

LEGAL AND PRIVACY

Implications for the fashion, apparel and beauty industries due to the coronavirus

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The \$400 billion U.S. fashion industry employs more than 4 million people. Image credit: Foley & Lardner LP

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"This is a strange time, but I am optimistic. I believe this is something that unites us in our humanity and every day I am reminded to appreciate the simplicity and beauty of things we often take for granted." ~ Ralph Lauren, quoted last month

Like other industries, the fashion, apparel and beauty businesses have been, and continue to be, hit hard by the COVID-19 pandemic.

The \$400 billion U.S. fashion industry employs more than 4 million people, excluding retail positions. Retail positions continue to be the largest private sector employer, supplying as many as one in four jobs, according to the [National Retail Federation](#).

Despite the pressing importance of the industry in the U.S., as emphasized by the Council of Fashion Designers of America ("CFDA") CEO Tom Ford, fashion continues to suffer from an image problem.

While many think of the industry as an elitist bubble, the reality is that the pandemic is having an impact on the supply chain composed of millions of workers from seamstresses and production staff to retail sales associates and patternmakers.

Additionally, a large portion of materials used by the [fashion, apparel, and beauty industries](#) come from areas greatly impacted by the virus, namely China, Vietnam and Bangladesh.

The [Institute of Supply Managements](#) recently released study measuring COVID-19's short and long-term impacts on the world's supply chains revealed that nearly 75 percent of companies are already reporting supply chain disruptions in some capacity due to coronavirus-related transportation restrictions.

Of those companies, the study showed that one in six reported adjusting revenue targets downward an average of 5.6 percent due to COVID-19.

According to [Fortune.com](#), 94 percent of Fortune 1000 manufacturers are being hit with disruptions as a result of the

coronavirus.

The fashion industry continues to respond in varying ways to the COVID-19 outbreak. A few of the most recent developments and efforts within the industry include:

A Common Thread

Vogue, in collaboration with the CFDA has repurposed the CFDA/Vogue Fashion Fund to address the needs of those in the fashion industry that have been most affected by the coronavirus. The initiative is directed towards both donations and awareness.

Starting on March 26, those who work behind the scenes in the industry can upload videos the impact of the outbreak has had on their careers and lives using the hashtag [#cvffacommonthread](#).

The funding aspect of the initiative comes in part from the CFDA/Vogue Fashion Fund and crowd funding.

Donors can contribute by texting THREAD to 44-321 or online at givelively.org, a fundraising platform for nonprofits. Although the fund's parameters have not been fully defined, designers and brands seeking relief can apply on the CFDA Web site beginning April 8. More information on this initiative can be found on the [CFDA's Web site](#).

The Coronavirus Aid, Relief, and Economic Security Act

Over the past several days, the CFDA, alongside several prominent brands and names in the industry have been lobbying heavily for the industry's inclusion in the federal stimulus package.

The Bill just passed in Senate, and the House followed suit on Friday, March 27, with President Trump then signing it into law. The law sets aside \$454 billion to go to businesses, cities and states. Foley's summary can be [found here](#).

U.S. Small Business Administration: The U.S. SBA offers low-interest federal disaster loans for small businesses suffering substantial loss as a result of COVID-19. To contact the SBA Disaster Assistance Customer Service Center, call 1(800) 659-2955 or email disastercustomerservice@sba.gov.

The National Retail Federation: The NRF is working to address the supply chain implications of the coronavirus. [Click here](#) to learn more.

Brand and designer initiatives

In addition to these initiatives, several brands and designers are also working to address the needs of the community:

Ralph Lauren: The Ralph Lauren Corporate Foundation has pledged \$10 million to help the company's teams and communities impacted by COVID-19. The donation will go towards providing financial grants for the Emergency Assistance Foundation for Ralph Lauren colleagues in need, contribute to the World Health Organization COVID-19 Solidarity Response Fund, fund the new Pink Pony Fund for supporting institutions caring for people with cancer during this time, and commit an inaugural gift of \$1 million to the A Common Thread Fund.

Pyer Moss: The founder of Pyer Moss, Kerby Jean-Raymond, announced his studio would be converted to a donation center for medical supplies. Additionally Jean-Raymond plans to donate \$50,000 to small businesses affected by the outbreak.

Supplies can be sent to:

YOUR FRIENDS IN NEW YORK

242 W 27th ST . 7th Floor

New York, NY 1001

For questions, contact wanttohelp@yourfriendsin.nyc

Prada, Christian Siriano and Dov Charney: Prada has started the production of 80,000 medical overalls and 110,000 masks, which will be allocated to healthcare workers.

Christian Siriano, in response to New York State Governor Andrew Cuomo's call for local businesses to help churn out more personal protective equipment, is ramping up his studio to produce masks and other medical supplies.

Additionally, the founder and former CEO of American Apparel, Dov Charney, has been making face masks for his workers for more than a month at his new company called Los Angeles Apparel. The company is now producing

hundreds of thousands of masks per week, is selling its facemasks online, and has donated more than 10,000 masks to local hospitals.

Hanes Brands: Hanes is now converting its factories to produce cotton facemasks. The FDA approved the design for use by healthcare workers, and Hanes is sharing the design with a consortium of other organizations, including Fruit of the Loom, SanMar, Beverly Knits and the National Council of Textile Organizations.

The consortium is planning to produce 5-6 million masks weekly, with Hanes contributing upwards of 1.5 million masks.

Este Lauder: Este Lauder has remained very active in supporting those impacted by the crisis.

For example, the company made a \$2 million grant to Doctors Without Borders, \$75 million grant to NYC COVID-19 Response & Impact Fund, \$800,000 in grants to Red Cross Society of China, Shanghai Charity Foundation and Give2Asia, and provided \$1.4 million worth of in-kind donations to China Women's Development Foundation.

Additionally, the company recently reopened its Melville manufacturing facility to produce hand sanitizer for medical staff.

In short, the fashion, apparel and beauty industries continue to consider response actions to help mitigate their risk and prepare for how they will deal with the fallout from the coronavirus. An effective plan should include establishing an interdisciplinary crisis response team to identify, assess and manage the risk presented. The team should include personnel from purchasing, operations, quality, finance and legal.

Other considerations

Some additional considerations include:

- Continue to communicate with critical suppliers and manufacturers. As the response team identifies the mission critical materials, companies should consider proactively reaching out to those suppliers/manufacturers to determine what level of inventories they are carrying and what actions the suppliers are taking to minimize impact to determine whether the company should redeploy resources and work to onboard alternative/additional suppliers/manufacturers.
- Review purchase and supply contracts to determine what "Force Majeure" rights and requirements may apply. Force majeure refers to a legal doctrine under which a party may be relieved from liability for non-performance if circumstances beyond the party's control prevent the party from fulfilling its obligations under a contract. The coronavirus outbreak presents a somewhat unique situation in that it includes both a naturally occurring component (the virus itself) and a government action component (including the quarantines and other measures put in place in response to the outbreak). Parties should carefully review the force majeure provisions in their contracts to determine whether they apply. Any party seeking to invoke the force majeure provisions in its contract usually must show that there are no alternative means for performing under the contract, as increased costs alone will not be sufficient to prevail on a claim of force majeure.
- Continue to monitor customer and retail store demands alongside wholesale account fulfillment. Due to the expected amount of carry-over merchandise, retailers need to be conscious of inventory and adjust open-to-buy plans or purchasing budgets accordingly.
- Review allocations. Manufacturers should review allocation requirements and obligations to multiple, competing customers for potentially scarce materials as manufacturing operations ramp back up.

M&A agreements

Companies who are parties to definitive M&A agreements should review any "Material Adverse Change" (MAC) clauses, and representations and warranties, to assess the potential impacts of the coronavirus on their transaction.

For attorneys drafting and reviewing definitive M&A agreements now, care should be taken in crafting or reviewing appropriate MAC clauses, representations and warranties and other provisions to take the potential impacts of coronavirus into account.

On the buy side, enhanced focus on supply contract due diligence is recommended.

Reporting requirements

Public companies should review and make accurate required disclosures, in the event that business operations are

impacted such that a reporting requirement is triggered.

All companies who are parties to credit agreements and other financing arrangements should review existing MAC clauses, and potential impacts on the borrower's financial covenant compliance to determine whether any proactive conversations with lenders may be warranted.

Insurance

Companies should review insurance policies to determine possible coverage in the event of a business disruption, and comply with all applicable notice requirements.

Employment concerns

The challenges for any business facing coronavirus or any other disease outbreak involve a multitude of conflicting legal obligations.

Under the Occupational Safety and Health Act (OSHA) and similar state laws, employers have a general duty and obligation to provide a safe and healthy work environment, even when the work occurs outside the employer's physical premises.

Furthermore, under these health and safety laws, employers must not place their employees in situations that are likely to cause serious physical harm or death.

Conversely, overreacting by implementing broad-based bans and making business decisions about employees that are not based on statistical realities could get an employer sued under laws that prohibit discrimination based upon disability (perceived or real) and national origin, among others.

Properly planning for and implementing plans to deal with the coronavirus is legally and operationally complex. For more information on specific action employers should take, [click here](#).

IN SUMMARY, it is important for this industry to take additional steps now in order to mitigate their risk of suffering more negative impacts from the coronavirus.

For additional Web-based resources available to assist you in monitoring the spread of the coronavirus on a global basis, you may wish to visit the [CDC](#) and the [World Health Organization](#).

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