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## “Bello e Ben Fatto”—The Protection of Fashion “Made in Italy”

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# **“BELLO E BEN FATTO”—THE PROTECTION OF FASHION “MADE IN ITALY”**

*Barbara Pozzo\**

## **ABSTRACT**

The essay focuses on fashion and will cover distinct areas. It will first address the birth of “made in Italy” in the field of fashion from an historical point of view. It will then analyze the measures that the Italian government has launched in recent years to protect “traditional Italian brands”, and the various initiatives of certification and labeling in order to protect “made in Italy” fashion products. It will then focus on the enormous problems related to counterfeiting and, finally, on the new challenges such as the use of Blockchain as a strategy for the protection of “made in Italy” products, and how sustainability is, or should become, a part of the “made in Italy” paradigm.

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## **I. “MADE IN ITALY”: A BRAND WITH A LONG STORY**

Fashion has always been an important part of Italy’s cultural life, and more than in any other country, the image of Italy is associated with fashion.<sup>1</sup>

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<sup>1</sup> Simona Segre Reinach, *Made in Italy in Motion*, 2 ZONEMODA J. 13, 13 (2011).

Since the eleventh century, the development of the *Communes* in Italy brought about social and political changes that had their repercussions also in the field of fashion, where merchants and artisans played an important role.

Slowly, the desire to look well-dressed abandoned the *manors* and reached a wider range of people. Artisans began to produce objects that, showed in fairs and markets, began to become the object of desire.

Fashion can be talked about as early as the thirteenth century, as desire and display of objects conceived and produced to induce the purchase and to show taste, social privilege, and wealth of those who owned and wore them.

During the thirteenth century, new classes, bearers of a new mentality, used fashion to try to undermine a society where roles were predefined on the ground of belonging to a determined social class.

As a reaction to this development, secular authorities tried to maintain the *status quo* issuing *sumptuary laws* aimed at keeping the main population dressed according to their “station.”<sup>2</sup>

The development of a market of luxury goods went hand in hand with the emergence of *new* wealthy people, eager to show their abundance of means with beautiful dresses and accessories.

This evolution was accompanied by the Italian manufacture that derived its strength from a solid artisan tradition, which dates back to the Middle Ages. The backbone of the medieval manufacture was the textile sector.

Cotton was one of the first production activities to reach a significant level of importance in the twelfth century. These were mixed fabrics, which combined cotton, linen, or wool. The best known were the *fustagni* (moleskin), low-cost items intended for a medium-low clientele, whose production had already started in the twelfth century and was present in many urban centers of Northern Italy. The raw material was imported from Southern Italy, but above all from the Middle East, which, together with the mainland European countries, were also important outlet markets for the finished product.<sup>3</sup>

In the wool sector, the production and trade of wool items during the twelfth century developed rapidly, putting Italy in touch with the merchants of England and the Flanders. The cloths were imported raw from the northern countries. Then, guilds, mainly from Tuscany, had specialized in dyeing and finishing fabrics and then exporting them to the Mediterranean basin.<sup>4</sup>

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<sup>2</sup> See generally Maria Giuseppina Muzzarelli, *Reconciling the Privilege of a Few with the Common Good: Sumptuary Laws in Medieval and Early Modern Europe*, 39 J. MEDIEVAL & EARLY MOD. STUD. 597 (2009).

<sup>3</sup> CARLO MARCO BELFANTI, *STORIA CULTURALE DEL MADE IN ITALY* 52 (2019).

<sup>4</sup> *Id.* at 53.

Silk before the twelfth century was imported to Europe from the East or from Arabic Spain as a luxury good. Since then, towns of Central and Northern Italy began to develop the culture of silk.<sup>5</sup> Lucca, in Tuscany, is considered the cradle of this new production that slowly, slowly began to spread out. In the Duchy of Milan, Filippo Maria Visconti, who reigned between 1392 and 1447, is recognized as the founder of an important silk industry in Milan.<sup>6</sup> Under the Sforza, the family that reigned on the Duchy of Milan after 1447, silk production developed in the Como area, mainly thanks to Duke Ludovico Sforza, who imposed mulberry tree cultivation to the farmers. More than this, the Duke went down in history as *Ludovico il Moro*, which comes from the name of the mulberry plant, which in Latin is *bombix mori* and in Como’s dialect *murun*. In this region, the farmers already produced silk in springtime to improve their low incomes, and women and children were in charge of gathering and cutting mulberry leaves to feed the tiny worms. Since this moment onwards, the town of Como is characterized by the transformation of the silk into a fabric, which is still now one of the main features of the area.<sup>7</sup>

Located in the center of the Mediterranean, with excellent relations with the Middle East, especially during the Renaissance, Italy was able to impose its production in the whole of Europe.

Between the thirteenth and fifteenth centuries, the silks of Lucca and the impalpable veils produced in Bologna began to have an enormous success in other Italian cities and abroad as well, thanks to the skills of artisans whom the Italian Renaissance courts competed for. What was “Made in Italy” (“*fatto in Italia*”) reached during the Middle Ages a real and symbolic value, much before Italy itself was made.<sup>8</sup>

## II. THE CODIFICATION OF “GOOD TASTE”

In Italy, it is possible to trace back to the Renaissance the development of a particular genre, called “conduct literature,” that codified “good taste,” providing the readers with all possible suggestions to behave well and look well.<sup>9</sup>

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<sup>5</sup> *Id.* at 54.

<sup>6</sup> KENNETH R. BARTLETT & GILLIAN C. BARTLETT, *THE RENAISSANCE IN ITALY: A HISTORY* 118 (2019).

<sup>7</sup> BELFANTI, *supra* note 3, at 54.

<sup>8</sup> MARIA GIUSEPPINA MUZZARELLI, *BREVE STORIA DELLA MODA IN ITALIA* 15–16 (2014).

<sup>9</sup> Eugenia Paulicelli, *Fashion: The Cultural Economy of Made in Italy*, 6 *FASHION PRAC.* 155, 159 (2014).

Among the most important Courtesy Books, we find *Il Cortegiano* by Baldassarre Castiglione and *Il Galateo* by Giovanni della Casa.<sup>10</sup>

Baldassarre Castiglione published in 1528 *Il Cortigiano*, *The Book of the Courtier*.<sup>11</sup> The *Book* deals with questions of *etiquette* and morality of the courtier,<sup>12</sup> and was very influential in Europe in the sixteenth century, being translated into Spanish, German, French, Polish, and English. One hundred and eight editions were published between 1528 and 1616.<sup>13</sup>

Giovanni della Casa released *Il Galateo* in 1558, in which he pretends to be an unlettered old man (“*vecchio idiota*”) writing for the guidance of his young nephew in order to learn the *good manners*. Two are the main principles that he suggests to follow: *misura* (measure) and the *desire to please*.

Della Casa regards *misura* as practically synonymous with *bellezza* (beauty). Beauty in Della Casa’s view should be interpreted as the need for harmony in all life’s manifestations. So, “[f]or example, it would be unpleasing to see a beautiful and high-born lady washing clothes in the public street, because the complete effect would be jarring and incongruous.”<sup>14</sup>

In teaching his nephew how to please, Della Casa suggests to him “that it is bad to be one of those who are never ready to come to meals when the rest are, who grind their teeth, sing when they have a bad voice, and make a great roaring noise when they yawn,” without further attention to moral issues.<sup>15</sup>

<sup>10</sup> On these Courtesy Books, see generally HARRY BERGER JR., THE ABSENCE OF GRACE: SPREZZATURA AND SUSPICION IN TWO RENAISSANCE COURTESY BOOKS (2000). It is further interesting to read the relationship between the two works of Castiglione and Della Casa in one of the most distinguished English critics of Castiglione, Sir Walter Raleigh. Raleigh wrote that [t]he *Courtier* is to the *Galateo* what a theory of jurisprudence is to a record of the decisions of a police-court magistrate.” According to Hilary Adams: “This simile reveals at least two major differences between the two works. The theory of jurisprudence corresponds to Castiglione’s theory of social behaviour, while Della Casa, like the police-court magistrate, is less concerned with the principles of the law than with its maintenance in lesser matters. In addition, one is constructive, while the evidence of the other is mainly negative.” Hilary Adams, “*Il Cortegiano*” and “*Il Galateo*,” 42 MOD. LANGUAGE REV. 457, 457 (1947).

<sup>11</sup> BARTLETT, *supra* note 6, at 176.

<sup>12</sup> One peculiarity of the book is that it was written in the dialect of Lombardy. “Castiglione prefaces *The Courtier* with a lengthy justification of why he chose not to write in Tuscan, the language of publicly recognized master stylists like Boccaccio and Petrarch, but selected instead to write in the vernacular of his native Lombardy . . . . [Castiglione] provided concrete evidence of his own beliefs regarding the relationship between language and consciousness, and between language and culture. By choosing to write in the Lombard dialect, Castiglione solidified the connection between the political, ideological, and aesthetic components of language and literacy.” On this issue, see Robert J. Graham, *Composing Ourselves in Style: The Aesthetics of Literacy in “The Courtier,”* 24 J. AESTHETIC EDUC. 45, 46 (1990).

<sup>13</sup> PETER BURKE, THE FORTUNES OF THE COURTIER: THE EUROPEAN RECEPTION OF CASTIGLIONE’S *CORTEGIANO* (1995).

<sup>14</sup> Adams, *supra* note 10, at 459.

<sup>15</sup> *Id.* at 460.

Della Casa's work had a lasting success, although posthumous. *Il Galateo* was translated into French (1562), English (1576), Latin (1580), Spanish (1585), and German (1587). Della Casa's work set the foundation for modern etiquette writers and authorities on manners, such as "Miss Manners" Judith Martin, Amy Vanderbilt, and Emily Post.<sup>16</sup>

In this "conduct literature," we find the first attempts to codify the dress style and habits that will take on the form of desirable and fashionable lifestyle.<sup>17</sup>

In the seventeenth century, the theme of fashion prevailed together with the awareness of the economic importance of the phenomenon.<sup>18</sup>

What should be remembered, in conclusion, is that the humanistic culture that developed in Italy at that time became a point of reference throughout Europe. Fashion became a tool to transmit the ideologies, the taste, and the style of those ideas that developed in Italy.

It shouldn't come as a surprise that the use of the word *moda* (which means fashion in Italian) was introduced during this period.

Agostino Lampugnani, a Milanese Abbot, used the word *moda* for the first time in 1648 in his work "*Carrozza da Nolo overo Del vestire e usanze alla Moda.*"<sup>19</sup> The origin is probably to trace back to the French word *mode* or to the Latin *modus* which makes specific reference to "measure, moderation, rule, time, rhythm" in an era where the display of clothes and ornaments started to show off.<sup>20</sup>

In the seventeenth century, the word *moda* appears in the titles and texts of many authors to indicate a sort of frenzy in adapting to the latest uses.

The *Accademia della Crusca*, the oldest linguistic academy in the world and the most important research institution of the Italian language, which was founded in Florence in 1583, had been characterized by its efforts to maintain the purity of the Italian language. Since 1612, the *Accademia* was publishing the *Vocabolario degli Accademici della Crusca*, the first dictionary of the Italian language. In the first edition of the *Vocabolario*, we don't find any mention of the word *moda*, but already in the second edition of 1691, we find that the word *moda* has been introduced and has been defined as "running custom."<sup>21</sup>

16 VALENTINA D'URSO, LE BUONE MANIERE 119 (1997).

17 Paulicelli, *supra* note 9, at 159.

18 MUZZARELLI, *supra* note 8, at 23.

19 GIOVANNA MOTTA, LA MODA CONTIENE LA STORIA E CE LA RACCONTA PUNTUALMENTE 19 (Nuova Cultura ed. 2015).

20 MUZZARELLI, *supra* note 8, at 21.

21 Cf. GIORGIO RIELLO, LA MODA, UNA STORIA DAL MEDIOEVO A OGGI 27 (Laterza ed. 2012).

These events can be considered the embryonic source of an Italian style that was exported to the rest of Europe already in the early Modernity.

The central role that Italy was able to play during the Renaissance in European history slowly faded away in the following centuries, mainly due to the opening of new commercial routes on the oceans and the presence of new international competitors.<sup>22</sup>

### III. A NEW BEGINNING

The rise of France and England as economic powers that were able to develop international routes had important consequences also in the field of textiles, trade in general, and fashion in particular.

While England, with its wools, was able to affirm an increasing role in men's fashion, the second half of the nineteenth century was the period where France was able to develop the success of the *Haute Couture* worldwide.

At the same time, we can trace back to the same period the origin of those initiatives that allowed Italian fashion and the brand "Made in Italy" to earn the world stage again.

France had dominated the Italian fashion market since the eighteenth century.<sup>23</sup> The debate about forging a modern Italian fashion emerged at the beginning of the nineteenth century within the context of the larger discussion on how to regenerate morally the Italian character. In terms of outward manifestation of such regeneration, the question was how to emancipate Italians from what fashion periodicals often defined as the tyranny of foreign influences.

Some initiatives of that period have to be interpreted as a reaction to the French predominance, as the attempts to highlight in the press Italian products and creativity. The *Corriere delle dame*, for example, one of the pioneers in women's fashion magazines published in Milan between 1804 and July 1875, urged Italy, home of good taste, to emancipate itself from the French yoke.<sup>24</sup>

Shame on you! Italy, the master of all times in all genres of the divine art of the beautiful goes begging to borrow its fashion from Paris? Renounce at once this dependence for your attire, and even if this ever changing invention of fashion were a vice and not a need of the rich and a support

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<sup>22</sup> BELFANTI, *supra* note 3, at 78.

<sup>23</sup> Gabriella Romani, *Fashioning the Italian Nation: Risorgimento and Its costume all'italiana*, 20 J. MOD. ITALIAN STUD. 10, 12 (2015).

<sup>24</sup> BELFANTI, *supra* note 3, at 199; *cf.* ERICA MORATO, LA STAMPA DI MODA DAL SETTECENTO ALL'UNITÀ (2018); CARLOS MARCO BELFANTI, STORIA D'ITALIA ANNALI 19, 767 (Giulio Einaudi ed. 2003).

for the arts, I would tell you: follow Italian vices and not those coming from other places.<sup>25</sup>

At the same time, the debate on fashion that emerged during the nineteenth century about the need to create a modern Italian fashion accompanied the ideals of the Risorgimento, the political and social movement that was struggling to unify different states of the Italian peninsula into a single state.<sup>26</sup>

The debate over fashion . . . arose as part of the general national efforts aimed at “regenerating Italy,” an expression used during the Risorgimento to “convey the idea that Italy needed to rise up from its state of extreme decline and regain the level of civilization that it had achieved in older and better times.”<sup>27</sup>

The national transformation in the making influenced the dress code: velvet became the patriots’ favorite outlook that recalled the splendor of Renaissance Italy.<sup>28</sup>

As Gabriella Romani underlines:

Dressed in black velvet, Italian men and women (in particular women for their role as ‘mothers of the nation’) projected a visual image of collective mourning, permeated with moral significance and aimed at rendering, with its visual language of blackness and martyrdom, the sense of sacrifice undertaken by patriots for the national cause—a message that resonated widely in Italy’s nationalist discourse throughout and beyond the nineteenth century.<sup>29</sup>

On the other side, it was during the second half of the nineteenth century that there began to emerge the first signs of a renewed interest in revitalizing the creative energy of the country,<sup>30</sup> inspired by the Renaissance as the age in which Italian good taste had laid down the canon of aesthetic.<sup>31</sup>

At the Milan International world’s fair held in 1906, tailor Rosa Genoni, who was not only a fashion creator but also a feminist and peace activist, won an award offering dresses inspired by the works of Botticelli and Pisanello as

<sup>25</sup> Romani, *supra* note 23.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* (citing SILVANA PATRIARCA, ITALIAN VICES NATION AND CHARACTER FROM THE RISORGIMENTO TO THE REPUBLIC 22 (2010)).

<sup>28</sup> SOFIA GNOLI, UN SECOLO DI MODA ITALIANA: 1900-2000 15 (Meltemi ed. 2005).

<sup>29</sup> Romani, *supra* note 23, at 12.

<sup>30</sup> BELFANTI, *supra* note 3, at 199.

<sup>31</sup> *Id.*; Carlo Marco Belfanti, *Renaissance and ‘Made in Italy’: Marketing Italian Fashion Through History (1949–1952)*, 20 J. MOD. ITALIAN STUD. 53, 66 (2015).



a good example of a new Italian fashion.<sup>32</sup> Genoni has been listed as probably the first to outline the theory of continuity between Renaissance craft tradition and the potential growth of Italian fashion.<sup>33</sup>

At the first National Conference of Italian Women, she delivered a speech that supported the idea of having an Italian fashion based on the vestiges of the past—*Per una moda italiana* (For an Italian fashion)<sup>34</sup>—and on the regained enthusiasm after having gained national unity and independence from foreign powers. In 1909, in Lombardy a Committee was founded for “a fashion of pure Italian art.”<sup>35</sup>

In the same years in which Rosa Genoni developed her activism, we saw an important movement developing in Italy that would characterize fashion in a particular way: Futurism.

The birth of Futurism as a modernist movement can be traced back to 1909 when Filippo Tommaso Marinetti published his manifesto *Manifeste du Futurisme* in the Paris daily *Le Figaro*. The idea of Marinetti was to exalt modernity in all areas of social and political life. Futurism chose new abstract principles like speed, novelty, violence, technology, and nationalism to be spread out not only in paintings, poetry, music, photography, film, and drama. Also, fashion became part of the initiative, with specific programs, by Giacomo Balla in the form of the *Futurist Manifesto of Men's Clothing* of 1914, followed by Volt (pseudonym of Vincenzo Fanni) in 1920 with the *Manifesto of Futurist Women's Fashion*.<sup>36</sup> As Paulicelli underlines, “What attracted the Futurists was the power the visual impact of dress had in establishing new codes of aesthetics and a politics of style that connected the personal self with the social self.”<sup>37</sup>

With the seizure of power by Fascism in 1922, this was a widely revived rhetoric.<sup>38</sup> Under Fascism, the cause of a *truly* Italian fashion was adopted. The idea of a public institution with the aim of promoting the “Italian-ness” of fashion took shape in 1932 with the foundation of a government institution called *Ente autonomo per la mostra permanente nazionale della moda* (Autonomous Agency for the Permanent National Fashion Exhibition).<sup>39</sup>

<sup>32</sup> On the iconic figure of Rosa Genoni, see the recently published volume by MANUELA SOLDI, ROSA GENONI. MODA E POLITICA: UNA PROSPETTIVA FEMMINISTA FRA '800 E '900 (Marsilio ed. 2019).

<sup>33</sup> Belfanti, *supra* note 31, at 56; GNOLI, *supra* note 28, at 17.

<sup>34</sup> See generally ROSA GENONI, PER UNA MODA ITALIANA (1908).

<sup>35</sup> MUZZARELLI, *supra* note 8, at 33 (“Una moda di pura arte italiana . . .”); BELFANTI, *supra* note 3, at 203; cf. GNOLI, *supra* note 28, at 17.

<sup>36</sup> See generally Eugenia Paulicelli, *Fashion and Futurism: Performing Dress*, 27 ANNALI D'ITALIANISTICA 187 (2009).

<sup>37</sup> *Id.* at 188.

<sup>38</sup> *Id.* at 189.

<sup>39</sup> BELFANTI, *supra* note 3, at 208.

This newly founded Agency had the task of promoting Italian fashion industry and of organizing two major biannual exhibitions and fashion shows in order to enhance the idea of finding a truly Italian way to fashion independent from foreign influences.<sup>40</sup> In 1935, the Agency took on the supervisory duty of the whole sector with the possibility of awarding a specific hallmark, called *marca d'oro* (Golden Mark).<sup>41</sup>

The campaign for self-sufficient consumption and Italian fashion also involved the media, especially the women's press, which had developed considerably in the inter-war period. In particular, the magazine called *Lidel*,<sup>42</sup> founded by Lydia De Liguoro, was a very refined and high-cost women's magazine, addressed to the women of the aristocracy and the upper-Italian bourgeoisie who advocated the birth of an Italian fashion independent from the French one.

The dreams of a pure Italian fashion, however, soon had to confront the War and the consequent destruction that followed.

#### IV. THE BIRTH OF FASHION “MADE IN ITALY” IN THE POST-WAR TIMES

After the end of the War, many initiatives were taken to revive the fortunes of the Italian fashion industry.

The *Ente Italiano Moda* (Italian Fashion Authority), building on the heritage of the previous Authority founded under Fascism, was established in Turin in 1945, just after the end of the Second World War. In 1949, a second fashion organization was founded in Milan, the *Centro Italiano Moda* (Italian Fashion Centre), which “was aimed at coordinating all Italian fashion activities, whose ‘dispersion’ was ‘without any doubt the greatest obstacle to its expansion in Italy and outside Italy.’”<sup>43</sup>

Nonetheless, as many fashion historians have repeatedly stressed, “Made in Italy,” as we understand it now, was born in the post-war period thanks to the initiative of a man, described as an educated and smiling

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<sup>40</sup> Eugenia Paulicelli, *Fashion, the Politics of Style and National Identity in Pre-Fascist and Fascist Italy*, 14 GENDER & HIST. 537, 542 (2002).

<sup>41</sup> BELFANTI, *supra* note 3, at 208.

<sup>42</sup> *Id.* at 207; GNOLI, *supra* note 28, at 46.

<sup>43</sup> Valeria Pinchera & Diego Rinallo, *The Emergence of Italy as a Fashion Country: Nation Branding and Collective Meaning Creation at Florence's Fashion Shows (1951–1965)*, 62 BUS. HIST. 151, 158 (2020).

gentleman, but with an iron wrist and a first-rate organizational intelligence: Giovanni Battista Giorgini.<sup>44</sup>

Giorgini, who had been in touch before World War II with important American Department stores, had the original idea of gathering important American buyers, who were already in Europe attending the presentation of the Parisian collections, to the first Italian fashion show that took place in Florence in 1951.<sup>45</sup>

The fashion show took place at his own residence, Villa Torregiani, and presented 180 models of thirteen haute couture designers and four designers of the so-called boutique fashion. Among the haute couture designers, we found Simonetta Visconti, Fabiani, Sorelle Fontana, Emilio Schubeth, Carosa, Marucelli, Veneziani, Noberasco, and Vanna. Among the boutique fashion designers, we found Avolio, Mirsa, Emilio Pucci, and Tessitrice dell'Isola.<sup>46</sup>

Giorgini's skill, however, did not only lie in the organization of the fashion show but also in creating an ideal setting to attract the attention of the media. There were four Italian journalists<sup>47</sup> and the special envoy of the authoritative American publication *Women's Wear Daily*, Elisa Massai.

The foreign buyers were attracted by the Italian creativity and the competitive prices in comparison with the articles presented in Paris, which resulted in great success for the fashion show.

On the wave of success, Giorgini launched a new initiative, and the following July, the show was held at the Grand Hotel of Borgo Ognissanti.<sup>48</sup> This time big names of the American specialist press, like Bettina Ballard from *Vogue* and Carmel Snow from *Harper's Bazaar*, were present.

The success of this second initiative, well portrayed on American Newspapers and Magazines, allowed Giorgini to get the prestigious Sala Bianca at Palazzo Pitti in 1952: "*Italian fashion had become an international reality and Florence was its capital.*"<sup>49</sup>

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<sup>44</sup> Simona Segre Reinach, *The Meaning of 'Made in Italy' in Fashion*, 7 CRAFT + DESIGN ENQUIRY 135, 141 (2015); GNOLI, *supra* note 28, at 139; BELFANTI, *supra* note 3, at 225; Belfanti, *supra* note 31, at 54; Paulicelli, *supra* note 40, at 547; Pinchera & Rinaldo, *supra* note 43, at 151.

<sup>45</sup> Belfanti, *supra* note 31, at 58–59.

<sup>46</sup> GNOLI, *supra* note 28, at 141.

<sup>47</sup> The Italian journalists were Misia Armani of "Tessili Nuovi," Sandra Bartolomei Corsi of "Il Secolo XIX," Vera Rossi of "Novità," Elsa Robiola, Director of "Bellezza" as envoy of "Il Tempo." Compare GNOLI, *supra* note 28, at 141.

<sup>48</sup> GNOLI, *supra* note 28, at 142.

<sup>49</sup> Belfanti, *supra* note 31, at 61.

## V. THE AFFIRMATION OF "MADE IN ITALY FASHION": AN INTRICATE PLAY OF FORCES

Besides the genius of Giorgini, the affirmation of "Made in Italy Fashion" on international markets is the result of an intricate play of forces and variables, sometimes of opposite sign, and in contradiction with the result that wanted to be achieved.

On the one side, we cannot forget that Italian fashion, in the period of its affirmation, was in many ways indebted to the United States:<sup>50</sup> from the use of the funds allocated by the Marshall Plan for the purchase of raw materials and textile machinery and packaging, to the updating of industrial clothing production methods, up to the allocation of large lots of cotton coming from the US.<sup>51</sup>

On the other side, the weight of these financial and technical aids, however, was perhaps less significant for the birth of Italian fashion than the function of promotion and support put in place by the buyers of the department stores and the journalists of the most important US magazines.<sup>52</sup>

At that time, there was a general interest on the part of the United States in creating strong ties with Italy, not only for reasons of commercial utility but above all for reasons related to American foreign policy in those years.<sup>53</sup> The United States ambassador to Rome, Clare Boothe Luce, also had an active role in promoting Italian fashion in the United States.

Another aspect that should be considered in order to understand the way to the success of "Made in Italy" fashion is the situation of the productive sector that was characterized by specific features. In Italy, we found a large presence of small and medium-sized industries, a strong artisan tradition, a continuous technological update also combined with the production of sophisticated technologies and machines, and a territorial organization in industrial districts.<sup>54</sup> All these factors have rendered "Made in Italy" fashion a production system characterized by a vertical integration of production ranging from the yarn to the finished product.<sup>55</sup> Even today, Italy remains the only European country to have the entire fashion chain.

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<sup>50</sup> NICOLA WHITE, RECONSTRUCTING ITALIAN FASHION: AMERICA AND THE DEVELOPMENT OF THE ITALIAN FASHION INDUSTRY (2000).

<sup>51</sup> Elda Danese, *La moda italiana*, in 3 MANUALE DI COMUNICAZIONE, SOCIOLOGIA E CULTURA DELLA MODA 71, 78 (Meltemi ed. 2005).

<sup>52</sup> *Id.* at 79.

<sup>53</sup> *Id.*

<sup>54</sup> GIACOMO BECATTINI, DISTRETTI INDUSTRIALI E MADE IN ITALY, LE BASI SOCIOCULTURALI DEL NOSTRO SVILUPPO ECONOMICO 55 (1998).

<sup>55</sup> Leopoldina Fortunati, *Il Made in Italy, Ovvero lo Stile Italiano*, in 3 MANUALE DI COMUNICAZIONE, SOCIOLOGIA E CULTURA DELLA MODA 7 (2005).

Finally, the importance of the relationship between fashion and cinema cannot be underestimated. Since the end of the forties, a strong connection developed between Hollywood and *Cinecittà*, the large film studios in Rome, and with Rome itself. For a certain period, *Cinecittà* was even called “Hollywood on the Tiber.”<sup>56</sup>

In 1949, the wedding of Tyrone Power and Linda Christian, with specially designed clothes for her by the *Fontana sisters* and for him by the *Caraceni* tailor shop,<sup>57</sup> attracted Roman ateliers to the spotlight of Hollywood.<sup>58</sup>

Roman fashion had thus found its main sponsor: American cinema. It was also thanks to Rome that the image of Italian fashion went beyond the borders of the peninsula and landed in America taking on the charm and elegance of Italian art. That is true for *Roman Holiday*, a 1953 romantic comedy film directed and produced by William Wyler with Gregory Peck and Audrey Hepburn, and *Three Coins in the Fountain*, directed in 1954 by Jean Negulesco, starring Clifton Webb, Dorothy McGuire, Jean Peters, Louis Jourdan, and Maggie McNamara, and featuring Rossano Brazzi.

#### VI. DEFINING “MADE IN ITALY” FROM A LEGISLATIVE POINT OF VIEW: A COMPLEX TASK

Since the first fashion show in 1952, many things have happened. Italian luxury goods are renowned for the quality of the textiles and the elegance and refinement of their construction. “Made in Italy” fashion has become a sector of vital importance for Italian economics: in 2018, the top fifty Italian fashion businesses accounted for 40 percent of the total revenue of the Italian fashion industry. The sector now counts over 82,000 businesses and employs more than 620,000 people.

Legislation in this sector always had to cope with two different and divergent needs: the ones of the big corporations that tend to delocalize production abroad in order to abate production costs, and the ones of the brands that have maintained production in Italy and that would like to use a specific quality trademark.

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<sup>56</sup> Reka Buckley, *Material Dreams. Costume and Couture Italian Style: From Hollywood on the Tiber to the Italian Screen*, in *THE ITALIAN CINEMA BOOK* 132–41 (Peter Bondanella ed., 2013).

<sup>57</sup> Sonnet Stanfill, *The Role of the Sartoria in Post-War Italy*, 20 *J. MOD. ITALIAN STUD.* 83 (2015).

<sup>58</sup> Italy’s local tailor shops, or *sartorie*, were the country’s main sources of fashion production in the immediate post-war period. Throughout the 1950s and into the following decade, Italian wardrobes were still predominantly handmade, either within the household, or, if one could afford it, at one’s tailor (*sarto*) or dressmaker (*sartoria*). Only the comfortably affluent and foreigners frequented the elite Roman or Milanese couture houses, which aimed to compete with French haute couture.

Nonetheless, in the last decades, the Italian State tried to protect this brand by introducing several regulations encouraging business that maintained the whole production in Italy.<sup>59</sup> In 2003, a special fund was set up at the Ministry of Productive Activities with endowments of twenty million euros for 2004, thirty million euros for 2005, and twenty million euros starting from 2006, for the implementation of actions in support of a promotional extraordinary campaign in favor of “Made in Italy.” The idea was to promote a regulation of the indication of origin or the establishment of a specific trademark to protect the goods entirely produced on the Italian territory according to the European legislation on origin.<sup>60</sup>

The same law was foreseeing that the “Made in Italy” label on products or goods not originating in Italy pursuant to European legislation on origin constitutes a false indication.

The Italian legislation thus referred to the Community Customs Code<sup>61</sup> to identify the criteria to determine which products can be considered “Made in Italy.”

As Italian legislation in this field needs to cope with relevant EU legislation, and in particular, with the Union Customs Code, it is important to get acquainted with the legal terminology of EU law and the basic rules in order to determine the “nationality” of a good when entering a country. EU law distinguishes between *country of origin* and *country of consignment*. The *country of origin* is the country from which the goods originate. The *country of consignment* is the last Member State where a change has been made to the goods.

According to EU law, it is further necessary to distinguish between *preferential origin* and *non-preferential origin of goods*.

*Preferential origin* is conferred on goods from particular countries, which have fulfilled certain criteria allowing preferential rates of duty to be claimed. In order to obtain *preferential origin*, those criteria generally require that the goods be wholly obtained or have undergone specifically determined working or processing. *Preferential origin* confers certain tariff benefits (entry at a reduced or zero rate of duty) on goods traded between countries which have agreed to such an arrangement, or where one side has granted it autonomously. In order to have *preferential origin*, goods must fulfill the

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<sup>59</sup> M. Cartella, *Il Made in Italy e l'apprendista Stregone*, in 18 (5) IL DIRITTO INDUSTRIALE 417–27 (2010).

<sup>60</sup> Legge 24 dicembre 2003, n.350, G.U. Dec. 27, 2003 n.299 (It.).

<sup>61</sup> *See generally* Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato 952/2013 of 10 October 2010, 2010 O.J. (L 269), (The Community Customs Code was introduced with EEC Regulation 12 October 1992 n. 2913/92, then partially repealed and replaced by EC Regulation 23 April 2008 n. 450/98. The Community Customs Code is now laid in Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato 952/2013 of 10 October 2010, 2010 O.J. (L 269)).

relevant conditions laid down in the origin protocol to the agreement of whichever country is concerned or in the origin rules of the autonomous arrangements.

The *non-preferential origin* of goods is that of the country in which the goods were entirely obtained or, if several countries are involved in the manufacturing process, that of the country in which the goods were last substantially worked or processed. In order to acquire the *non-preferential Italian origin*, a product must therefore undergo a substantial transformation on the Italian territory regardless of any percentages of domestic or foreign goods used in production.

Made with this premise, with Law n. 166/09,<sup>62</sup> the mark “100% MADE IN ITALY” was introduced. According to this Law, the product or merchandise is intended as entirely “Made in Italy,” and classifiable as “Made in Italy” in accordance with this law, only if the design, the production, the processing, and the packaging are carried out exclusively in the Italian territory.<sup>63</sup>

The Institute for the Protection of Italian Manufacturers<sup>64</sup> is the competent Authority to issue the “100% MADE IN ITALY,” in line with the parameters set by Law n. 166, Article 16 of 20 November 2009.

The process of obtaining the certification begins with the interested company requiring certification, by declaring that it possesses the requirements (entirely Italian production, Italian semi-finished products, first choice materials, own style, typical traditional processing).

The company fills in the specification and provides documentation proving the existence of the declared requirements.

The Institute will carry out on-site inspections of the company in order to ascertain the requirements and compliance of the documented with the declared. Preventive and periodic checks are carried out directly by the Institute or by specifically delegated external bodies or professionals.

The “100% MADE IN ITALY” certification is the only one that guarantees the authenticity of the product. Each type of certified product can obtain advantages, including:

- Confirmation of the value of the true quality Italian product.
- Acquisition of prestige to the product and of safety for the consumer.

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<sup>62</sup> Legge 20 novembre 2009, n.166, G.U. Nov. 24, 2009, n.274 (It.).

<sup>63</sup> *Id.* (“Si intende realizzato interamente in Italia il prodotto o la merce, classificabile come made in Italy ai sensi della normativa vigente, e per il quale il disegno, la progettazione, la lavorazione ed il confezionamento sono compiuti esclusivamente sul territorio italiano.”).

<sup>64</sup> In Italian: *Istituto per la Tutela dei Produttori Italiani*.

- Recognizability of the real “Made in Italy” compared to the labels of partial Italian production or total foreign production.

The Register of the companies that have applied and received the “100% MADE IN ITALY” certification is public, and everybody can browse the list of the participants.<sup>65</sup> At a first look at the Register, anyway, you will find a lot of small businesses and the absence of the great names that claim to be 100% Italian, like Brunello Cucinelli.

This can be explained in light of the fact that the big brands do not need the certificate to be identified with the “Made in Italy” brand.

In 2010 a new law was passed, Law n. 55 of 8 April 2010,<sup>66</sup> with the aim of introducing a system of compulsory labeling for three specific sectors: textile, leather goods, and footwear.

Also known as “Reguzzoni - Versace law” or “Reguzzoni - Versace - Calero law,” the law takes its name from the deputies Marco Reguzzoni (Lega Nord), Santo Versace (Pdl), and Massimo Calero (Pd), first signatories of the initial bill, that was supported by more than 130 deputies from all political sides.

Unanimous support accompanied the procedure throughout the parliamentary process, marking a very high quorum in the Chamber (546 votes in favor). The reasons for this bipartisan support are to be found in the importance of the provision that affects eleven product sectors and involves a million workers, as well as in support of trade unions and trade organizations.

The goals of the law were twofold: to better inform the consumer, and to protect the Italian production.<sup>67</sup>

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<sup>65</sup> See generally *Certificazione 100% Made in Italy*, ISTITUTO PER LA TUTELA DEI PRODUTTORI ITALIANI, <https://it01.it/> (last visited Sept. 12, 2020) (The list of companies that have received the *100% Made in Italy* certification).

<sup>66</sup> See generally Legge 8 aprile 2010, n.55, G.U. Apr. 21, 2010, n.92 (It.).

<sup>67</sup> *Id.* (“Al fine di consentire ai consumatori finali di ricevere un’adeguata informazione sul processo di lavorazione dei prodotti, ai sensi dell’articolo 2, comma 2, e dell’articolo 6, comma 1, del codice del consumo, di cui al decreto legislativo 6 settembre 2005, n. 206, e successive modificazioni, e è istituito un sistema di etichettatura obbligatoria dei prodotti finiti e intermedi, intendendosi per tali quelli che sono destinati alla vendita, nei settori tessile, della pelletteria e calzaturiero, che evidenzii il luogo di origine di ciascuna fase di lavorazione e assicuri la tracciabilità dei prodotti stessi.”) (“In order to allow end consumers to receive adequate information on the manufacturing process of the products, pursuant to article 2, paragraph 2, and article 6, paragraph 1, of the consumer code adopted by legislative decree 6 September 2005, n. 206, and subsequent modifications, a mandatory labeling system is established for finished and intermediate products, meaning those intended for sale, in the textile, leather goods and footwear sectors, which highlights the place of origin of each processing phase and ensure the traceability of the products.”).



In order to use the “Made in Italy” label, the law of 2010 provided a specific procedure. In particular, for each sector taken in consideration, the law describes the various phases of production.

In order to be able to use the label “Made in Italy,” the law follows a main principle, that is to say that at least two phases have to take place in Italy, while all the remaining phases have to be traceable.<sup>68</sup>

Unfortunately, the Italian Law of 2010 was found in contrast with EU Regulation 952/2013 (Union Customs Code) that follows a different principle in order to establish the origin of a product.

The law taken by the Italian Parliament in 2010 was then in contrast in particular with Article 60 (*Acquisition of origin*) of the EU Regulation, which provides that:

- Goods wholly obtained in a single country or territory shall be regarded as having their origin in that country or territory.
- Goods the production of which involves more than one country or territory shall be deemed to originate in the country or territory where they underwent their last, substantial, economically justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture.

The Italian criterion was thus in conflict with the European one. One thing is in fact to say that in order to be considered “Made in Italy” the product has to count on two processing stages realized in Italy. Another is to refer to the only substantial process that has generated a new product.

The result was that the Italian Customs agency, with a circular note issued in the same year,<sup>69</sup> declared the non-applicability of the law. Finally, the Presidency of the Council of Ministers adopted on 30 September 2010 a directive confirming the orientation according to which Law 55/2010 will not be considered applicable.

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<sup>68</sup> *Id.* (“L’impiego dell’indicazione «Made in Italy» è permesso esclusivamente per prodotti finiti per i quali le fasi di lavorazione, come definite ai commi 5, 6, 7, 8 e 9, hanno avuto luogo prevalentemente nel territorio nazionale e in particolare se almeno due delle fasi di lavorazione per ciascun settore sono state eseguite nel territorio medesimo e se per le rimanenti fasi è verificabile la tracciabilità.”) (“The use of the indication “Made in Italy” is allowed only for finished products for which the processing phases, as defined in paragraphs 5, 6, 7, 8 and 9, took place mainly in the national territory and in particular if at least two of the processing phases for each sector have been carried out in the same territory and if traceability can be verified for the remaining phases.”).

<sup>69</sup> See generally Italian Customs Agency, circular n. 119919/RU (of 22 September 2010.).

As a conclusion, we might say that the legislative initiatives taken by the Italian Parliament unfortunately did not always reach the goal of providing this important industrial sector with clear guidelines.

## VII. COUNTERFEITING AND THE PROTECTION OF CONSUMERS

It has often been underlined that one of the greatest problems facing luxury goods firms in a globalizing market is that of counterfeiting.<sup>70</sup>

Law has treated the problem by way of repression of the illicit conducts as well as by boosting specific campaigns to render consumers aware of the problem.<sup>71</sup>

In 2016, the Italian Ministry for Economic Development (*Ministro per lo Sviluppo Economico*), together with the Italian Patent and Trademark Office (*Ufficio Italiano Marchi e Brevetti, UIBM*), published research<sup>72</sup> that shed light on the economy of counterfeiting in Italy. In terms of quantities, 67.5 percent of the 15,814 seizures made in the period of 2008 to 2015 concern three product categories: clothing accessories (35.4 percent), clothing (20.4 percent), and footwear (11.7 percent).<sup>73</sup> The seizures carried out in 2015 confirm the medium-term data, so that the detentions relating to the three categories represent 64.5 percent of the total.<sup>74</sup>

We can find results that are in line with this research in a more recent publication of the Organisation for Economic Co-operation and Development (OECD) of 2018. As OECD has shown,<sup>75</sup> the risk of trade in counterfeits has been growing in recent years in Italy. This risk poses a significant threat to the engine of the Italian economic growth but also

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<sup>70</sup> See generally Brian Hilton Chong Ju Choi & Stephen Chen, *The Ethics of Counterfeiting in the Fashion Industry: Quality, Credence and Profit Issues*, 55 J. BUS. ETHICS 343 (2004); Laura Meraviglia, *Technology and Counterfeiting in the Fashion Industry: Friends or Foes?*, 61 BUS. HORIZONS 467 (2018); Eunju Ko & Carol M. Megehee, *Fashion Marketing of Luxury Brands: Recent Research Issues and Contributions*, 65 J. BUS. RSCH. 1395 (2012); Anne E. Wilcock & Kathryn A. Boys, *Reduce Product Counterfeiting: An Integrated Approach*, 57 BUS. HORIZONS 279 (2014); Vincenzo Marinello & Mariano Cavataio, *La contraffazione del made in Italy. Impatto del fenomeno e politiche di contrasto*, RIVISTA TRIMESTRALE DI SCIENZA DELL'AMMINISTRAZIONE, n. 4/2016 (2016).

<sup>71</sup> See generally Joanna Large, *'Get Real, Don't Buy Fakes': Fashion Fakes and Flawed Policy—The Problem with Taking a Consumer-Responsibility Approach to Reducing the 'Problem' of Counterfeiting*, 15 CRIMINOLOGY & CRIM. JUST. 169 (2015).

<sup>72</sup> Ministero dello Sviluppo Economico, *La contraffazione: dimensioni, caratteristiche e approfondimenti*, ELABORATED BY FONDAZIONE CENSIS, UFFICIO ITALIANO MARCHI E BREVETTI (UIBM): CENTRO STUDI INVESTIMENTI SOCIALI (2016).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> See generally TRADE IN COUNTERFEIT GOODS AND THE ITALIAN ECONOMY: PROTECTING ITALY'S INTELLECTUAL PROPERTY (OECD Publishing, 2018), <http://dx.doi.org/10.1787/9789264302426-en>.

undermines good governance, the rule of law, and citizens' trust in government.

A review of the data on Italian customs seizures shows that counterfeit products imported into Italy between 2011 and 2013 came mainly from China and Hong Kong—China represented respectively around 50 percent and 29 percent of the total value seized by Italian customs. They were followed by Greece (6 percent), Singapore (4 percent), and Turkey (2 percent).<sup>76</sup> The articles mostly counterfeited were clothing, articles of leather, and in particular handbags. To look at the numbers, this means a loss of 3.8 billion in earnings only for the fashion industry. A collapse of legal turnover to the benefit of the undeclared, with a loss of tax revenue corresponding to 0.62 percent of the gross domestic product.<sup>77</sup>

In order to cope with these problems, the Italian legal system has introduced specific provisional measures in the Industrial Property Code,<sup>78</sup> such as seizures and injunctions.<sup>79</sup>

According to Article 129 of the Industrial Property Code,<sup>80</sup> any industrial property right holder may apply for the description or the seizure, and also for the seizure subject to the description, of some or all of the items infringing his right, as well as of the means used to manufacture them, and of the evidence of the alleged violation. In the latter case, measures adequate to the protection of the confidential data shall be taken.

The judge, having heard the parties and achieved, if necessary, the summary information, decides with an order and, if he authorizes the description, he may also authorize the possible taking of samples of the objects.

In cases characterized by special urgency and in particular, when possible delays may cause irreparable damages to the right holder or when the summoning of the counterparty can jeopardize the enforcement of the description or seizure order, the judge will decide on the application with a grounded decree.

The Industrial Property Code further provides that, except for the needs of criminal justice, the objects deemed to infringe an industrial property right, may not be seized but only described as long as they are displayed within the fence of an exhibition, whether official or officially recognized, taking place

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<sup>76</sup> *Id.* at 24.

<sup>77</sup> *Id.* at 14.

<sup>78</sup> Decreto Legislativo 10 febbraio 2005, n.30, G.U. Mar. 4, 2005, n.28 (It.).

<sup>79</sup> As far as the proceeding is concerned, the provisional measures such as seizures and injunctions are rules by the Italian Code of Civil Procedure.

<sup>80</sup> D.Lgs n. 30/2005 (It.).

in the territory of the Italian country or being moved from, or to, such exhibition.<sup>81</sup>

The holder of an industrial property right may also request that an injunction be ordered against any imminent violation of his right and the continuation or repetition of the violations in progress. In particular, he may request that an injunction be ordered against the manufacture, trade, and use of the infringing goods, and an order to withdraw from the trade the same goods against those who own them or have them available.

The injunction and the order to withdraw from the market can be requested, on the same grounds, against any person whose services are used to infringe an industrial property right.<sup>82</sup> The sector workers generally consider the provisional measures very effective and, in fact, they constitute the main instrument to fight against counterfeiting.

We should recall anyway that also the Italian Penal Code provides stringent sanctions in this respect. In particular, Article 517 Italian Penal Code foresees that

[a]nyone who offers for sale or otherwise puts into circulation intellectual works or industrial products, with national or foreign names, brands or distinctive signs, capable of misleading the buyer on the origin, provenance or quality of the work or product, is punished, if the offense is not foreseen as a crime by other legal provisions, with imprisonment of up to two years and a fine of up to € 20,000.<sup>83</sup>

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<sup>81</sup> *Id.* (“1. Il titolare di un diritto di proprietà industriale può chiedere la descrizione o il sequestro, ed anche il sequestro subordinatamente alla descrizione, di alcuni o di tutti gli oggetti costituenti violazione di tale diritto, nonché dei mezzi adibiti alla produzione dei medesimi e degli elementi di prova concernenti la denunciata violazione e la sua entità. Sono adottate le misure idonee a garantire la tutela delle informazioni riservate. 2. Il giudice, sentite le parti e assunte, quando occorre, sommarie informazioni, provvede con ordinanza e, se dispone la descrizione, autorizza l’eventuale prelevamento di campioni degli oggetti di cui al comma 1. In casi di speciale urgenza, e in particolare quando eventuali ritardi potrebbero causare un danno irreparabile al titolare dei diritti o quando la convocazione della controparte potrebbe pregiudicare l’attuazione del provvedimento di descrizione o di sequestro, provvede sull’istanza con decreto motivato. 3. Salve le esigenze della giustizia penale non possono essere sequestrati, ma soltanto descritti, gli oggetti nei quali si ravvisa la violazione di un diritto di proprietà industriale, finché figurino nel recinto di un’esposizione, ufficiale o ufficialmente riconosciuta, tenuta nel territorio dello Stato, o siano in transito da o per la medesima.”)

<sup>82</sup> *Id.* (“Il titolare di un diritto di proprietà industriale può chiedere che sia disposta l’inibitoria di qualsiasi violazione imminente del suo diritto e del proseguimento o della ripetizione delle violazioni in atto, ed in particolare può chiedere che siano disposti l’inibitoria della fabbricazione, del commercio e dell’uso delle cose costituenti violazione del diritto, e l’ordine di ritiro dal commercio delle medesime cose nei confronti di chi ne sia proprietario o ne abbia comunque la disponibilità, secondo le norme del codice di procedura civile concernenti i procedimenti cautelari. L’inibitoria e l’ordine di ritiro dal commercio possono essere chiesti, sugli stessi presupposti, contro ogni soggetto i cui servizi siano utilizzati per violare un diritto di proprietà industriale.”)

<sup>83</sup> Regio Decreto 19 ottobre 1930, n.1398, G.U. Oct. 26, 1930, n.251 (It.).

Nonetheless, seizures and injunctions remain the most important instruments to protect businesses against counterfeiting. One reason for this success may be the fact that since 2003, Specialized Sections have been introduced in the courts of first instance as well as the appellate courts. Specialized Sections deal exclusively with problems of industrial property<sup>84</sup> and are regulated by Article 134 of the Industrial Property Code.<sup>85</sup>

Recent experience, however, has shown that the legislative initiatives put in place are not sufficient when the counterfeited goods are sold by platforms like Ali Baba or Amazon. These problems can be addressed only with a cooperative attitude, and Confindustria Moda is working together with such platforms in order to introduce controls on a voluntary basis.

### VIII. THE PROTECTION OF THE HISTORICAL MARKS

There is another recent initiative that deserves our attention. With a Law Decree in 2019,<sup>86</sup> called the “Growth Decree,” the Italian government has introduced a special protection of the so-called historic marks of national interest, at the same time disadvantaging their relocation abroad.

According to this law, owners and licensees of “historic marks of national interest” may request their registration in a special register, managed by the Italian Patent and Trademark Office.

The “Growth Decree” defines “historic marks of national interest” as “trademarks registered for at least fifty years or for which it is possible to demonstrate continuous use for at least fifty years, used in connection with the marketing of products or services made in a national manufacturing company of excellence, historically connected to the national territory.”<sup>87</sup>

Owners and licensees of historic trademarks acquire a special position, and there are some important advantages connected with the registration.

On the one side, they have the right to use the “special badge” of “Historic mark of national interest.” This badge is deemed to have an impact on consumer choices, adequately highlighting the historicity of Italian brands.

On the other side, the owners and licensees of historic marks can also access a fund catered to small and medium-sized enterprises. They can also apply to a special “Fund for the protection of historical brands of national

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<sup>84</sup> The Specialized Sections have been introduced by Decreto Legislativo 27 giugno 2003, n.168, G.U. July 11, 2003, n.159 (It.).

<sup>85</sup> D.Lgs n. 30/2005 (It.).

<sup>86</sup> Decreto Legge 30 aprile 2019, n.34, G.U. Apr. 30, 2019, n.100 (It.). The Decree was later converted in Legge 28 giugno 2019, n.58, G.U. June 29, 2019, n.151 (It.).

<sup>87</sup> *Id.*

interest,” established for the purpose of “safeguarding the employment levels and the continuation of productive activity on the national territory,” with an initial endowment of thirty million euros.<sup>88</sup>

The inclusion in the register of historical trademarks of national interest also entails some obligation. In the event of dismissal or relocation of the manufacturing site outside the national territory, with consequent collective dismissal of workers, owners and licensees of historical trademarks have to provide the Ministry of Economic Development with an articulated series of information aimed at allowing the intervention of the administration and access to the resources of the Fund.

The violation of these obligations to inform the Ministry is punished with a fine.

Only recently, these provisions were rendered effective through a new Decree of the Ministry of Economic Development published in the month of February 2020,<sup>89</sup> which defines the methods of registration in the Special Register of historic brands of national interest.

Since April 16, 2020, it has been possible to apply for registration by submitting the application to the Italian Patent and Trademark Office electronically. In order to be introduced in the Register, the trademark has to be registered for at least fifty years, and the registration must have been renewed continuously over time. In the case of an unregistered trademark, the applicant must show that the trademark must have been effective and continuous for at least fifty years.

This last initiative has the aim of supporting promotional campaigns of historic companies while protecting Italian traditions with respect to the risk of relocation abroad.

## **IX. BEHIND THE CURTAIN OF “MADE IN ITALY” TODAY**

The recent debate on “Made in Italy” has brought out two burning issues.

On one side, Italian law, though trying to protect “Made in Italy” products, does not guarantee that the production is really made by Italian artisans.

Workshops that organize foreign workers have become very common in Italy. They offer a cheap solution to all those businesses that have “speed” as their competitive advantage and that are incompatible with a relocation process. This appears, in many ways, an inevitable choice. It is not only a

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<sup>88</sup> *Id.*

<sup>89</sup> Decreto 27 febbraio 2020, G.U. Apr. 7, 2020, n.92 (It.).

problem of costs but also a question of lack of skilled Italian workers, as it becomes difficult to keep the Italian artisanship tradition alive.

In April 2019, the *New Yorker* published an interesting article named “The Chinese Workers Who Assemble Designer Bags in Tuscany,”<sup>90</sup> stressing that many companies are using inexpensive immigrant labor to manufacture handbags that bear the coveted “Made in Italy” label. The article further underlined that more than ten percent of Prato’s two hundred thousand legal residents are Chinese and that according to local police’s investigative unit, the city is also home to some ten thousand Chinese people who are there illegally. According to this source, Prato appears to have the second-largest Chinese population of any European city, after Paris, and it has the highest proportion of immigrants in Italy, including a large North African population.

On the other side, since the second half of the nineties, the Italian firms are experiencing a growing process of relocation of production activities abroad. This process mainly regards firms operating in the so-called “Made in Italy” sectors.<sup>91</sup>

Two factors have rendered relocation more convenient than in the past: the progressive fall of barriers to international trade and technological progress. In particular, new digital technologies allow an easier, quicker, and more economic coordination of the various phases of the production process, even when these are located in various countries of the world.

In a recent inquiry book by Giuseppe Iorio, *Made in Italy, The Dark Side of Fashion*,<sup>92</sup> the author, who has been working in the fashion field for several years, tells about the investments done by famous Italian trademarks like Prada, Armani, and Moncler in countries where the labor is inexpensive in comparison to Italy. The inquiry particularly relates to the investments made by famous “Made in Italy” brands in countries like Transnistria (officially the Pridnestrovian Moldavian Republic), a breakaway state in the narrow strip of land between the river Dniester and the Ukrainian border, internationally recognized as part of Moldova. Transnistria has been recognized only by three other mostly non-recognized states: Abkhazia, Artsakh, and South Ossetia. Workers have no rights, and their income is very

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<sup>90</sup> D. T. Max, *The Chinese Workers Who Assemble Designer Bags in Tuscany*, NEW YORKER, Apr. 16, 2018, at 9.

<sup>91</sup> Francesco Prota & Gianfranco Viesti, *La Delocalizzazione Internazionale del Made in Italy*, 3 L'INDUSTRIA, RIVISTA DI ECONOMIA E POLITICA INDUSTRIALE 409, 409–40 (2007).

<sup>92</sup> GIUSEPPE IORIO, *MADE IN ITALY? IL LATO OSCURO DELLA MODA* (Castelvecchi 2018).

low. The 2019 “Freedom in the World” report, published by Freedom House, describes Transnistria as a “not free” country.<sup>93</sup>

Iorio’s book gives the impression that slavery still exists, even in the heart of old Europe. The slaves of the third millennium are not serfs, nor prisoners of the Stalinist gulags; they are workers of fashion, of an industry that manufactures luxury clothing for the windows of our elegant boutiques. The picture that comes out of the book tells the story of human beings immolated on the altar of globalized capitalism, forced by misery to work without rights, without protections, and without the least freedoms. Just because their workforce costs less than the Italian one, they had the misfortune of being born in countries still far from being able to define themselves as democratic, and someone else can get rich quickly.

The image that comes out of Italian fashion is deleterious, to say the least.

Fortunately, this is not always the case. There are still some Italian brands that employ only “Italian hands and heads” (*mani e teste italiane*), like Brunello Cucinelli, who has adopted a humanistic approach to luxury.<sup>94</sup> As we will see, sustainable and responsible fashion has become a new challenge in which Italian brands are highly investing.

## X. THE NEW CHALLENGES

Looking ahead, the challenges of Italian fashion are mainly two: sustainability and new technologies.

As far as sustainability is concerned, we have to recall that sustainability is a core value of the EU Treaty.<sup>95</sup> Since the Fifth Environmental Action Programme, adopted by the Commission on 18 March 1992, entitled “Towards sustainability,”<sup>96</sup> and even more with the Sixth Environmental Action Programme (“*Environment 2010: Our Future, Our Choice*”),<sup>97</sup> the Commission announced that one of the aims of environmental policy was to

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<sup>93</sup> *Countries and Territories*, FREEDOM HOUSE, <https://freedomhouse.org/countries/freedom-world/scores> (Freedom House rates people’s access to political rights and civil liberties in 210 countries and territories).

<sup>94</sup> Maria Rosaria Napolitano & Floriana Fusco, *Brunello Cucinelli: La Creazione di Valore Condiviso Nell’impresa Umanistica*, 1 MICRO & MACRO MARKETING 335 (2019); David LaRocca, *Brunello Cucinelli: A Humanistic Approach to Luxury, Philanthropy, and Stewardship*, 3 J. RELIGION & BUS. ETHICS, at 22, 23 (2015).

<sup>95</sup> Barbara Pozzo, *Sustainable Development, in ENVIRONMENTAL SUSTAINABILITY IN THE EUROPEAN UNION: SOCIO-LEGAL PERSPECTIVES*, 11, 13 (Serena Baldin & Sara De Vido eds., 2020).

<sup>96</sup> Commission Directive, The Fifth Environmental Action Programme: Towards Sustainability, 1993 O.J. (C 138) 5 (EC).

<sup>97</sup> Council Decision 1600/2002 of July 22, 2002, The Sixth Community Environmental Action Programme, 2002 O.J. (L 242) 1 (EC).



induce the market to work in favor of the environment. The idea was to improve cooperation with businesses by introducing incentive schemes for companies with the best environmental performance, promoting a shift towards greener products and processes, and incentivizing the adoption of eco-labels to enable consumers to compare analogous products on the basis of their environmental performance.<sup>98</sup>

In Italy, in the field of fashion, we have had top-down initiatives, as well as bottom-up initiatives.

In 2012, the National Chamber of Italian Fashion (*Camera Nazionale della Moda Italiana*) launched the *Manifesto for the sustainability in Italian Fashion*,<sup>99</sup> which can be considered a code of conduct for all the associated companies.<sup>100</sup> The *Manifesto* lays down detailed guidelines and principles for sustainability, organized according to the stages of the value-creation chain. They include design of quality products that can last and minimize impacts on ecosystems; choice of raw materials with a high environmental and social value; reduction of environmental and social impacts of processing of raw materials and production; distribution, marketing, and sale according to sustainability criteria; improvement of management systems; support for the local territory and “Made in Italy”; business ethics; communication transparency; and education.<sup>101</sup>

Many important brands like Gucci,<sup>102</sup> Prada,<sup>103</sup> and Armani<sup>104</sup> have implemented Codes of Ethics that should guarantee for the future a better control on safety measures, minimal wages, and environmental impact.<sup>105</sup>

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<sup>98</sup> Pozzo, *supra* note 95, at 21.

<sup>99</sup> *Manifesto for the Sustainability in Italian Fashion*, CAMERA NAZIONALE DELLA MODA ITALIANA (June 13, 2012), [https://www.cameramoda.it/media/pdf/manifesto\\_sostenibilita\\_en.pdf](https://www.cameramoda.it/media/pdf/manifesto_sostenibilita_en.pdf).

<sup>100</sup> Valentina Jacometti, *Diritto e moda sostenibile tra iniziative legislative e iniziative volontarie*, in *FASHION LAW: LE PROBLEMATICHE GIURIDICHE DELLA FILIERA DELLA MODA* 341 (Barbara Pozzo & Valentina Jacometti eds., 2017).

<sup>101</sup> Valentina Jacometti, *Sustainable Consciousness and Consumer Identity: Legal Tools and Rules*, in *FASHION TALES: FEEDING THE IMAGINARY* 247 (Emanuela Mora & Marco Pedroni eds., 2017).

<sup>102</sup> KERING, CODE OF ETHICS (2013), [https://www.gucci.com/documents/code\\_of\\_ethics\\_en.pdf](https://www.gucci.com/documents/code_of_ethics_en.pdf).

<sup>103</sup> PRADA GROUP, CODE OF ETHICS (Dec. 18, 2007), [https://www.pradagroup.com/content/dam/pradagroup/documents/Responsabilita\\_sociale/code\\_of\\_ethics\\_en.pdf](https://www.pradagroup.com/content/dam/pradagroup/documents/Responsabilita_sociale/code_of_ethics_en.pdf).

<sup>104</sup> *Armani Supplier Social Code of Conduct*, ARMANI <https://www.armani.com/cloud/armanif31wp/uploads/2017/12/Armani-Social-Code-of-Conduct1-WEB.pdf> (last visited Sept. 14, 2020).

<sup>105</sup> Rossella Cerchia & Katherine Piccolo, *The Ethical Consumer and Codes of Ethics in the Fashion Industry*, U. MILAN DEP'T PRIV. L. & LEGAL HIST. 4 (2019).

Other important initiatives are the *Greenitaly Report*<sup>106</sup> and the *Sustainable Fabrics and Accessories Catalogue*,<sup>107</sup> which every year take stock of the development of sustainable production in Italy in the fashion and accessories sector.

The other important challenge for the future is the use of new technologies, such as blockchain, to enhance traceability of the products.<sup>108</sup>

Blockchain is one of the fastest-growing innovative technologies. The Fashion industry has explored the different ways in which it can benefit from the application of this technology. Among the various areas identified where the adoption of blockchain solutions can bring new value to the supply chains and to the industry as a whole, there was the proof of authenticity of “Made in Italy” products and incontrovertible certification of their origin. This could help in the future to fight in particular counterfeiting as well as promoting traceability of sustainable products.<sup>109</sup>

## XI. CONCLUSIONS

While I was writing this article, the Coronavirus pandemic broke out. Italian fashion and the whole “Made in Italy” system can currently be considered on one’s knees. In times of need, the great designers have all contributed not only to the needs of the country with donations to hospitals, but also by converting production to the devices needed at this time, such as masks, which Italy did not produce.

It is very difficult to predict what will happen in the near future, after a lockdown period of two months for all Italian industries, including the fashion industry.

Clothing stores are full of clothes from the past season that will remain unsold. Tourism is also strongly in crisis, so it is foreseeable that Italy will not be able to enjoy the usual flows of visitors from abroad in the summer season as well.

After such a painful period for the country, dotted with thousands of deaths, it is also difficult to imagine wanting to rush to buy a dress when the lockdown is over.

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<sup>106</sup> UNIONCAMERE, GREENITALY REPORT (2013), <https://www.unioncamere.gov.it/P55A3047C310S144/greenitaly-2013—il-rapporto-annuale-di-unioncamere-e-fondazione-symbola-.htm>.

<sup>107</sup> sustainability-lab, *Catalogo dei tessuti sostenibili P/E2015 SS/2015* (Feb. 10, 2014) [http://issuu.com/blumine/docs/catalogo\\_bassa/1?e=9323883/6679926](http://issuu.com/blumine/docs/catalogo_bassa/1?e=9323883/6679926).

<sup>108</sup> Marie Malaurie-Vignal, *Blockchain, Intellectual Property and Fashion*, 15 J. INTELL. PROP. L. & PRAC. 92 (2020).

<sup>109</sup> CARLO ALBERTO BENTIVOGLIO & KATIA GIUSEPPONI, *FASHION E SOSTENIBILITÀ: OPPORTUNITÀ OFFERTE DALLA TECNOLOGIA BLOCKCHAIN* (Ledizioni LediPublishing 2020).

The hope is that after a period of adjustment, the country gradually returns to normalcy and can enjoy life and that the Italian style, perhaps a little sadder, but also wiser since the times of the crisis, will come back to shine.