers that responded to the Changing Markets Foundation survey confirmed that they had increased their use of fossil fuel-based fabrics. Only three reported reduced use, and 27 companies did not respond to the survey; this shows a disturbing lack of transparency. Synthetic fibers are projected to reach 73% of textile production by 2030; most of these brands are likely expanding their use of synthetics.); see also Alyssa Hardy, *Everything You Need to Know About Fast Fashion*, VOGUE (Apr. 24, 2024), <https://www.vogue.com/article/what-is-fast-fashion>.

243. See CHANGING MARKETS FOUNDATION, *supra* note 240.

ii. Wool

Synthetic fabrics are not the only type of fabric that fast fashion companies predominantly use; they also use animal-based textiles like wool. Animal-based textiles are associated with substantial deforestation and water consumption.²⁴⁴ Unbeknownst to many, wool is stealthily a mass-market commodity produced from animal farming.²⁴⁵ The harms of animal farming in the meat industry are “breaking into mainstream climate discourse” despite greenwashing efforts by the industry.²⁴⁶

It is a common misconception because of misleading reports to think that animal-based textiles are a byproduct of the meat industry. However, it is not a byproduct; it is a co-product.²⁴⁷ It is a co-product that is portrayed as sheep in pastures and a renewable resource, but the reality is that the sheep are being bred for slaughter.²⁴⁸

“The wool industry is a slaughter industry”²⁴⁹; it accounts for 16.5% of greenhouse gas emissions and uses one-third of *all* freshwater.²⁵⁰ The slaughter process of sheep requires a lot of water and simultaneously produces a large amount of wastewater, which pollutes nearby waterways.²⁵¹ This wastewater includes contaminants such as “pathogens, proteins, lipids[,] and fibers” from the dead animals, and sometimes antibiotics and drugs fed to the animals.²⁵² This poses a health hazard to communities near such waterways because slaughterhouses are notorious for haphazard wastewater treatment and violating pollution permits.²⁵³

b. Chemical Pollution in Wastewater and Waterways

Sheered wool is not automatically usable in garments; it needs to undergo a scouring process. About “35% to 60% of the weight of shorn wool is contaminated with impuri-

244. See FELDSTEIN ET AL., *supra* note 233, at 2 (The wool industry’s intensive water usage for sheep hydration and chemical-heavy feed crop production, coupled with habitat degradation from native wildlife displacement and vegetation depletion, results in extensive pollution through fecal runoff and slaughterhouse wastewater, contaminating waterways with pathogens, proteins, fibers, antibiotics, and other pharmaceutical residues.).

245. *Id.*

246. See Marina Bolotnikova, *The Greenwashing of Wool, Explained*, VOX (Dec. 21, 2023), <https://www.vox.com/future-perfect/24008053/wool-marketing-environment-sustainable-claims-sheep-animal-cruelty-fast-fashion>; see generally FELDSTEIN ET AL., *supra* note 233.

247. See Bolotnikova, *supra* note 246.

248. See FELDSTEIN ET AL., *supra* note 233, at 19.

249. *Id.*

250. See *id.* at 3 n.4, 5 (citing Richard Twine, *Emissions From Animal Agriculture—16.5% Is the New Minimum Figure*, 13 SUSTAINABILITY 6276 (2021) and Mesfin Mekonnen & Arjen Y. Hoekstra, *Four Billion People Facing Severe Water Scarcity*, 2 SCI. ADVANCES e1500323 (2016)).

251. See *id.* at 21.

252. *Id.* at 20.

253. *Id.* (“In a study of U.S. slaughterhouses, a facility that processes sheep had 15 effluent violations and was found discharging wastewater into an impaired waterway.”) (citing KIRA BURKHART ET AL., WATER POLLUTION FROM SLAUGHTERHOUSES, ENV’T INTEGRITY PROJECT (2018), https://www.environmentalintegrity.org/wp-content/uploads/2018/10/Slaughterhouse_Report_Final.pdf).

ties,” such as wool grease,²⁵⁴ suint,²⁵⁵ and surface soiling.²⁵⁶ Thus, the wool must be scoured, which requires large amounts of water, active detergents, and cleansing agents to remove the grease.²⁵⁷ The scouring process also produces waste that is not biodegradable; most of that waste has contaminants that are “released as waste water.”²⁵⁸

This wastewater, common to the scouring process, contains alkylphenol ethoxylates (APEOs).²⁵⁹ “APEOs are endocrine disruptors, which are potentially damaging to human fertility and very toxic to aquatic life.”²⁶⁰ Some brands have placed restrictions and bans on using APEOs in their supply chain²⁶¹; however, in the United States, these chemicals and other subsets of APEOs in textile products remain largely unregulated.²⁶² EPA has taken steps to identify acceptable levels in water and identified nonylphenol ethoxylates (NPEs) and nonylphenol (NPs), subsets of APEOs, that are “detergent-like substances, with uses that lead to widespread release into aquatic environments” and are very toxic to aquatic life.²⁶³ The Agency has taken the initiative to reduce NPs/NPEs in the industry by asking industry trade organizations to reduce or eliminate their use voluntarily.²⁶⁴ Since NPs/NPEs are a subset of APEOs, this regulation by EPA has minimal impact on reducing its exposure to the consumer because it is left up to the corporate industry to eliminate.

The toxicity to aquatic life may not seem like a significant issue, on its face, to the consumers of fast fashion. However, a deeper look will reveal that it is directly linked to public health (a.k.a. the consumers’ health). It poses a health risk to the public because of manufactured chemicals that pollute the world’s oceans and then contaminate the fish we consume.²⁶⁵ Humans are primarily exposed to

polychlorinated biphenyls (PCBs), dioxins, brominated flame retardants, perfluorinated substances, pesticides, and other detergent-like substances through eating contaminated seafood.²⁶⁶ Accordingly, eating contaminated seafood has been linked to cardiovascular disease, developmental and neurobehavioral disorders, metabolic disease, immune dysfunction, endocrine disruption, and cancers.²⁶⁷

None of the problems arising from fast fashion are trivial or speculative. As demonstrated above, the industry’s environmental impact is significant and continuous, with little evidence of slowing or reversing. The chemical, greenhouse gas, and microplastic pollution from polyester and wool demonstrates a severe health risk and substantial injury to consumers in the United States, and is directly linked to the fast fashion industry’s mass production of clothing and textiles. This is the first indication that the FTC should utilize its broad authority to regulate unfair business practices within the fast fashion industry.

2. Is the Injury to Consumers Outweighed by Any Countervailing Benefits to Consumers?

The second sub-test that must be met under “practices injurious to consumers” is that the injury cannot be outweighed by any consumer or competitive benefits that the sales practice produces.²⁶⁸ This means that the injury must be injurious in its net effects, as a whole.²⁶⁹ Thus, any benefits produced from the business practice cannot outweigh the injury suffered by the consumer.²⁷⁰ Further, the Commission measures the various costs a remedy would entail in their countervailing benefits analysis.²⁷¹

Below, I will discuss the various factors of cost-benefit analyses, including the impacts on economies, consumers, and workers and the cost of industry compliance and federal regulation. This will inform the conclusion that any benefits produced by the fast fashion industry and the cost of industry compliance and federal regulation are outweighed by the injury to consumers as a whole.

254. See *id.* at 21. This is also known as lanolin, a wax produced by sheep skin glands.

255. *Id.* This is dried sheep sweat.

256. *Id.* This consists of dirt, dust, feces, and vegetable matter.

257. *Id.*

258. See *id.* at 22.

259. *Id.*

260. *Id.* at 23 (citing Ismail-H. Acir & Klaus Guenther, *Endocrine-Disrupting Metabolites of Alkylphenol Ethoxylates—A Critical Review of Analytical Methods, Environmental Occurrences, Toxicity, and Regulation*, 635 SCI. TOTAL ENV’T 1530 (2018)).

261. *Id.*

262. See LEVI STRAUSS & CO., LEVI STRAUSS & CO.’S PHASE OUT OF ALKYLPHENOL ETHOXYLATES (APEOs) 2 (2013), https://www.levistrauss.com/wp-content/uploads/2021/01/082913-apeo-investigation-rpt_updated.pdf; see also Alden Wicker, *Just How Harmful Are the Chemicals in Your Clothes?*, HARPER’S BAZAAR (Oct. 16, 2020), <https://www.harpersbazaar.com/fashion/trends/a34206576/toxic-fashion-industry/>.

263. See U.S. EPA, *Fact Sheet: Nonylphenols and Nonylphenol Ethoxylates*, <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/fact-sheet-nonylphenols-and-nonylphenol-ethoxylates> (last updated Apr. 28, 2025); see also National Mastitis Council, NMC NPE Fact Sheet 1 (2016, revised May 2020), <https://www.nmconline.org/wp-content/uploads/2020/09/NMC-NPE-Fact-Sheet-FINAL-May-2020.pdf>.

264. See National Mastitis Council, *supra* note 263.

265. See Biresaw D. Abera & Mekuannt A. Adimas, *Health Benefits and Health Risks of Contaminated Fish Consumption: Current Research Outputs, Research Approaches, and Perspectives*, 10 HELIYON 3 (2024), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11268356/pdf/main.pdf> (“Even though fish is a major source of protein and other nutrients it can also be a source of contaminants, such as heavy metals, polychlorinated biphenyls (PCBs), dioxins, and furans which can accumulate in fish tissues and can pose a health risk to consumers.”).

266. See U.S. EPA, *Exposure Assessment Tools by Chemical Classes—Other Organics*, <https://www.epa.gov/expobox/exposure-assessment-tools-chemical-classes-other-organics> (last updated Mar. 3, 2026) (“Humans are primarily exposed to these compounds through ingestion of contaminated foods such as meat, dairy, fish, and shellfish.”); see also Abera & Adimas, *supra* note 265, at 4 (“These contaminants can find their way into the aquatic food chain through industrial waste, agriculture, or other human activities. They can accumulate over time in fish as they are absorbed from water sources and food, potentially leading to adverse health effects in humans who consume them.”).

267. See Abera & Adimas, *supra* note 265, at 5-6 (discussing the links between PCBs, dioxins, and pesticides in fish consumption to numerous serious health issues).

268. See FTC Policy Statement on Unfairness, *supra* note 131.

269. *Id.*

270. *Id.*

271. *Id.* (These include, but are not limited to, (1) costs to the parties directly before the agency, (2) increased paperwork, (3) increased regulatory burdens on the flow of information, and (4) reduced incentives to innovation and capital formation.).

a. *Impact on Economies, Consumers, and Workers*

Here, there are definitive benefits to the rise of the fast fashion industry, but they are surface-level. The fast fashion business model can be argued to have revolutionized the fashion industry, and in general, the clothing industry, by “simplifying consumers’ purchasing process and expediting the turnover of both garments and trends.”²⁷² Looking through a global economic lens, this is great for the world’s gross domestic product (GDP) because of its steady annual valuation increase.²⁷³ In 2020, 2021, and 2023, the global fast fashion market was valued at \$25.09 billion, \$30.58 billion, and \$122.98 billion, respectively, and is expected to grow to \$146.02 billion in 2024.²⁷⁴

The market is projected to grow to \$197.05 billion in 2028 at a compounded annual growth rate of 8.5%.²⁷⁵ This unprecedented growth rate in the world’s GDP is a significant incentive for corporations to continue to use the current business model, tipping the scale to favor the consumer injury being outweighed by countervailing benefits. However, this transformation in the fashion market “comes at a price” of severe disadvantage to the planet and its inhabitants, which also means, unequivocally, the consumers. The harms clearly outweigh the benefits of the industry.

Understandably, the fast fashion industry has been praised for its low costs and newfound accessibility to lower- and middle-income communities.²⁷⁶ Ironically and unfairly, these are the same communities that “bear the brunt of the industry’s waste and pollution.”²⁷⁷ It may seem that the fast fashion industry’s goal is to promote inclusivity and affordability. The unfortunate reality is that the industry is merely amassing enormous profits at the expense of the environment, the workers, and the consumers.²⁷⁸

It is undisputed that consumers have much power; however, meaningful sustainability progress will likely be seen when such practices are taken within the corporations.²⁷⁹ Some examples of practices taken by large fashion corporations are Coach, taking back, re-configuring, and making unique upcycled bags, and Patagonia, which has established Worn Wear, “an online secondhand buying and trading platform for used clothing and gear to extend their

lifecycles.”²⁸⁰ A mass effort by fast fashion corporations to follow the lead set by companies like Coach and Patagonia would make it unnecessary for a government agency to step in to regulate.

However, sustainability initiatives are not at the forefront of decisionmaking for major fashion brands; instead, they are committed to the mass production of microtrends.²⁸¹ The lack of accountability and desire to fix the problems their industry is causing trigger the need for the FTC to tackle fast fashion regulation for consumer protection.

Further, proponents of fast fashion, “or at least [scholars who] appreciate the positive economic effects of the practice, maintain that outsourcing apparel manufacturing is beneficial to both developed and developing countries.”²⁸² Consumers in developed countries enjoy lower prices while corporations increase their profits.²⁸³ Simultaneously, developing countries are seeing improvement in infrastructure from the increase in business operations, ultimately aiding in economic growth in the future²⁸⁴ and improving quality of life.²⁸⁵

Although there is a boost in the global economy from the fast fashion industry, those in developed countries are being displaced from their manufacturing jobs, specifically Americans.²⁸⁶ “Because fast fashion retailers strove to sell their products at the lowest prices possible, many companies outsourced their manufacturing to developing countries, thus eliminating jobs in the United States.”²⁸⁷ This can be seen in the drastic drop in American-made clothing from 1991 to 2012, from 56.2% to 2.5%, and 1.2 million jobs lost in the United States from 1990 to 2012.²⁸⁸ Additionally, the outsourcing of manufacturing produced massive, detrimental trade deficits.²⁸⁹ Although there is a clear benefit to developing countries’ economies and infrastructure, there is just as clear a disadvantage to developed countries, like the United States, with little indication of meaningful improvement or reversal.

Supporters of fast fashion may believe that the combined benefits to the world’s GDP and developing nations outweigh the injurious effects on consumers of developed nations, trade deficits, and environmental degradation. However, while the increase in the world’s GDP may sound ideal, it does not indicate to whom that increase in money is going. An educated guess is that the money is likely going to the heads of corporations in the fast fashion industry. This increase in GDP may help developing

272. See FELDSTEIN ET AL., *supra* note 233, at 5.

273. See Molly Flanagan, *Fast Fashion*, UNIV. PA. ENV’T INNOVATIONS INITIATIVES, <https://environment.upenn.edu/news-events/news/fast-fashion> (last visited Mar. 2, 2026) (providing a chart of clothing sales and decline in clothing utilization since 2000, showing the increase in the world’s GDP); see also Emma Williams, *Appalling or Advantageous? Exploring the Impacts of Fast Fashion From Environmental, Social, and Economic Perspectives*, 13 J. GLOB. BUS. & CMTY. (2022) (discussing Business Research Company report on fast fashion discussing market valuations).

274. See Williams, *supra* note 273; see also THE BUSINESS RESEARCH COMPANY, *FAST FASHION GLOBAL MARKET REPORT (2024)* (stating the estimated current valuation and growth valuation in “Frequently Asked Questions”).

275. THE BUSINESS RESEARCH COMPANY, *supra* note 274.

276. See FELDSTEIN ET AL., *supra* note 233, at 5.

277. *Id.*

278. *Id.* at 5-6; see also Flanagan, *supra* note 273.

279. See Flanagan, *supra* note 273 (stating the idea that the burdens of the exploitative fast fashion industry at large should not be on the consumer).

280. *Id.*

281. See CHANGING MARKETS FOUNDATION, *supra* note 240 (stating that a survey done by the foundation found that major fashion brands are increasing their use of polluting synthetic textiles, deepening their commitment to fast fashion despite growing environmental concerns).

282. See Williams, *supra* note 273, at 6.

283. *Id.*

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.* at 7.

288. *Id.*; see also DANA THOMAS, *FASHIONOPOLIS: WHY WHAT WE WEAR MATTERS* 20 (Penguin Books 2020).

289. See THOMAS, *supra* note 288 (stating that in 2017, U.S. exports totaled \$5.7 billion, while imports totaled \$82.6 billion).

nations incrementally. But on a larger scale, the increase in GDP is not drastically helping those working in poor conditions who make the clothes the corporations sell, and it is not environmentally sustainable. It also does not help U.S. consumers, who are losing their jobs because of outsourcing to fast fashion companies, nor does it help the U.S. economy, which is in a trade deficit due to the offshoring.

Thus, cumulatively, the impact on the world's GDP and developing nations does not likely outweigh the disadvantages to those same developing nations, U.S. consumers and workers, and the trade deficit in the U.S. economy.

b. Cost of Industry Compliance and Federal Regulation

A known challenge to the proposal of an additional regulatory scheme is the cost of industry compliance and the general cost to the U.S. economy of federal regulation. Thus, this is necessary for the cost-benefit analysis when arguing that an agency should regulate another industry within its scope, such as the FTC with the fast fashion industry.

Some scholars estimate that businesses spend an additional \$700 billion annually to comply with regulations.²⁹⁰ Other associations, like the National Association of Manufacturers (NAM), estimate key findings of a \$277,000 cost to U.S. firms and businesses, a \$465 billion increase in aggregate regulatory compliance costs since 2012, and a \$3.079 trillion cost for federal regulations to the U.S. economy.²⁹¹ NAM claims that small businesses “tend to be hit hardest.”²⁹² Other scholars claim that industry compliance costs disproportionately impact medium sized businesses over small businesses.²⁹³ It is hard to accurately measure the exact regulatory cost of compliance on firms and businesses because “federal, state, and local authorities subject firms to a complex web of regulations, making it very difficult to estimate the cost of overlapping regulations for any particular firm or industry.”²⁹⁴

290. See Tyler Hogue, *Estimating the Impact of Regulation on Business*, REG. REV. (Feb. 28, 2024), <https://www.theregreview.org/2024/02/28/hogue-estimating-the-impact-of-regulation-on-business/>.

291. See generally NICOLE V. CRAIN & W. MARK CRAIN, *THE COST OF FEDERAL REGULATION TO THE U.S. ECONOMY, MANUFACTURING AND SMALL BUSINESS* (2023), <https://nam.org/wp-content/uploads/2023/11/NAM-3731-Crains-Study-R3-V2-FIN.pdf>.

292. See Clyde W. Crews Jr., *National Association of Manufacturers Pegs Cost of Regulation at \$3.079 Trillion*, FORBES (Dec. 28, 2023), <https://www.forbes.com/sites/waynecrews/2023/12/28/national-association-of-manufacturers-pegs-cost-of-regulation-at-3079-trillion/>; see also CRAIN & CRAIN, *supra* note 291, at 4 (stating “the cost of regulatory compliance disproportionately affects small firms”).

293. Francesco Trebbi et al., *The Cost of Regulatory Compliance in the United States 22* (USC Marshall School of Business Research Paper Sponsored by iORB 2024):

As firm or establishment employment increases regulatory costs per employee increase steadily until a firm size of around 500 workers, then regulatory compliance costs per employee start falling rapidly, indicating economies of scale. We uncover the percentage of labor costs for regulatory compliance for mid-size businesses are about 40-50 percent higher than that for the smallest businesses and about 10-20 percent higher than that for the largest ones.

294. Hogue, *supra* note 290; see also *id.* at 8.

There is a sound reason to compare the costs of introducing federal agency regulation in a new industry, like fast fashion, with overall consumer injury. However, an essential distinction in that comparison is the consensus among scholars, as demonstrated above, that most costs adversely impact small and medium sized businesses over large ones.²⁹⁵ Among the primarily underregulated large businesses are those in the fast fashion industry, which include Shein, Zara, H&M, Fashion Nova, Primark, and many more.²⁹⁶ These companies are major players in fast fashion that significantly contribute to water consumption, carbon emissions, microplastics, wastewater and chemical runoff, human rights violations, and lack of consumer transparency.²⁹⁷ As the above section on substantial consumer injury establishes, environmental degradation and human rights violations are directly linked to consumer injury.²⁹⁸

While the benefits of the fast fashion industry and the costs of industry compliance and federal regulation present large quantitative numbers, the severe qualitative environmental degradation and human rights violations represent a significant sustainability issue that cannot be ignored and arguably tip the scales to outweigh the former. This is because the regulation fashion landscape, which includes the fast fashion industry, “face[s] little regulatory intervention.”²⁹⁹ Thus, taken as a whole, the consumer injury the fast fashion industry creates and continues to contribute to outweighs any countervailing benefits and costs.

3. Is the Injury to Consumers One They Could Not Reasonably Have Avoided?

Typically, the effects of U.S. consumerism, including in the fast fashion industry, are primarily assessed through consumers' decisions.³⁰⁰ To promote a free market, the government tends to stay out of regulating individuals' private purchasing decisions.³⁰¹ The market is expected to be self-correcting.³⁰² The U.S. government anticipates that American consumers will do their due diligence to make informed product decisions, surveying available alternatives when necessary.³⁰³

295. CRAIN & CRAIN, *supra* note 291; Trebbi et al., *supra* note 293.

296. See Adam Hayes, *Fast Fashion's Impact on Retail Manufacturing and the Environment*, INVESTOPEDIA (updated Aug. 20, 2025), <https://www.investopedia.com/terms/f/fast-fashion.asp> (stating that fast fashion leaders are Zara and H&M); see also Sachi K. Mulkey, *Shein Is Officially the Biggest Polluter in Fast Fashion*, YALE CLIMATE CONNECTIONS (Sept. 19, 2024), <https://yaleclimateconnections.org/2024/09/shein-is-officially-the-biggest-polluter-in-fast-fashion-ai-is-making-things-worse/> (stating that despite pledging to reduce its carbon dioxide emissions, Shein nearly doubled its carbon emissions in 2023, making it the biggest polluter in the fast fashion industry).

297. See *supra* notes 221-68 and accompanying text.

298. *Id.*

299. See Stephen et al., *supra* note 40.

300. See FTC Policy Statement on Unfairness, *supra* note 131.

301. *Id.*

302. *Id.*

303. *Id.* (stating that consumers will “. . . choose those that are most desirable, and avoid those that are inadequate or unsatisfactory.”).

However, it is understood that certain sales strategies can prevent consumers from making effective decisions on their own, and corrective measures may be necessary.³⁰⁴ Stopping seller behavior that unreasonably obstructs the free exercise of consumer decisionmaking is when the FTC typically decides to intervene under unfairness.³⁰⁵ Certain seller practices that undermine informed consumer decisionmaking include intentionally withholding or failing to disclose essential price or performance information, using overt coercion, and exercising undue influence over particularly vulnerable groups of buyers.³⁰⁶

In the case of apparel purchases, particularly in fast fashion, decisionmaking is driven by self-expression and identity.³⁰⁷ Clothing purchases are directly controlled by those purchasing the item. People consciously choose to buy the clothes they do. Scholar Breanne Parker argues that “[u]nfortunately, many consumers already know just how bad [fast fashion] corporations are.”³⁰⁸ Logically, it follows that these purchasing decisions are reasonably avoidable. “Yet, millions of people still continue to support fast fashion companies.”³⁰⁹

This disconnect is because the average U.S. consumer has “the full might of multibillion-dollar companies working against them.”³¹⁰ More specifically, the consumer’s inability to avoid fast fashion begins when larger companies prey on smaller, independent designers by creating technically legal dupes of their designs.³¹¹ They then use social media and influencers to cultivate and facilitate the spread of microtrends.³¹² This allows the consumer to “see an item of clothing worn on the runway or the red carpet” at a significantly lower cost and be able to purchase it right on the spot.³¹³

Fast fashion companies take advantage of consumers’ desire for luxury and to be a part of the status quo. To satisfy that desire, they provide a false sense of accessibility, as that trendy piece of clothing is available now, but it will soon become just another part of the fast fashion problem. The complex and layered fast fashion model demonstrates that larger forces are at work, making purchasing these products unreasonably unavoidable for consumers.

Further, even the most informed U.S. consumers face a sea of misinformation and false claims by the fast fashion industry.³¹⁴ After the shift to become more sustainable, led by consumers pushing back at large corporations, retailers began labeling their clothes as “sustainable” or “eco-

friendly.”³¹⁵ “On social media platforms like TikTok and Instagram, where people engage with the latest trends, there is very little information shared by companies about who makes this clothing, where it is made, and what the environmental cost of this production is.”³¹⁶ Unfortunately, the harsh truth is that these labels are merely advertising and marketing tactics with little truth regarding environmental claims.³¹⁷

Therefore, even when consumers think they are helping to reverse the impact of environmental and human rights, they are not. Even when they are trying to avoid the injury, they cannot. The far-reaching and hidden tactics used by fast fashion giants reveal all the seller practices that undermine informed consumer decisionmaking, and are not reasonably avoidable on the part of the consumer.³¹⁸

4. Sub-Conclusion of Consumer Injury

The sections above carefully analyze and examine each sub-test under consumer injury to demonstrate that the fast fashion industry’s practices indisputably injure consumers and satisfy the first unfairness factor. The factor of consumer injury is met because the injury is substantial, it outweighs any countervailing benefits, and it is not reasonably avoidable.

B. Violation of Established Public Policy

The second factor in determining *unfairness* in trade practices that must be discussed is the fast fashion industry’s violation of public policy established by statute, common law, industry practice, or otherwise.³¹⁹ “This criterion may be applied in two different ways. It may be used to test the validity and strength of the evidence of consumer injury, or, less often, it may be cited for a dispositive legislative or judicial determination that such injury is present.”³²⁰ Violations of established public policy are used to provide additional evidence “on the degree of consumer injury caused by specific practices.”³²¹

Other established public policies may be referenced to guide the FTC on whether a practice is injurious in its net effects and, thus, unfair.³²² Finally, public policies should

304. *Id.*

305. *Id.*

306. *Id.*

307. See, e.g., Tkhayet, *supra* note 1; Shah, *supra* note 1.

308. See Parker, *supra* note 178, at 4.

309. *Id.*

310. See Wilkinson, *supra* note 114, at 203.

311. See *supra* notes 21-31 and accompanying text.

312. *Id.*

313. See Audrey Lin, *Driven to Shop: The Psychology of Fast Fashion*, EARTH-DAY.ORG (Aug. 5, 2022), <https://www.earthday.org/driven-to-shop-the-psychology-of-fast-fashion/>.

314. See Perkins, *supra* note 130.

315. See *The Future of Fashion: Circular and Sustainable Fashion Trends*, MINTEL (updated Aug. 22, 2025), <https://www.mintel.com/insights/retail/the-growth-of-circular-and-sustainable-fashion-trends/>; see also Wilkinson, *supra* note 114.

316. See Hannah Berhane, *Rethinking Clothing Consumption: Understanding the Human Cost of Fast Fashion*, UNC CHAPEL HILL (APR. 26, 2024), <https://ethicspolicy.unc.edu/news/2024/04/26/rethinking-clothing-consumption-understanding-the-human-cost-of-fast-fashion/>.

317. See Wilkinson, *supra* note 114; see generally Tina Zou, *The Power of Marketing in Fashion: The Reality of the Fast Fashion Industry*, NAT’L HIGH SCH. J. SCI. (June 22, 2024), <https://nhsjs.com/2024/the-power-of-marketing-in-fashion-the-reality-of-the-fast-fashion-industry/>.

318. See *supra* note 306 and accompanying text.

319. See FTC Policy Statement on Unfairness, *supra* note 131 (noting that public policy alone is not likely to support a finding of unfairness).

320. *Id.*

321. *Id.*

322. See *The FTC’s Use of Unfairness Authority: Its Rise, Fall, and Resurrection*, *supra* note 218.

be clear, well-established, widely shared, and not isolated.³²³ Some established U.S. laws and policies that are clear, well-defined, and widely recognized, rather than isolated, which fast fashion violates, include environmental regulations, labor standards, and children's rights.

1. Environmental Regulations

A leading practice of fast fashion companies is the continuous mass production of textiles,³²⁴ which pollute waterways with chemicals and waste, overpopulate landfills, and release carbon emissions.³²⁵ The environmental harm caused by the industry's mass production of textiles occurs pre- and post-consumer consumption.³²⁶ This violates multiple U.S. environmental laws, including, but not limited to, RCRA, the CAA, and the CWA.³²⁷ However, as stated above, fast fashion companies continue to escape liability because environmental statutes that target pollution, waste, and conservation do not apply to manufacturers operating in America or "fast fashion consumed in the United States."³²⁸

2. Labor Standards

Another established public policy in the United States is labor standards. Fast fashion industry practices often violate public policy relating to minimum wage, safe working conditions, and reasonable working hours.³²⁹ This is because while the clothing is sold in the United States, the production and manufacturing are done outside the United States.

A prominent and recent example of a labor protection statute, signed into law by President Joe Biden, is the Uyghur Forced Labor Prevention Act (UFLPA).³³⁰ This law was "the U.S. response to the Chinese government's systemic use of forced labor against Uyghurs and other ethnic minorities in the Xinjiang Uyghur Autonomous Region (XUAR) in the People's Republic of China."³³¹ Enforcing the UFLPA is key to preventing unfair economic compe-

tion, risk of consumers unknowingly purchasing goods made with forced labor, financing of criminal organizations, and atrocious human rights violations.³³²

The Act shows the United States' established public policy in upholding ethical labor practices and standards through the enactment of legislation. Fast fashion brands like Shein and Temu have been reported to use Xinjiang cotton in their products.³³³ In fact, approximately 16% of cotton clothes within the United States contained Xinjiang cotton.³³⁴

Not only fast fashion brands Shein and Temu, but most fast fashion companies' business models are rife with labor public policy violations.³³⁵ For instance, a fast fashion company named Boohoo paid their workers in Leicester as little as \$4.44 per hour.³³⁶ These practices by the fast fashion industry clearly violate established U.S. labor public policy.

3. Children's Rights

The Fair Labor Standards Act (FLSA) is the central public policy governing child labor and rights.³³⁷ It is U.S. public policy to safeguard children from unethical and illegal labor practices.³³⁸ U.S. consumers may not ordinarily see the link between fast fashion and children's rights. However, fast fashion production is rampant with child labor and violation of children's rights to education, freedom, and protection.³³⁹

Unfortunately for regulators but beneficial for fast fashion companies, child labor starts at the earliest stages of production.³⁴⁰ Children often create the textiles that make up the clothes.³⁴¹ Because of their tiny, delicate fingers, "children are often employed to produce cotton seeds, pick cotton, spin yarn in the production of textiles, and cut and construct the final garments."³⁴² The incentive to use child labor among fast fashion companies is the low

323. See FTC Policy Statement on Unfairness, *supra* note 131.

324. See U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-25-107165, TEXTILE WASTE: FEDERAL ENTITIES SHOULD COLLABORATE ON REDUCTION AND RECYCLING EFFORTS (Dec. 12, 2024), <https://www.gao.gov/products/gao-25-107165> (emphasizing that textile waste has been increasing over the past 20 years because of fast fashion).

325. See *supra* notes 231-68 and accompanying text; see also Rachel Walden, Fast Fashion: Ethical Dilemma and Suggestions for Change 5-6 (May 2024) (B.S. thesis University of Arkansas, Fayetteville), <https://scholarworks.uark.edu/mktguht/84> (outlining environmental concerns from impact of fast fashion).

326. See Walden, *supra* note 325, at 5.

327. See *supra* note 120 and accompanying text.

328. See *supra* notes 121-23 and accompanying text.

329. See Ruben Rosalez, *The Exploitation of Garment Workers: Threading the Needle on Fast Fashion*, U.S. DEP'T LABOR BLOG (Mar. 21, 2023), <https://blog.dol.gov/2023/03/21/the-exploitation-of-garment-workers-threading-the-needle-on-fast-fashion>; see also Walden, *supra* note 325 (outlining labor exploitation within fast fashion industry).

330. See U.S. Customs and Border Protection, *Uyghur Forced Labor Prevention Act*, <https://www.cbp.gov/trade/forced-labor/UFLPA> (last updated Feb. 4, 2025).

331. *Id.*

332. See Evan Conceicao & Melissa Whalen, *Implementing the Uyghur Forced Labor Prevention Act: A Challenge Worth the Effort*, U.S. Customs and Border Protection (last updated Nov. 13, 2025), <https://www.cbp.gov/frontline/implementing-uyghur-forced-labor-prevention-act>.

333. See Hope O'Dell, *The Cost of Shein and Temu's Low Prices*, CHI. COUNCIL ON GLOB. AFFS. (Oct. 19, 2023), <https://globalaffairs.org/bluemarble/how-shein-and-temu-get-around-us-labor-laws-ban-products-made-forced-labor>.

334. *Id.*

335. See Schuyler Velasco, *Forced Labor in the Clothing Industry Is Rampant and Hidden. This AI-Powered Search Platform Can Expose It.*, NGN MAG. (Mar. 21, 2024), <https://news.northeastern.edu/2024/03/21/magazine/fashion-supply-chain-forced-labor/>; see also Maiti, *supra* note 226 ("In fast fashion, sales and profits often take precedence over human welfare.").

336. See Walden, *supra* note 325.

337. See U.S. Department of Labor, *Child Labor*, <https://www.dol.gov/agencies/whd/child-labor> (last visited Mar. 2, 2026) (stating that child labor provisions of the FLSA were implemented to make sure "that when young people work, the work is safe and does not jeopardize their health, well-being or educational opportunities").

338. *Id.*

339. See Chiara Baruta, *The Detrimental Effects of Fast Fashion on Children's Rights*, HUMANIUM (Sept. 21, 2021), <https://www.humanium.org/en/the-detrimental-effects-of-fast-fashion-on-childrens-rights/>.

340. See Madeline A. James, *Child Labor in Your Closet: Efficacy of Disclosure Legislation and a New Way Forward to Fight Child Labor in Fast Fashion Supply Chains*, 25 J. GENDER, RACE & JUST. 245, 255 (2022).

341. *Id.* at 255-56.

342. *Id.* at 256.

cost of production, which means they can beat their competitors' prices by selling their clothes to consumers at a lower price.³⁴³

Child labor is widely prevalent in countries such as Bangladesh, Benin, India, and Uzbekistan.³⁴⁴ As mentioned before, the collapse of Rana Plaza in Dhaka, Bangladesh,³⁴⁵ was one of the worst incidents of neglect to a building where workers were injured and killed.³⁴⁶ Americans spent \$340 million on clothing that same year, "much of which was produced [] where the factory disaster happened."³⁴⁷

Consumers in the United States are buying clothes from fast fashion brands that escape liability for child labor simply because the clothes are manufactured outside the country. This practice of fast fashion companies using children to produce their clothes at a low cost for sale is a distinct violation of established U.S. child labor laws and public policy.

4. Sub-Conclusion of Violation of Established Public Policy

As demonstrated in the previous sections, there are clear, well-established, widely shared, and non-isolated public policies related to environmental regulations, labor standards, and children's rights that the practices of the fast fashion industry violate. Indeed, a violation of public policy evaluated on its own cannot be used to determine *unfairness*.³⁴⁸ However, combined with the determination of consumer injury,³⁴⁹ the violation of not just one but three areas of public policy demonstrates that the fast fashion industry's practices are injurious in their net effects. Thus, those practices may be deemed unfair.

C. Unethical or Unscrupulous Conduct

Finally, the third and final factor in determining *unfairness* in trade practices is whether the conduct is immoral, unethical, oppressive, or unscrupulous.³⁵⁰ The FTC has recognized that this test has proven to be largely duplicative because "conduct that is truly unethical or unscrupulous will almost always injure consumers or violate public policy as well."³⁵¹

The practices and conduct of the fast fashion industry discussed throughout this Article include but are not limited to: (1) mass production of clothing that leads to chemical and water pollution, oversaturated landfills, and increased carbon emissions; (2) the appropriation of IP from fashion designers; (3) the spread of false and misleading sustainability claims; and (4) the implications for

labor and human rights.³⁵² These practices and conduct are demonstrably immoral, unethical, oppressive, and unscrupulous, satisfying the standard for the test. The Commission has never used this test as a stand-alone basis for determining *unfairness*; however, such a determination can be made alongside an analysis of consumer injury and public policy violation.³⁵³

V. Conclusion

The fast fashion industry's practices satisfy all three factors the FTC considers when determining unfairness under §5 of the FTC Act. The industry causes substantial consumer injury through environmental degradation, health risks from toxic chemicals, microplastic pollution, and more. Consumers cannot realistically avoid these harms, which are not outweighed by any counterbalancing benefits. The industry's practices and conduct violate established public policies regarding environmental protection, labor standards, and children's rights.

Further, the industry's behavior is clearly unethical and unscrupulous, ranging from the exploitation of workers to misleading sustainability claims. Given this comprehensive satisfaction of the unfairness criteria, combined with the FTC's broad statutory authority and mandate to protect consumers, the Commission can and should regulate unfair practices in the fast fashion industry. Although the FTC has already begun addressing deceptive greenwashing claims, broadening its oversight to encompass unfair practices would be a crucial step toward establishing meaningful accountability in an industry that has long prioritized profits over the welfare of consumers, the environment, and human rights.

VI. Addendum: Fast Fashion Regulation by the FTC Under the Current Presidential Administration

Following completion of this Article, the United States transitioned into a new era of federal regulation under the current presidential administration. This era is marked by shifting priorities and distinctive approaches to federal enforcement.³⁵⁴ These changes warrant a brief but important reflection of their implications on how the proposed FTC framework in this Article may operate within today's legal and political landscape.

Under the new presidential administration came a shift of the FTC commissioners from a Democratic to a Repub-

343. *Id.*

344. *Id.*

345. See *supra* note 36 and accompanying text.

346. See James, *supra* note 340, at 256.

347. *Id.* at 257.

348. See FTC Policy Statement on Unfairness, *supra* note 131.

349. See *supra* notes 30-48.

350. See FTC Policy Statement on Unfairness, *supra* note 131.

351. *Id.*

352. See *supra* Part IV.

353. *Id.*

354. See William Hallett et al., *Navigating Consumer Protection: What the New Trump Administration Means for Consumer Product & Retail Companies*, ARNOLD & PORTER (Jan. 14, 2025), <https://www.arnoldporter.com/en/perspectives/events/2025/01/navigating-consumer-protection-what-the-new-trump-administration-means-for-consumer-product> (predicting the FTC is likely to undergo recalibration of certain enforcement policies).

lican majority, led by Chairman Andrew N. Ferguson.³⁵⁵ A switch in the political majority within a federal agency usually indicates considerable modification to its objectives.³⁵⁶ However, in this instance, the FTC's objectives in protecting consumers during its current tenure remain largely unchanged.³⁵⁷ The main difference between the previous FTC administration and the current one is that the agency will likely focus on enforcing existing laws rather than pursuing new rulemaking efforts.³⁵⁸

Former FTC Chairwoman Lina M. Khan, in a recent publication, echoes the same sentiments on the similar

intentions and priorities of the current commissioners concerning FTC enforcement.³⁵⁹ Importantly, she mentions her observation of the bipartisan support for a more expansive interpretation of unfairness.³⁶⁰ Although her publication focuses on privacy and data protection against AI, her observations signal that the FTC intervention in the enforcement of unfair business practices within the fast fashion sector remains possible under this administration. The FTC's §5 authority continues to be a legally viable mechanism to address the unfair business practices prevalent in the under-regulated fast fashion industry and to protect consumers.³⁶¹

355. See *President Trump Fires Two Democratic FTC Commissioners*, KATTEN (Mar. 20, 2025), https://katten.com/files/2004845_2025_03_20_frm_ftc_president_trump_fires_two_democratic_ftc_commissioners.pdf (stating President Trump removed two Democratic commissioners, giving Republican appointees complete control over future enforcement actions and abandoning existing actions they may not support); see also FTC, *Commissioners*, <https://www.ftc.gov/about-ftc/commissioners-staff/commissioners> (last visited Mar. 2, 2026).

356. See, e.g., *Navigating the Balance of Power in the U.S. House and Senate to Drive Policy Wins*, BLOOMBERG GOV'T (Jan. 15, 2026), <https://about.bgov.com/insights/congress/balance-of-power-in-the-u-s-house-and-senate/> (“With their newfound majority, Senate Republicans have assumed leadership of Senate committees, which will have significant implications for future lobbying and regulatory strategy.”).

357. See *President Trump Fires Two Democratic FTC Commissioners*, *supra* note 355 (predicting that “[d]espite the Commission’s composition changes, the FTC’s consumer protection mission is expected to remain largely unchanged under Chairman Ferguson.”).

358. See *id.* (noting that the agency’s focus will likely be on privacy, data security, and technology).

359. See Lina M. Khan et al., *After Notice and Choice: Reinvigorating “Unfairness” to Rein in Data Abuses*, 77 STAN. L. REV. 1375, 1458 (2025) (noting concerns surrounding how Republican control of White House might affect lasting impact of shifts in enforcement made under Khan’s FTC leadership and emphasizing it is unlikely the FTC will return to an entirely hands-off approach to consumer protection).

360. See *id.* at 1460 n.611.

361. See *supra* Parts III & IV.