The Fashion Industry's Challenges and Innovations in Sustainability
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The Fashion Industry's Challenges and Innovations in Sustainability

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I. Introduction

This article will explore and illustrate how fashion companies are mitigating their environmental impact and advancing social goals. In particular, we will highlight the evolving legal, economic and operational challenges the industry faces and some mechanisms that may provide tools to achieve these goals.

Publicity and Disclosure

Fashion is, by its very nature, a highly visible, buzzy industry. Between the complexities of manufacturing garments and the moral hazard of rapidly executed and affordable "fast fashion," the industry has been tagged as a polluter and waste-maker. In response, multiple companies, such as Reformation and Allbirds, have emerged with claims that their production methods and materials are socially responsible. Others, such as The RealReal, propose to provide second lives to objects and value to both sides of the purchase equation. The imperative is real, as consumers of fashion are increasingly demanding sustainability. Even influencers are promoting the benefits of a "conscious closet."

At the same time, these escalating claims are drawing attention from watchdog consumers and agencies. For example, the FTC is being lobbied by the industry to provide a more cogent and credible framework for testing sustainability claims in the fashion industry. On a more macro level, the SEC is reviewing a proposal to integrate disclosure requirements for public companies across all industries that would require companies to address their challenges with, and approaches to, ESG concerns so that investors can make informed decisions.

While few institutionalized approaches have been universally adopted, the concept of B Corp certification remains a powerful benchmarking tool, the parameters of which continue to evolve. B Corp certification is considered one of the more rigorous tools for public benefit corporations (PBCs) to make disclosures regarding their ESG efforts. To become certified, a company must be evaluated and graded by B Labs on all sustainability practices, and certification requires, when available, that the company's legal structure considers the interest of all stakeholders—i.e., that the company be formed as a PBC. While meeting the benchmarks of B Labs is neither easy nor cheap, it has become an important signifier for customers, investors and employees that fashion brands are beginning to embrace.

II. Challenges of Implementing a Sustainability Program

It is critical to any sustainability program for a company to begin by looking under its own hood and mapping out its supply chain—moving upstream or downstream to cover the path from raw materials to end customer. This mapping exercise may be complex, but it will give an overview of all the suppliers that will need to cooperate with the company's sustainability efforts to maximize the strategy's effectiveness.

With supply chain mapping, you are likely to find suppliers that already comply with certain environmental standards, but you will also discover that some partners will have work to do to achieve the same benchmarks. It is important to recognize that there is no flawless supply chain, and there is value in the historical relationships with existing suppliers in terms of know-how, institutional knowledge, and trust that cannot be overlooked. There is also a cost implication associated with changing suppliers, which may not make it feasible to immediately overhaul an entire network. This is where the importance of developing a company and context specific code of conduct becomes important and working with your suppliers to help them conform to your standards. Perfection will always be the enemy of good, but incremental progress compounds into impactful change.

Stakeholder Identification

Who are the relevant internal and external stakeholders at play in your organization? These will be the drivers for change. Some stakeholders to keep in mind in your analysis include employees, trade organizations and other community influencers, suppliers, customers (direct and third-party distribution channels), boards of directors, and shareholders.

Materiality

Once your stakeholders are identified, it is imperative to understand what issues are important to your relevant stakeholders. Every organization has different interests and identifying issues and clearly defining goals that are material to your organization will make your sustainability efforts authentic, limit greenwashing, and increase your impact. By completing your materiality assessment, you will have tangible data from which you can focus your environmental, social and governance priorities.

It Makes Financial Sense

How do you build the business case for, and demonstrate the return on investment on, sustainability? Beyond the moral imperative of doing the right thing, it must make business sense to make these changes, and studies show that it does. Companies that successfully communicate and implement sustainability measures derive competitive advantage through stakeholder engagement, mitigate risks, foster innovation, improve financial performance, increase customer loyalty, and better attract and engage talent. These competitive advantages seemingly bear themselves out in the better performance of sustainability focused companies in market downturns relative to other companies, including in the recent pandemic downturn.

Strategize for Your Organization

Once there is enhanced transparency throughout the supply chain, it is time to analyze other aspects of the organization. The environmental impact of a product is based on the sum of a number of parts: shipping, packing, and ultimately the end of the product's life. While material production remains the largest contributor to the industry's greenhouse gas emissions in any given year, shipping materials and finished goods around the world, using single-use plastics to package clothing, and sending product to the landfill at the end of life are contributing causes to the environmental damage due to the fashion industry.

The logistics team can play a key role in identifying transportation efficiencies. Alternative packaging—packaging that is free of plastic, recycled, or reusable—is now increasingly available, and many companies are experimenting with various options in real time. This includes anything from checking a box to allow multiple items to ship in one box, to substituting refillable for disposable containers. Finally, many apparel companies have rental and take-back programs that allow customers to give clothes multiple lives. Various players in the industry are also trying to solve for the end-of life of clothing, which can include downcycling denim into insulation, using chemical recycling to make new fibers, or upcycling fabrics into new textiles that can be used in new products.

Weaving sustainability into business strategy also requires a company to clearly communicate its efforts and goals with internal and external stakeholders. As noted above, this communication must be accurate and authentic so it does not become greenwashing. Much of the push to adopt sustainable business practices comes from consumer pressure, which is as true in fashion as any other industry. Employees are another key group of stakeholders pushing forward their employer's sustainability efforts. Because of this, internal and external communications that educate and excite customers and employees about a company's sustainability efforts are essential for building engagement and creating a positive feedback loop that will further propel efforts to mitigate environmental impact.

Sustainability and Corporate Governance

Many boards are keenly aware of the importance of environmental, social, and governance (ESG) factors in today's world as there is increasing awareness of the relationship between environmental impact and financial performance. Blackrock, the global asset management firm, noted in its 2021 Stewardship Expectations that "[t]he events of this year have intensified our conviction that sustainability risk—and climate risk in particular—is investment risk." The report continues, "we expect boards to shape and monitor management's approach to material sustainability factors in a company's business model.…[W]e want to be explicit and clear about our views on board responsibility for sustainability and director accountability." While the work described above—interrogating supply-chain, transportation, packaging, and end of life strategies—belongs to management, the ultimate responsibility for monitoring the risks of environmental impact fall to the Board of Directors (or other governing body). As such, boards are actively engaging with the topic of sustainability, whether through a full board review of changes to business strategy that mitigate environmental impact or delegating the topic to a committee with specific interest and expertise in ESG. Regardless of how boards chose to monitor ESG factors, they will likely be spending an increasing amount of time on them as stakeholders also sharpen their focus on the importance of sustainability to the apparel industry.

III. Widening the Equation—Corporations Where Public Impact and Profits Matter

Not surprisingly, with the increased focus on ESG, investors and business creators have focused on a corporate hybrid that has been slowly gathering steam—the public benefit corporation. While still a for-profit corporation that provides shareholders with limited liability, this entity explicitly frees (and requires) boards to consider the interests of all material stakeholders, including customers, employees, and shareholders. This new corporate form is still young—Maryland passed the first PBC statute in 2010. As of yet, most PBCs remain either in private ownership or wholly owned by public companies, but the landscape is beginning to change. Recently, some PBCs have gone public—Laureate Education (2017), Coursera, Inc. (2021) Lemonade Insurance (2020), and Vital Farms (2020). And, this February, Veeva became the first public company to convert into a PBC. For the PBCs that have gone public, there has been no indicator that their corporate entity choice impeded the success of their public offering.

PBCs are gaining acceptance in the corporate world, as illustrated by the recent amendments to Delaware's General Corporation Law (DGCL), which make it easier for existing companies to convert to a PBC. DGCL §§ 363, 365 and 367 have decreased the required vote to convert from a corporation to a PBC, from a two-thirds vote to a mere majority of outstanding shares—the same percentage as what is required to approve a cash-out merger. Not only has this amendment made it easier for corporations to change their formal entity structure, but the amendments also clarified that directors of a PBC who have an ownership interest in the corporation's stock may still balance the public interest of the corporation with the economic interests of shareholders without creating a conflict of interest. This may alleviate some board members' apprehension to make the change. Additionally, we are not aware of any reported shareholders' litigation arising regarding a PBC, nor have we heard of a "risk premium" being required as to such companies by D&O carriers, despite their unfamiliar character.

Overall, we believe the current cultural environment and many pervasive themes in the fashion industry portend PBCs becoming more widely integrated in the corporate world generally, as well as an increasingly important part of the fashion industry.

For more information, check out the authors' Corporate Social Responsibility and Sustainability in Fashion program segment, available from PLI Programs On Demand.

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