

Design piracy in the United States women's ready-to-wear apparel industry: 1910-1941

by

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A dissertation submitted to the graduate faculty
in partial fulfillment of the requirements for the degree of
DOCTOR OF PHILOSOPHY

Major: Textiles and Clothing

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Iowa State University
Ames, Iowa
2005

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ACKNOWLEDGEMENTS

The idea for this dissertation was a result of a dress purchased with an FOGA label by my advisor, Jean L. Parsons. Jean, you have been most supportive throughout the Ph.D. process. Thank you for helping to build my confidence in the art of history writing. I thank Jane Farrell-Beck for her dedication to the subject of historic costumes. Thank you to Amy Bix for encouraging me to present this topic to a wider historical audience. To Linda Niehm, I owe a great deal of gratitude for teaching me to view topics from a “so-what” perspective. Thank you to Larry Ebberts for encouraging me to pursue a minor in higher education, a subject I have greatly enjoyed. Thank you also to Sara Kadolph for her example of master teaching and her willingness to assist me in my pursuit of becoming a great teacher. I also thank the College of Human Science at Iowa State University, the American Association of Family and Consumer Sciences, the Costume Society of America, and the Kappa Omicron Nu Association for their financial support.

The process of receiving a Ph.D. was difficult and at times disheartening. I thank my parents, Ted and Margaret Brubacher for their love, support, and constant encouragement. Their examples of hard work and dedication buoyed me throughout this process. I am grateful for my decision to attend Iowa State University. It is here that I found my life’s work and life partner. I thank my husband, Mike Marcketti, for the reminder that receiving a Ph.D. is only one of my life-goals. This dissertation is dedicated in memory of my grandparents, Ted and Dorothy Brubacher and Harold and Esther Maxwell, for their examples of everyday leadership and faith.

ABSTRACT

This research investigates the economic conditions of the American apparel industry, as well as the complex interactions of apparel industry members, trade organizations, and the U. S. government to better understand the reasons cited for supporters of apparel style protection versus those who accepted design piracy. The purpose is to examine the concept of piracy within the historical context of the American ready-to-wear apparel industry. Through an analysis of journalistic coverage in trade and popular fashion periodicals, pertinent legal records, economic and census data, governmental hearings, archival sources, and the case study of the Fashion Originators Guild of America, this research analyzes the interrelationships among American access to fashion, the ready-to-wear industry, and design piracy. The precise time boundaries of this research are 1910 through 1941. These years encompassed the rise of the American ready-to-wear industry and coincided with the beginning of the trade publication *Women's Wear Daily*. The year 1941 marked the end of the Fashion Originators Guild of America's program of self-regulation against piracy. Protection of women's apparel against piracy was controversial and difficult. First, protection of styles against piracy was contradictory to the concept of fashion. Without the social process of imitation, the lucrative business of the women's ready-to-wear apparel industry could not exist. Second, an objective criterion for determining product originality was difficult. These problems were multiplied in the women's ready-to-wear apparel industry which placed thousands of different styles in production each season, each conforming to the prevailing fashion in varying price and quality levels. While the apparel industry continues to debate the rubric of "referencing," the FOGA was an important early case highlighting the ethical, economic, and social considerations of a program of industry-wide self-regulation.

CHAPTER ONE: INTRODUCTION

The concept of copying or “knocking-off” another designer’s idea was an accepted and even institutionalized practice of the apparel industry. Although design piracy was most often used to turn high-end designs into less expensive goods, couture designers also copied the works of other designers and artists.¹ Some in the apparel industry believed that “today’s knock-off houses provide good value and style,” while others suggested the possibility that at least some apparel firms producing pirated apparel “fund organized crime and terrorism.”² Today, many designers aggressively protect elements of their merchandise through trademarks or patents, but apparel designs are virtually impossible to protect. Legally, designers and manufacturers have had tenuous success in proving their work “original and novel” as required by United States (U.S.) patent laws, and copyright laws have not applied to apparel. The speed of fashion change, and the apparel industry’s reliance on repetition of ideas at various price points makes design protection difficult and controversial.

Individuals within the apparel industry have consistently expressed ambiguity about the issue of design piracy. This is illustrated by the vastly different connotations of terms used to describe the products of piracy, including knock-offs, adaptations, and copies. In the past, some believed there was a clear-cut ethical problem with copying apparel designs,

¹ “Knock-off” is a common term used in the apparel industry to describe exact or near-exact copies of pre-existing garments. The knock-off process is taught in clothing courses and is a component of some pattern making textbooks. See for example, Norma R. Hollen and Carolyn M. Kundel, *Pattern Making by the Flat-Pattern Method* (Upper Saddle River N.J.: Prentice Hall, Inc., 1993), and Ruth E. Glock and Grace I. Kunz, *Apparel Manufacturing: Sewn Products Analysis* (Upper Saddle River N.J.: Prentice Hall, Inc., 2000), 55. In 1994, a French commercial court ordered Polo/Ralph Lauren to pay \$383,000 to Yves Saint Laurent for plagiarizing a tuxedo dress design. Teri Agins, “Fashion Knockoffs Hit Stores before Originals as Designers Seethe,” *The New York Times*, August 8, 1994, 1.

² Agins, 1; Cathy Horyn, “Is Copying Really a Part of the Creative Process?” *The New York Times*, April 9, 2002, 1; Staci Wood, “Buying Knockoffs is a Slippery Slope,” *USA Weekend*, July 27-29, 2003, 17.

while others defended the practice as essential in providing fashion to consumers at all income levels.³ Historically, retailers, designers and manufacturers all presented arguments both for and against measures to control the copying of apparel. These arguments most frequently involved tangible and immediate issues about cost and quality of the dresses marketed, and less so any ethical issues related to plagiarism. That copying was and is an essential component in fashion diffusion was the most frequent justification for design piracy.

While the concept of piracy is an old and even accepted practice, it is a controversial tradition. One of the major reasons for, and results of, design piracy was the succession of popular garment styles into lower price points. Some within the apparel industry attributed the practice of price-lining, offering merchandise at specified prices that reflected differences in quality of goods, to piracy.⁴ Due to technical advancements in the ready-to-wear apparel industry, firms were able to reproduce copies of pre-existing garments quickly and efficiently. Price-lining resulted in selling similar items at various price points. According to some, this resulted in an emphasis on style rather than quality, loss of profits and prestige for original clothing designers, a decreased life span of specific styles resulting in increased markdowns and economic loss of profit to retailers, and blurred lines of social class distinction as distinguishable by dress. Manufacturers, designers, retailers, consumers, and

³Margaretta Stevenson (ed.), *How the Fashion World Works: Fit Yourself for a Fashion Future, Addresses given at The Fashion Group's Training Courses* (New York: Harper & Brothers Publishers, 1938), 6; Helen Everett Meiklejohn, *Dresses: Impact of Fashion on a Business* (New York: McGraw-Hill Book Co., Inc., 1938), 20. Meiklejohn used class issues to support the practice, stating that "the copying of dress styles gives legitimate aid and comfort to the underprivileged."

⁴ Price lining also grew out of manufacturer and retailer motivations for clearer distinctions among products and fewer variations in products. Price lining was a "rationalizing" tendency reinforced by the War Industries Board established during World War I. Jane Farrell-Beck, and Colleen Gau, *Uplift: The Bra in America* (Philadelphia, PA: University of Pennsylvania Press, 2002), 66.

laborers debated the economic and social implications of equal access to fashion.⁵ The design plagiarism debate within the historical context of the developing American ready-to-wear industry is important for a broader understanding of the apparel industry, and of economic and social life in the early twentieth century.

This research investigates the economic conditions of the American apparel industry, as well as the complex interactions of apparel industry members, trade organizations, and the U. S. government, to better understand the reasons cited by supporters of apparel style protection versus those who accepted design piracy. The purpose is to examine the concept of piracy within the historical context of the American ready-to-wear apparel industry. The study of the arguments for and against piracy within the early U.S. ready-to-wear apparel industry provides crucial ethical, economic, and social implications relative to protecting works of fashion for their originality.

The history of design piracy in the United States apparel industry has been largely overlooked by textile and apparel historians. Many writers have commented on the proliferation and prevalence of design piracy in the apparel industry and have mentioned the FOGA as a self-help organization in the attempt to control design piracy. Legal scholars have examined the government's attitudes regarding piracy from the standpoints of intellectual property rights, collective bargaining agreements, and anti-trust legislation. These legal commentaries lack, however, the apparel industry's perspective concerning U.S. ready-to-wear design piracy. The data that informed the research in this dissertation was primarily from the industry perspective. The apparel consumer's perspective is most difficult to

⁵ William Leach, *Land of Desire: Merchants, Power, and the Rise of a New American Culture* (New York: Vintage Books, 1993).

discern, due to a lack of existing evidence. Industry executives often spoke on behalf of consumer interests, yet consumer voices are most often missing from these arguments.

Through an analysis of journalistic coverage in trade and popular fashion periodicals, pertinent legal records, economic and census data, governmental hearings, archival sources, and the case study of the Fashion Originators Guild of America, this research analyzes the interrelationships among American access to fashion, the ready-to-wear industry and trade organizations, and design piracy. The precise time boundaries of this research are 1910 though 1941. These years encompassed the rise of the ready-to-wear industry and coincided with the beginning of the trade publication *Women's Wear Daily*⁶. The year 1941 marked the end of the Fashion Originators Guild of America court case that decided their program of industry self-regulation against design piracy was illegal. In addition, numerous trade organizations that represented the diverse apparel interests of manufacturers, workers, designers, retail establishments, and consumers, in regards to design piracy, formed during this period.

One of the more controversial trade organizations of this period was the Fashion Originators Guild of America (FOGA), in existence from 1932 to 1941. A history of the FOGA served as an important source and case study in this research. The FOGA was a trade association of leading dress manufacturers and retailers who cooperated to eliminate design piracy. Although the Guild was highly effective at safeguarding against piracy and at establishing other trade regulations, the Federal Trade Commission and the United States Supreme Court deemed the group's actions monopolistic. The procedures and strategies of

⁶ *Women's Wear Daily* was originally titled *Women's Wear*. On January 3, 1927 the name of this trade newspaper was changed to *Women's Wear Daily*.

the FOGA were debated and discussed in trade publications, popular press articles, and the legal system. These sources provide extensive detail as to the legal, social, and economic effects (both positive and negative) of design piracy on manufacturers, retailers, laborers, and consumers in the United States.

Research Questions

1. What were the interrelationships between design piracy and the developing American ready-to-wear industry?
2. What were the arguments for and against protection of designs and how were they mediated by a perceived need for unrestricted access to fashion across all socio-economic levels?
3. What role did the FOGA play in controlling design piracy in the period 1932 to 1941?

Methods

To collect, analyze, and interpret the historical data utilized in this research, artifact analysis was conducted. Secondary sources directed the search for primary data. The primary data was “synthesized into a meaningful pattern of reconstructed truth, an interpretation, using both imaginative insight and scholarly objectivity.”⁷ Interpretation as proposed by Fleming “focuses on the relation between some fact learned about the artifact and some key aspect of our current value system.”⁸ Before the 1940s, design plagiarism and the ability of American designers to create original creative fashion was heavily debated, but today, design plagiarism in the fashion world seems to be a given and American fashion is

⁷ Sandra S. Buckland, “Promoting American Fashion 1940 through 1945: From Understudy to Star” (Ph.D. diss., The Ohio State University, 1996), 46.

⁸ E. McClung Fleming, “Artifact Study: A Proposed Model,” *Winterthur Portfolio* (1974): 153-173.

celebrated and valued. An analysis of the data from this pivotal period 1910 to 1941 demonstrated the values and ideologies of the time.

This study relied on a comprehensive review of journals, newspapers, trade publications, and magazine articles from 1910 to 1941. *The New York Times* index was scanned for articles in *The New York Times* concerning the FOGA, design piracy, and copying of clothing and textiles. The *Reader's Guide to Periodicals* index was examined for pertinent articles in *Business Week*, *Time*, *Newsweek*, and *Printer's Ink Monthly*. *Women's Wear Daily* was systematically searched and read for mention of design piracy, the topic of American fashions for American women, and the FOGA. Legal documentation, including the incorporation papers of the FOGA and the docket of FOGA cases argued in the United States District Court in southern New York were examined. The twelve briefs of the United States Supreme Court case, FOGA v. the Federal Trade Commission were analyzed for recurring themes. Governmental reports from the period, including the *Working Papers of the National Recovery Administration's Division of Review on Design Piracy* of 1935 and the *National Recovery Administration's Hearings on the Codes of Fair Competition for the Dress Manufacturing Industry* assisted greatly in understanding the arguments both for and against design piracy. Editorial issues pertaining to the controversies of design piracy and design protection in the 1930s and 1940s in the *Journal of the Patent Office Society*, the *Harvard Law Review*, and the *Journal of Retailing* were taken into account in the analysis of the arguments for and against design piracy.

Primary research relating to the FOGA was conducted in museums, archives, libraries, and special collections in New York City. Dresses registered with the FOGA were found in the Costume Institute of the Metropolitan Museum of Art and the Costume

Collection of the Fashion Institute of Technology. FOGA registered dresses were also found at the Fashion Institute of Design and Merchandising, California, The Ohio State University Costume and Textiles Collection, Kent State University Museum, Ohio, Cincinnati Art Museum, Ohio, The Textile and Fashions Arts of the Museum of Fine Arts, Massachusetts, and the Minnesota Historical Society. Memoirs of Maurice Rentner from varying perspectives and the sketches submitted for registration with the Guild by the FOGA vice-president Herbert Sondheim were located in the Special Collections, Gladys Marcus Library, Fashion Institute of Technology. A pamphlet published by the FOGA in collaboration with the New York Dress Institute was found in the Art Library of the Metropolitan Museum of Art. Other information concerning the Guild's procedures was found in the Bergdorf Goodman Family Records located in the Special Collections of the Fashion Institute of Technology.

Organization of the Dissertation

This dissertation is organized in six chapters. Chapter One introduces the topic and provides the research questions, methods, organization of the dissertation, and definition of terms. Chapter Two reviews literature relevant to the field of research that initiated the study: the burgeoning structure of the apparel industry and the development of design piracy within the U.S. women's ready-to-wear. Legal and apparel industry perspectives regarding piracy are also discussed in chapter two. Chapter Three describes the context for the study, specifically a history of the ready-to-wear women's apparel industry in the early twentieth century leading up to the beginning of the FOGA and provides ideas as to how the concept of American fashions for American women developed. Chapter Four discusses U.S. ready-to-wear apparel industry arguments concerning piracy and attempts to establish style protection.

Chapter Five analyzes the methods of the FOGA to eliminate style piracy, and discusses the societal arguments both for and against the protection of apparel designs. Chapter Six summarizes the study.

Definition of Terms

Adaptation	An interpretation of an already existing garment. Much contested in the apparel industry was the point at which an adaptation ceased being a copy and became an original garment in and of itself. The delineation between an adaptation, a copy, and an original were highly subjective. This ambiguity became the crux of the argument concerning the acceptability of design piracy. The concept of adaptations made protection of styles nearly unenforceable.
Contractors	Contractors were paid by apparel manufacturers to complete certain tasks of garment assembly. Responsibilities of these “outside shops” included sewing garments, pressing, finishing, and shipping garments to manufacturers or jobbers according to specifications supplied by the manufacturer. Contractors usually had to bid for work from manufacturers. They hired and paid for their own labor force.
Custom Made	Clothing that was made specifically according to a client’s wishes. The style of custom made clothing was often based on a popular fashion trend, but elements of the garment were altered to satisfy a particular client’s needs and desires. Dressmakers and tailors altered garments to accommodate client’s aesthetic tastes, body type, color preferences, etc. Custom made clothing was more expensive than personal production of clothing in ones’ home.
Authorized Copies	The French haute couture allowed for some authorized copies of their designs. Retailers and manufacturers paid these haute couture houses a stipulated sum for the rights of reproduction. An authorized copy was an endorsed reproduction of an original design and could be labeled as such.
Copy	Copies were unauthorized replications of garments.
Design	During the period 1910 to 1941 the words design and style were often used interchangeably. To this day, the word design is difficult to define as it has many different connotations and meanings. The word design as used in <i>Women’s Wear Daily</i> during 1910 to 1941 frequently connoted specific elements of garment, such as sleeve type, as well as describing a general look or silhouette of a garment. The word design

was also used to describe the process of creating a garment. In this dissertation, design is primarily used to describe the above mentioned ideas.

Designer	A person who generates ideas for garment styles.
Fashion	An accepted and much-utilized style. Something that is fashionable may be beautiful or ugly, new or old. A style does not become fashionable until it has popular use and it remains a fashion only so long as it is so accepted. Fashion changes create a high rate of obsolescence for goods. Fashion is always a collective behavior since it means that a particular style has become aesthetically pleasing to a large group of people within the society or culture. Fashion both maintains order through uniformity because people desire to integrate themselves and belong within a society and promotes change because individuals' desire differentiation and novelty. Fashionable dress is in one sense never flattering to the natural human form since each unique body must wear the same style in order to be fashionable, and no one style can look equally attractive on a wide variety of bodies. Yet, the majority will adopt the fashionable style, which is what makes it fashionable, regardless of how flattering that style is to the individual. Frequent fashion changes artificially shorten the period during which a style prevails. ⁹
Haute Couture	The leading establishments located in Paris, France that created the most exclusive fashions for a specific clientele. Haute couture clothing was made-to-order specific to an individual, but not necessarily one of a kind in terms of style.
Inside manufacturer	Inside manufacturers performed all the operations connected with the designing and production of clothing and also supervised the distribution and marketing of their merchandise.
Jobber	Jobbers did their own styling or adapted styles to their particular price lines as well as cutting the materials for their garments. These cut materials were sent out to contract shops where they were sewn and then returned to the jobbing firms for distribution.
Manufacturer	A business establishment that creates garments for sale to retailers, jobbers, contractors, and sometimes the ultimate consumer.

⁹ Paul H. Nystrom, *Fashion Merchandising* (New York: The Ronald Press Co., 1932); Penny Storm, *Functions of Dress* (New Jersey: Prentice Hall, 1987), 287; Paul M. Gregory, "Fashion and Monopolistic Competition," *The Journal of Political Economy* (1948): 69.

Model	A particular style of dress.
Mode	The prevailing fashion.
Novelty	According to patent law, a novelty is the quality of being absolutely new as compared to all pre-existing things. ¹⁰
Originals	The quality of originality as applied to clothing was one of the most contested arguments concerning the regulation of design piracy in the women's ready-to-wear apparel industry. Those on the forefront of fashion created original styles. Some in the industry argued that adaptations could be considered originals as long as the adaptations were stylistically distinct from the original. A definitive distinction between an original style and an adaptation is most subjective and remains unclear.
Ready-to-Wear	Ready-mades described clothing produced for mass consumption in the early twentieth century. ¹¹ After the 1920s, the term ready-to-wear gained more widespread usage to describe clothing bought off of racks from retail outlets. As such the term ready-to-wear is used consistently throughout this dissertation.
Retailer	A business establishment that purchases goods from the wholesale market for resale to the public at higher, retail prices.
Style	During the period 1910 to 1941, the words design and style were often used interchangeably. To this day, the word style is very difficult to define as it has many different connotations and meanings. The word style as used in <i>Women's Wear Daily</i> during 1910 to 1941 frequently connoted distinction or superior quality, a general look, a fashion, and as a descriptive statement of personality and taste. In this dissertation, style is used to describe the above mentioned ideas. The word style is also used to describe specific models of dresses.
Style/design pirate	During the period 1910 to 1941, the words design and style pirate were often used interchangeably. Style or design pirates were those who did not have authorization to copy specific styles yet did so anyway. The term style/design pirate is used interchangeably in this dissertation.

¹⁰ John P. Nikonow, "Patent Protection for New Designs of Dresses," *Journal of the Patent Office Society* (1935): 253-4.

¹¹ Jean L. Parsons, "No Longer a 'Frowsy Drudge' Women's Wardrobe Management: 1880-1930," *Clothing and Textiles Research Journal* 20 (2002): 33-41.

CHAPTER TWO: LITERATURE REVIEW

The literature review chapter provides the framework for an analysis of the history of design piracy within the United States (U.S.) ready-to-wear women's clothing industry. In this section, I discuss the development of the women's ready-to-wear clothing industry and the structure of the women's ready-to-wear apparel industry that allowed design piracy to develop and flourish. Next, I examine the development of design piracy with a summary of the apparel and legal scholarship concerning this topic.

Development of the Women's Ready-to-Wear Apparel Industry

The transition from wearing custom-made clothing created by dressmakers and tailors to purchasing ready-to-wear garments bought off the rack in retail outlets occurred in uneven stages during the nineteenth and twentieth centuries. Spearheaded by advances in the women's corset and undergarment branches, mass manufacturing realized American desires for decent fitting, ready-to-wear clothing. During the 1860s, women could purchase corsets and loose fitting ready-to-wear cloaks, coats, and mantillas. It was not until the late 19th century, however, that changing societal attitudes and technical advancements allowed for the production of more closely fitted, feminine ready-to-wear garments such as suits, skirts, shirt waists, and gowns.¹ The focus of this section is the changes within society that made

¹ Claudia Kidwell and Margaret Christman, *Suiting Everyone: The Democratization of Clothing in America* (Washington: The Smithsonian Institution Press, 1974); Florence S. Richards, *The Ready-to-Wear Industry 1900-1950* (New York: Fairchild Publications, 1951); Jean L. Parsons, "Dressmakers: Transitions in the Urban Production of Custom-Made Clothing, 1880-1920" (PhD diss., The University of Maryland, 1998); Bernard Smith, "A Study of Uneven Industrial Development: The American Clothing Industry in the Late 19th and Early 20th Centuries" (PhD diss., Yale University, 1989), Chapter 3; Blanche Payne, Geital Winakor, and Jane Farrell-Beck, *The History of Costume* (New York: Longman, 1992); Linda Welters and Patricia A. Cunningham, "The Americanization of Fashion," *Twentieth Century American Fashion* (Oxford: Berg, 2005).

fashionable clothing available and necessary, and the technical advancements that made fashion possible.

Changes in the Need and Availability of Ready-to-Wear Apparel

Before the 1860s, for either geographical or economic reasons, clothing consumption meant personal production for most American women. “Babies” or dolls dressed in European styles and fashion drawings illustrated in magazines such as *Graham’s*, 1826-1857, *Godey’s Lady’s Book*, 1830-1898, and *Peterson’s*, 1842-1898 informed clothing makers of the latest styles. Homemade clothing, created from patterns, or based on existing styles, often did not fit well or look good, partly because of the great complexity of the fashionable styles and the lack of training and skill of the maker. Wealthier clients could order clothing directly from Europe or commission tailors and dressmakers to faithfully copy the fashions. Clients often insisted that gowns follow the fashionable silhouette and idea, yet were adapted to the particular form and personal characteristics of the individual woman. In large cities there were custom businesses that catered to the servant classes. Yet, for the majority of American citizens, while custom made clothes were the most fashionable and had the best appearance, workmanship, and fit, they were often prohibitively expensive.²

By the beginning of the twentieth century, ready-to-wear clothing, offered in a variety of styles, quantities, and prices, became available in almost all markets. Ready-to-wear clothing mass produced by garment manufacturers, transformed clothing “made for

² May Allinson, *Dressmaking as a Trade for Women in Massachusetts*, U.S. Bureau of Labor Statistics, Census Bulletin 193 (Washington, D.C.: GPO, 1919), 18; Margaret Walsh, “The Democratization of Fashion: The Emergence of the Women’s Dress Pattern Industry,” *The Journal of American History* 66 (1979): 299-313; Jane A.U. Funderburk, “The Development of Women’s Ready-To-Wear, 1865 to 1914: Based on *New York Times* Advertisements” (PhD diss., The University of Maryland, 1994), Chapter 2; Katherine Cranor, “Homemade Versus Ready-Made Clothing,” *The Journal of Home Economics* (1920): 230-233.

somebody” to clothing “made for everybody.”³ Ready-to-wear apparel followed fashionable trends but was non-specific to individual tastes and preferences. The growth of the ready-to-wear industry exploded in the United States due to increased opportunities for consumption, expanding societal roles of women, and the simplification of garment styles. In addition, the telephone, the wireless, a transatlantic cable, and the appearance of the first steam lines and cruise liners made swifter transmission of ideas and apparel styles possible, intensifying the tempo of fashion.⁴

Linked to a growing economy and increasing opportunities for consumption, mass production in the women’s ready-to-wear apparel industry accelerated in the early twentieth century. Mass production in women’s fashions was a cause as well as an effect of mass consumption. Women’s roles expanded through increased opportunities for wage-earning employment and participation in sports, etc. These roles were celebrated by more ready access to shopping, cultural events, and recreation. Shopping rituals changed as department stores became centers for display and entertainment, and clothing became available from more various and more convenient sources. As opportunities for interaction with high fashion images in the form of advertisements and retail shop displays increased, women desired more frequent style change and became increasingly interested in fashionable clothing. By 1915, women were doing 80 to 85% of the consumer purchasing in the United States.⁵

Women of most economic standings needed and were more able to afford fashionable clothing during the twentieth century. New responsibilities in manufacturing, clerical,

³ Kidwell and Christman, *Suiting Everyone*.

⁴ William Leach, *Land of Desire: Merchants, Power, and the Rise of a New American Culture* (New York: Vintage Books, 1993).

⁵ Leonard Drake and Carrie Glaser, *Trends in the New York Clothing Industry* (New York: Institute of Public Administration, 1942), 25.

academic, administrative, and management positions blurred and broadened the definition of women's roles and the concept of the middle class. The disposable income created from the influx of women into the public domain fueled the growing demand for women's ready-to-wear apparel. The newfound roles of young, single, women in the workplace transformed the routines associated with the purchasing of clothing. College life, clerical jobs, and careers such as teaching and social work required neat, professional and fashionable clothing. With increased prosperity, women bought a variety of ready-to-wear dresses for business, travel, sports, and formal occasions.⁶

Women bought more clothing than before, but they chose simpler, looser fitting garments in keeping with the fashionable trend. Awkward, cumbersome styles such as those proposed in French haute couture, would impede fulfillment of their new roles in life. Attitudes toward time, budget, and fashion influenced the growth, promotion, and acceptance of ready-to-wear clothing. Long working hours coupled with greater opportunities to fill leisure time such as riding in automobiles, attending movies, or playing sports, meant less time to sew. The struggle to make a well-fitted acceptable garment made home sewing even less appealing. Active women increasingly wore separate skirts and shirtwaists and one-piece dresses, purchased in retail stores rather than wear custom or home-made intricately designed dresses. Women of most economic classes simply had more places to go, for which they

⁶ See also: Susan Porter Benson, *Counter Cultures: Saleswomen, Managers, and Customers in American Department Stores 1890-1940* (Chicago: University of Illinois Press, 1986); Jane Farrell-Beck, Alyson Rhodes-Murphy, Meredith I. Richardson, "Clothes Hangers: From Business Tool to Consumer Convenience, 1852-1936," *Clothing and Textiles Research Journal* 18 (2000): 9-18; Madelyn Shaw, "American Fashion: The Tirocchi Sisters in Context," in *From Paris to Providence, Fashion, Art and the Tirocchi Dressmakers' Shop, 1915-1947* (Providence, R.I.: Museum of Art, Rhode Island School of Design, 2000), 105-132.

needed and desired a greater variety of clothing that was comfortable, convenient, practical, and in-fashion.⁷

Technical Advancements

Technical advancements that stimulated the growth of women's ready-to-wear garment factories included the invention of the sewing machine in 1846, the long cutting knife about 1870, which allowed simultaneous cuttings of multiple layers of fabrics, and the application of electric power to drive the sewing machine and the knife by machine. Other specialized machines mechanized pinking, button-holing, snap-fastening, and other once laborious hand-processes.⁸

The changed organizational structure of the clothing industry following the Civil War further reduced the costs of mass-production. The large demand for ready-to-wear uniforms during the Civil War hastened the use of sewing machines and the division of labor to accommodate unskilled workers. Learned quickly and performed repetitively, less skilled workers completed simple, sub-divided tasks once reserved only for skilled professionals. Garments were mass produced on a large volume scale. The early years of the apparel industry (especially in the period after 1880) also witnessed a large influx of immigrant populations from Eastern Europe. Many of these immigrants entered the clothing business as factory workers, allowing for an abundance of cheap and ready labor.⁹

Partly due to the technical advancements that allowed for mass-production and the relative affordability of production equipment, entry into the apparel manufacturing industry

⁷William Leach, "Transformations in a Culture of Consumption: Women and Department Stores, 1890-1925," *The Journal of American History* 71 (September 1984): 333; Payne, Winakor, and Farrell-Beck, *The History of Costume*; Jean L. Parsons, "No Longer a 'Frowsy Drudge' Women's Wardrobe Management: 1880-1930," *Clothing and Textiles Research Journal* 20 (2002): 33-41.

⁸ Richards, *The Ready-to-Wear Industry 1900-1950*.

⁹ Kidwell and Christman, *Suiting Everyone*.

was easy. Small shops could quickly begin on low capitalization, with few employees. Further, the smallness of many shops allowed for flexibility in adoption of fashion changes.

As women's interest and participation in mass consumption increased, the apparel industry promoted the use and importance of fashion. By the turn of the twentieth century, manufacturers, particularly in the cloak and suit industry, began to use style changes as a way to both compete with each other and to appeal to customers at various income levels. They changed styles rapidly and used decorative trims to hide otherwise poor quality fabrics. Manufacturers generated sales by offering many garment variations and by changing their styles frequently from season to season and even with-in seasons. According to Parsons, manufacturers and department stores even manipulated what constituted style change by advertising simple changes such as sleeve lengths or placement of trim as being up-to-date.¹⁰ Manufacturers could both adapt prevailing modes into their own variations as well as exactly copy the popular styles. Successful styles, quickly copied in the marketplace, stimulated even more style variations. The multitude of offerings stimulated constant production and consumer demand.¹¹

A new organizational structure of retail stores catered to consumer demand. Before 1880 there were small, dry goods firms and neighborhood shops that offered only a limited number and variety of items. There were also department stores such as Bon Marche, begun in Paris ca. 1850, and Jordan Marsh and John Wannamaker's, ca. 1860. For the most part, however, women either purchased their clothing from personal dressmakers or bought fabric to create their own garments at home. Department stores flourished after the 1880s and were

¹⁰ Parsons, "No Longer a Frowsy Drudge," 38.

¹¹ Parsons, "Dressmakers: Transitions in the Urban Production;" Smith, "A Study of Uneven Industrial Development."

large retail establishments that offered women the choice of purchasing ready-to-wear garments, custom-made garments, or a selection of fashion fabrics to be created into garments elsewhere. Women had many opportunities to purchase clothing at various price points in the department stores; from amount the lowest dollar available to several thousands. *The New York Times* reported in 1930 that this specialization of departments was needed because, “the lumping of the various price classes of merchandise into a single section caused a class consciousness on the part of customers that was detrimental to sales.”¹² Women were encouraged to shop in departments that fit their economic means and social status.¹³

The custom dressmaking departments in department stores were very competitive with individual dressmakers, as these stores were more able to purchase popular Parisian designs in the form of muslin patterns and then modify them to specific client tastes. The often extravagant haute couture designs were adapted into wearable ideas based on the style of the original. Styles were copied from the most elite haute couture into the custom houses of the department stores and then into ready-to-wear. The ready-to-wear offerings were often adaptations utilizing cheaper materials and less intricate workmanship than the couture goods.

Department store consumers were encouraged to browse, and shopping became a new pastime for many women. Manufacturers and retailers increasingly offered a greater diversity of products and changed their product offerings often. To make a profit, retail stores relied on the rapid turnover of a large volume of merchandise. Manufacturers needed to

¹² “Separation of Low-Priced Section From Higher Recommended To Increase Retailer’s Trade,” *The New York Times*, January 12, 1930, 20.

¹³ William Leach, *Land of Desire: Merchants, Power, and the Rise of a New American Culture*.

simultaneously differentiate their goods from all rival brands, as well as distinctly position their own brands from previous seasons. Sellers tried to sell products more frequently than their rivals by means of carrying the newest styles. With the department store's power to generate demand through advertising and special promotions, and the ready-to-wear manufacturer's ability to constantly change styles to differentiate their products, the small custom producer became less important. The department store became a "palace" of consumption for Americans.¹⁴

Structure of the Women's Ready-to-Wear Apparel Industry

After 1880, the structure of the women's clothing industry became increasingly stratified. Before this time, many manufacturers performed the inside operations connected with the designing, production, distribution, and marketing of their own merchandise. During the late nineteenth and early twentieth centuries, the need for new styles, and increasing competition from small and medium sized firms, required many inside manufacturers to out-source elements of production. The constant inflow of immigrants, driven by their need for a livelihood and willingness to receive low wages, allowed for the growth of sub-manufacturing apparel producers.

Increased numbers of manufacturers dealt with independent agents called outside shops or contractors to produce a product, or part of a product for a stipulated price. The manufacturers supplied clothing designs, piece goods, materials, and credit. The contractor rented factory space and machinery, found and hired a labor force, and directed the

¹⁴ Leach, *Land of Desire*; Judith G. Coffin, "Women's Place and Woman's Work in the Paris Clothing Trades" (Ph.D. diss., Yale University, 1985), 60-65; Funderburk, "The Development of Women's Ready-To-Wear"; Wendy Gamber, "The Female Economy: The Millinery and Dressmaking Trades, 1860-1930" (PhD diss., Brandeis University, 1990), Introduction; Kidwell & Christman, *Suited Everyone*, 135; Parsons, "Dressmakers: Transitions in the Urban."

production process. The manufacturer paid the contractor by the piece. The contractor, in turn, paid his employees either by piece or time wages, extracting dollar amounts for the employees' use of sewing machines, needles, and threads. To make a profit, contractors often had to pay their workers less per garment than they themselves received.¹⁵

By the early twentieth century, some of the larger manufacturers required the services of 25-30 contractors to maintain their production levels. To achieve agreements for work, contractors bid increasingly lower amounts. For employees, this often meant unsanitary working conditions, long hours, and low wages. Work was often seasonal, with high turnover of employment as unskilled workers moved from place to place and from job to job. Due to the growing strength of union organizations and social outrage about factory conditions, laws passed in 1899 deterred contractors from using living quarters for workshops. Contractors moved from workshops in the New York East Side tenement districts to regular manufacturing sections of the city, concentrated in about a twenty block area along Seventh Avenue. The passage of these laws centralized the location of the women's ready-to-wear apparel manufacturing business but failed to solve sweat-shop conditions.¹⁶

The stratification and centralization of the apparel industry in New York City meant that there was an increasing number of manufacturing interests involved in the creation of garments located in a very close geographical area. Contractors were involved in the manufacturing of anywhere from 100 to 2000 different styles for a multitude of companies at any one time. Sub-manufacturers and subcontractors felt little loyalty to one specific company, as they worked for different concerns. Little secrecy existed in the production of

¹⁵ Richards, *The Ready-to-Wear Industry*.

¹⁶ Smith, "A Study of Uneven Industrial Development"; Richards, *The Ready-to-Wear Industry*.

clothing since rival firms often hired the same contractors to manufacture their goods.

Therefore, unauthorized copying of garments, known in the industry as piracy, was rampant.

Women's Wear Daily regularly reported sightings of peculiarly similar dresses in even the most exclusive Fifth Avenue shops such as Henri Bendel and Louise and Co.¹⁷

Rapid Growth

Between 1889 and 1899, the women's clothing industry grew three times as fast as other manufacturing, measured by the number of workers and the value of output. In fact, the women's ready-to-wear industry grew at a faster rate than the population. The New York ready-to-wear industry expanded in importance, favored by a large supply of largely immigrant labor, efficient distribution infrastructure, proximity to other clothing-related manufacturing and retailing firms, and the existence of a metropolis with a great concentration of wealth. Hotels, theaters, movie and opera houses, concert halls, and other recreational and shopping activities encouraged the growth of New York as the natural style capital of America. New York's industry grew fastest in the nation and by 1899 the value of its manufactured product had risen to 64.5% of the total. This rapid growth continued into the twentieth century. From 1900 to 1910 the volume of women's ready-to-wear doubled.¹⁸

At the turn of the century, manufacturers opened women's firms on a shoestring and competed effectively with older, well-established firms due to the small amount of capital required to operate factories, together with the division of risk offered by the contract system.

¹⁷ A.C. Johnston & Florence A. Fitch, *Design Piracy: The Problem and Its Treatment Under NRA Codes* (Washington: Office of N.R.A. Administration, 1936); "Costumes," *Women's Wear*, September 2, 1911, 1.

¹⁸ Jessica Daves, *Ready-Made Miracle: The American Story of Fashion for the Millions* (New York: G.P. Putnam's Sons, 1967), 34; Drake and Glaser, 25.

Low entry costs plus the growing interest by American women to consume fashion created a plethora of manufacturing and merchandising firms. According to one writer,

New machinery has never been expensive enough to preclude its use by the smallest manufacturers. Where, again, the large firm may acquire new machinery or greater skill in management, the competitive advantage so earned may be frequently overcome by the absurdly low overhead costs of the small firm.¹⁹

Women demanded fashion, and retail stores catered to these desires through constant newspaper advertisements of the latest styles. Firms embarking on a career in dress manufacturing could be lacking in all of the necessary ingredients for success except one, the hope of the employer that the firm could create a popular style or “number” that captured the public’s imagination. In other manufacturing industries which were less fashion oriented with standardized products, capital requirements were much greater. These firms needed to maintain large production plants and consistently sought improvements in technical efficiencies. In dress manufacturing, however, the prevalence of outside manufacturers removed the need for a new firm to invest large sums in plants, equipment, and even employees.²⁰

During the early twentieth century, the number of small and medium size shops increased greatly. Firms employing five or fewer employees grew from 9.7% of the total number of firms in 1904 to 27.2% of the total in 1919. Firms employing between six and twenty workers grew from 33% of the total in 1904 to 42.6% of the total in 1919. Medium size shops employing from twenty-one to fifty workers showed increases from 1,143 to 1,649 shops. The value of output from these shops increased as well. From 1914 to 1919 the value

¹⁹ Leo Wolman as quoted in Drake and Glaser, *Trends in the New York*, 25.

²⁰ Simon Larson, “Union Impact on Price in The Dress Industry,” (masters thesis, City College, 1963).

of manufactured women's ready-to-wear clothing rose from \$473,888,354 to \$1,208,543,128, a 39% increase, in part due to the mounting scientific exactness of production. In 1919, value of the dress industry in the United States was exceeded only by the food and the iron and steel manufacturing groups.²¹

The growth of the ready-to-wear apparel industry caused the decline of personal dressmakers and seamstresses and the creation of ample factory employment opportunities. According to the U.S. Census of Occupations the number of non-factory dressmakers and seamstresses declined from 498,000 in the year 1900 to 235,000 in 1920 and 158,000 in the year 1930. In contrast, U.S. Census of Manufacturing 1919 figures, placed textile and clothing manufacturing as the number one employer in the nation. Due to the demand for ready-to-wear and the growth in number of small and medium sized firms, the rate of expansion in factory employment from 1900 to 1920 was faster than at any other time thereafter. By 1923, New York was producing 79.9% of women's clothing; other clothing production occurred in other large cities such as Chicago and St. Louis. Of all of the workers engaged in manufacturing industries in 1919 in the five boroughs of New York City, nearly one in every six was at work on women's clothing.²²

The Emergence of the Dress Industry

Dresses or one-piece garments sewn from shoulders to hems were a twentieth century product. In the 1890s, separate shirtwaist blouses and skirts were often worn with matching jackets. As the twentieth century progressed, bodices and skirts were often sewn together at

²¹ Valerie Mendes and Amy De La Haye, *20th Century Fashion* (New York: Thames and Hudson, 1999); Richards, *The Ready-to-Wear Industry; The Clothing and Textile Industries in New York and Its Environs* (New York: Regional Plan Of New York And Its Environs, 1925), 17; U.S. Census of Manufactures, 1920: 30

²² U.S. Census of Manufacturing, 1923.

the waistline and were much simpler in cut, decoration, and amount of fabric than previous shirtwaist and skirt combinations.²³

Prior to the emergence of rayon from its experimental state to a staple fiber, and the enterprising use of cotton as a style fabric, there were basically two dress industries: that of silk dresses and that of house or wash dresses.²⁴ The silk dress industry created more specialized and ornate garments produced for street apparel whereas the housedress industry produced utilitarian garments such as uniforms, aprons, and cotton dresses for use in homes and workshops. The silk dress industry produced on a smaller scale, whereas the housedress industry sold to retailers in dozen lots rather than as individual garments. In the wash dress industry,

Style was of little importance. Their simple construction and their freedoms from the risk of style obsolescence permitted standardization, volume production methods, and the spreading of production schedules over relatively long seasons, and made it unnecessary to employ skilled labor in their production.²⁵

In contrast, style was of utmost importance in the silk dress industry and production was divided among thousands of small factories using tailoring methods of manufacturing and employing a large number of semi-skilled workers. With improvements in the quality of rayon in the late twenties and the introduction of new styles in house dresses, prices of house dresses overlapped those of the lowest priced silk dresses. Women who once could only

²³ Payne, Winakor, and Farrell-Beck, *The History of Costume*, 575; Phyllis, J. Tortora, and Keith Eubank, *Survey of Historic Costume*.

²⁴ In the 1929 Census of Distribution, Products of Manufacturing Industries, the dress industry is divided into all cotton, all rayon, all silk, and a category for all other fabrics. Wool is listed under the categories of ensembles, suits, separate coats, separate skirts, and coats.

²⁵ S. Trowbridge, *Some Aspects of the Women's Apparel Industry* (Division of Review, N.R.A., Work Materials No. 44., 1936): 95.

afford house dresses were now able to afford the more stylish silk dresses, thus blurring noticeable class distinctions once made obvious by clothing.²⁶

Toward the end of the 1920s, economic prosperity which had in part fueled the rise of the women's ready-to-wear apparel industry faltered. On October 29, 1929, the stock market collapsed, and the United States and Europe (to a lesser degree) sank into the period now known as the Great Depression. Although as much as twenty five percent of the American work force was unemployed during periods of the Depression, people continued to consume goods. The economic problems of the Depression had minimal effect on the growth of the dress industry in New York in terms of overall volume. But more high priced than lower priced firms went out of business. Shopping habits changed as women of all income levels needed to maximize their clothing purchases. This they achieved through comparative shopping, evaluating similar clothing styles sold by different stores and purchasing based on price in order to get the most for their money.²⁷

Changes in apparel industry practices solidified the institution of manufacturing in precise price lines, as firms specialized in very exact price points, with some selling dresses at only one wholesale price. Each manufacturer differed in the quality of labor they employed, the technical methods of production they used, and in the markets for their merchandise. Dress manufacturers specialized in specific price points for evening wear, tailored garments, party frocks, dresses, junior misses dresses, etc. Within each line, manufacturers were highly competitive within their own price lines and merchandise

²⁶ Drake and Glaser, *Trends in the New York*, 65.

²⁷ "Bootleg Fashions," *Collier's*, October 5, 1929, 21; John Keating, speaking as legal counsel for the Code Authority, on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 25; Bernard Barber and Lyle Lobel, "Fashion in Women's Clothes and the American Social System," *Social Forces* 31 (1952): 124-131.

boundaries. Manufacturers were also able to compete with neighboring price lines. Thus, a firm manufacturing dresses to sell at \$4.75 wholesale not only competed with other firms in the same price line but also with firms specializing in price lines immediately below and above the \$4.75 line.²⁸

Mirroring the practices of manufacturing firms, retail stores compartmentalized by price and type of merchandise and hired buyers for individual departments. Ready-to-wear departments included women's dresses, coats, and suits, sportswear, and junior miss for young women, among others. Expensive, medium, and bargain dress departments were created. In other words, the buyer for the house-dress department bought exclusively from house-dress manufacturers who produced in a specific price point; whereas buyers for the junior miss department dealt exclusively with junior miss creators. Price-lining reduced confusion and permitted greater assortment of sizes and colors in a more limited number of lines.²⁹

During the Great Depression, thousands of able-bodied, willing workers were unemployed. Accustomed to buying ready-to-wear in a variety of price and quality levels, women chose to buy less-expensive garments rather than cease buying altogether. Women once comfortable paying retail prices of \$16.95 for their dresses shopped around for one at \$10.95, while the \$10.95 customer settled for a \$6.95 dress. By 1933, the wholesale price of 79% of all dresses was \$4.75 or less. The shift in consumer demands from high priced to low

²⁸ Daves, *Ready-to-Wear Miracle*; Drake and Glaser, *Trends in the New York*; Payne, Winakor, and Farrell-Beck, *The History of Costume*, 575; Phyllis, J. Tortora, and Keith Eubank, *Survey of Historic Costume*, 4th ed. (New York: Fairchild Publications, 2005), 389.

²⁹ John Keating, speaking as legal counsel for the Code Authority, on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 25; Jane Farrell-Beck, and Colleen Gau, *Uplift: The Bra in America* (Philadelphia, PA: University of Pennsylvania Press, 2002), 87; Grace Kunz, *Merchandising: Theory, Principles, and Practice* (New York: Fairchild Books, 1998).

priced dresses caused a fundamental shift in the competitive relationship of the dress industry. Inexpensive dresses accounted for the majority of the dress industry by 1942. According to published records of the U.S. Census of Manufacturers, the average wholesale value per dress decreased from \$5.39 in 1927 to \$5.11 in 1929 to \$3.74 in 1931 to \$2.60 in 1933 to \$2.95 in 1935 and to \$2.62 in 1937.³⁰

The 50% reduction in ten years from dresses wholesaling at \$5.39 to \$2.62 was caused in part from the decline in cost and quality of dress materials and the sub-contracting system that outsourced production. The demand for inexpensive dresses was strong, stimulating manufacturers to produce low cost creations. According to a report of the General Executive Board of the International Ladies Garment Workers Union in 1932:

The crisis, within the past three years, has practically revolutionized the main lines of dress merchandise to meet a growing demand for cheaper garments. As a result of this tendency, the number of firms manufacturing higher grade dresses has tremendously decreased, giving way to \$3.75 and \$6.75 production lines which today constitute the bulk of the market's output. In a word the production slogan in the New York dress industry has now become not quality but cheapness, and as the cost of materials, overhead, and marketing does not vary substantially between firm and firm, this rush for cheapness has been carried on principally at the expense of labor.³¹

Many manufacturers ardently advertised their products on characteristics of price. One headline from an 1932 advertisement, stated, "We're Shouting Value" with an illustration of evening wraps available at wholesale prices of \$10.50. In the copy, the manufacturing company Del Opera Wraps declared, wraps "at a price that's going to make it

³⁰ Drake and Glaser, *Trends in the New York*, 78.

³¹ "Dress Trade's Growth Brings Union Problem," *Women's Wear Daily*, May 2 1932, 13.

very easy for you to do a volume business at a good mark-up.” This ad and ones similar to it pronounced value rather than quality or workmanship of goods.³²

The tremendous number of firms producing low priced one-piece dresses in the 1920s was evident in statistical data available from the period (Table 2.1).

Table 2.1 Number and value of dress establishments, 1929

Dresses, 1 piece	Number of establishments	Number of dresses	Value
Made to retail for:			
Under \$1	108	22,865,972	\$14,238,961
\$1 to 1.99	254	35,785,413	\$35,903,510
\$2 to 2.99	272	15,907,909	\$26,501,877
\$3 to 4.99	230	14,190,180	\$44,017,184
\$5 to 9.99	497	34,534,628	\$187,131,190
\$10 to 24.99	812	31,212,384	\$323,167,367
\$25 and over	511	8,340,375	\$192,311,325

Source: U.S. Census Office. Fifteenth Census. *Fifteenth Census of the United States Taken in the Year 1929, Distribution* (Washington, D.C.: Government Printing Office, 1932), 23.

This table illustrates the number of garments produced by the lower priced firms; the 108 establishments producing goods made to retail under \$1 produced 211,721 garments per firm whereas the 511 establishments producing goods made to retail for \$25 and over produced only 16,321 garments per firm. While the value of output is highest in the \$10 to \$24.99 price range, these dresses sold at retail for more money than their lower priced counter-parts.

According to Drake and Glaser, statistics showing the distribution of dress production by price most clearly reveal the expansion of the low price dress industry. Census data from 1929, 1931, and 1937 detail the total output and total wholesale value of dresses for dresses made to retail under \$2 and those made to retail at or over \$2 (Table 2.2).

³² “We’re Shouting Value,” *Women’s Wear Daily*, November 1, 1932, 9.

Table 2.2 Number and value of dress production, 1929, 1931, 1937

Year	Number of dresses produced		Wholesale value of dresses	
	Under \$2 (retail)	Over \$2 (retail)	Under \$2	Over \$2
1929	35.8%	64.2%	6.0%	94.0%
1931	40.2%	59.8%	8.1%	91.9%
1937	54.6%	45.44%	17.4%	82.6%

Source: Leonard Drake and Carrie Glaser, *Trends in the New York Clothing Industry* (New York: Institute of Public Administration, 1942): 81.

The physical output of dresses made to retail under \$2 increased from slightly more than one-third of the total production of dresses in 1929 to more than one-half in 1937. Measured by its wholesale value, the relative importance of this low price group grew from 6% to more than 17% between 1929 and 1937. Related evidence from the National Credit Office indicated that sales of dresses in the wholesale price range \$3.75 and below increased from 17.2% of the total sales of dresses in 1931 to 28.6% in 1936.³³

The paring down of profits per unit due to contracting, coupled with the fact that fewer units were sold, led to a stampede of bankruptcies. Firms continuously went into and out of business. Executives who had found the women's wear industry easy to enter made their exits more precipitously. Studies undertaken by the New York Dress Joint Board of the Dress and Waist Makers Union revealed that "Of the 1,687 [manufacturing] dress firms reported doing business in Manhattan in the spring of 1925, fully 1,411, or 83.6% of the original number had discontinued business by the spring of 1933."³⁴ Insolvency rates of apparel firms during the 1932-1933 year were 12%, compared with an average of 2.9% in the semi-durable industries, and 1.8% in durable groups. Other sources indicated that

³³ Ibid., 81; *Recent trends in important manufacturing industries in New York* (New York: Division of State Planning, 1941).

³⁴ Lazare Tepere, *The Woman's Garment Industry, an Economic Analysis* (New York: Educational Department of the International Ladies Garment Workers Union, 1937), 18.

customarily about 20% of apparel firms went out of business annually, and that this percentage doubled in 1932.³⁵

Importance of Style and Fashion Change

By 1910, every article of women's clothing could be purchased ready-to-wear, off of retail store racks. Style changes increased in frequency, and style variety grew in extent in the 20th century. The apparel industry utilized mass media to encourage consumers to respond to new styles and advertisers began to emphasize fashion as the most important motive to purchase a product rather than reasons of health or durability.³⁶ Fashion stimulated sales by encouraging obsolescence and premature replacement of goods. *Women's Wear Daily* noted:

This feature of the business is a radical departure from the old time system of turning out good, staple styles in quantities, when the idea of "dressing in uniform" as it is now called, was not regarded as objectionable, but contrarily, the more one saw of any special style and color, the more fashionable it was considered.³⁷

An atmosphere was created wherein a woman would almost rather be "caught dead" than wear last year's style or gaze on another woman wearing the same dress.³⁸ Obsolescence set in, not because a product became worn or unusable, but because it was out of date; it was no longer fashionable. The public compulsion for continual style creativity, evinced by the number of styles introduced each season by various manufacturers, was encouraged by the ready-to-wear apparel industry. Rapid obsolescence was a means for increasing consumer demand and expanding sales, and enabled firms an equal opportunity to create successful

³⁵ Richards, *The Ready-to-Wear Industry*.

³⁶ James D. Norris, *Advertising and the Transformation of American Society, 1856-1920* (New York: Greenwood Press, 1990): 104; Parsons, "No Longer a 'Frowsy Drudge,'" 42; Shaw, "American Fashion: The Tirocchi sisters in context."

³⁷ *Women's Wear*, November 30, 1910.

³⁸ Weare Holbrook and Frank Fogarty, "Clarence," *The New York Herald Tribune*, January 20, 1935.

sellers and achieve maximum profits. Even if a woman sought to purchase outdated styles, manufacturers and retailers only produced and stocked salable fashionable goods.³⁹

As the desire to keep up with changing styles began to increase, a philosophy evolved that quality was less important than stylishness. While consumers of haute couture and custom-mades stressed quality of goods and personalization of their relation with the producer, ready-to-wear consumers seemed more interested in following the every whim of fashion produced in prices they could afford. In the National Recovery Administration's Hearing on the Codes of the Dress Industry in 1934, John Keating, legal counsel for the Dress Code Authority, believed that by 1934 one-tenth of all dresses manufactured in the United States could clothe the American people. The abundance and proliferation of changing styles, however, caused American women to desire and purchase a multitude of dresses, which the fashion industry made available with great abundance.⁴⁰ Further, women desired a variety of dresses and sought quantity, rather than purchasing one or two good quality, expensive dresses wearable for a number of years. In the U.S. Supreme Court case decision of *FOGA vs FTC*, Judge Black expressed the importance of fashion over all other characteristics of a garment.

Women do not buy hats, they buy fashions. They most certainly do not protect the wearer against rain or snow or cold. Virtually their sole function is to make the wearer happy in the thought that she has a beautiful thing which is in fashion. No matter how beautiful, if not in fashion the hat will not sell. A woman buys fashion, not goods.⁴¹

³⁹ Paul M. Gregory, "Fashion and Monopolistic Competition;" Larson, "Union Impact on Price," Chapter 1.

⁴⁰ The N.R.A. hearing will be discussed in greater detail in Chapter 4: The Fashion Originators Guild of America. John Keating, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 21.

⁴¹ "FOGA was Self-Appointed Tribunal, High Court Finds," *Women's Wear Daily*, March 4, 1941, 1.

The increasing importance of style changes throughout the twentieth century had a strong influence on the operation of the clothing industry. Success was not entirely determined by the quality of production or by the costs of production. Profits and longevity of firms in the dress industry were to a large extent due to success in styling and luck in selling. Despite early importance of technology in industry growth, speed of fashion change was more important than advanced technical know-how. Constant fashion change necessitated hand-to-mouth buying of materials, small-lot production, excessive mark-downs of unfashionable goods, and intensified the seasonality of production. These changes often artificially raised product prices and lowered labor wages.⁴²

Fluctuations in fashion were so great and occurred so quickly that manufacturers and retailers were reluctant to assume the risk of purchasing materials, trimmings, and stock long in advance of actual production or the start of a season. Due to this, on average, the manufacturing workshops, as distinct from the designing rooms, were busy only 30-32 full weeks of the year. The ability to concentrate so much of the year's business into short periods made possible the existence of many firms because there were ample opportunities to enter and exit the industry. Firms needed only to carry small stocks since the popular style changed so quickly. Success in marketing clothing, especially some styles of women's clothing, had become so speculative as to be "compared to playing the stock market."⁴³ To the dress manufacturer, production was secondary to styling and merchandising. But if two firms had equally attractive styles, the firm willing to sell at the lowest prices would do a

⁴² "Why do Women Disregard Standards of Value to Follow Style?" *Women's Wear*, February 3, 1919, 40; Paul M. Paul M. Gregory, "Fashion and Monopolistic Competition," *The Journal of Political Economy* (1948): 74.

⁴³ *The Clothing and Textile Industries in New York and its Environs*, 19.

greater amount of business, and under these circumstances the determining factor was likely to be cost of production.⁴⁴

The towering importance of style in the dress industry was incalculable. Fashion commentator Helen E. Meiklejohn stated style was the very essence of the industry, determining geographical concentration, the structural scheme of the jobber-contractor arrangements, the size and amount of production, conditions in the workroom, and rate and terms of employment. This author further stated,

Style is largely responsible for the high rate of business mortality...It presides over merchandising practices and creates a market with laws all its own; it is not without significance in shaping the character of trade association and labor union. Finally, style, like a magnet, exercises a selective influence on those who enter the industry.⁴⁵

The importance of style was thought to negatively affect the quality of garment production. Because of this, in 1919 the need for a "Clothes Administration" to do similar work to that of Food Administration was stated in the trade press. Some believed rapidly changing styles "impeded rational choice" by taking women's minds off of price, quality of materials, and workmanship. These authors contended rapid style changes encouraged wasteful buying for the simple reason that last season's clothing were discarded after mere months never to be worn again.⁴⁶ Consumer dependence on style change allowed producers of goods to sell inferior goods at exorbitant prices since each season's offerings were touted as new and different. But were they truly new? In the women's ready-to-wear apparel industry, the creation and advertising of new styles more often changed the mind of the buyer rather than offering significant style changes, making her dissatisfied with her existing

⁴⁴ Paul M. Gregory, "Fashion and Monopolistic Competition," Larson, "Union Impact on Price," Chapter 1.

⁴⁵ Helen E. Meiklejohn, *Dresses: Impact of Fashion on a Business* (New York: McGraw-Hill Book Co., Inc., 1938).

⁴⁶ Paul M. Gregory, "Fashion and Monopolistic Competition," 70.

clothes.⁴⁷ Fashion writer Elizabeth Hawes expressed the irony of yearning for new items, differentiated from past offerings only in the smallest detail in the following quote.

All the filling in is done on the same basic patterns...It is the proud boast of some wholesalers that they make up a whole line with only three dress patterns. The newness, so loudly called for, is new trimming, new collars and cuffs, new glass buttons, new flowers, and all of this, not too new, please.⁴⁸

As the importance of style replaced quality and workmanship with the rise of the ready-to-wear industry, women no longer desired apparel that would withstand the test of time.

Instead, many preferred to purchase less expensive garments, in inferior materials, as long as the garments were fashionable. Perhaps exaggerating the importance of style to twentieth century women, a writer for *Women's Wear* stated "today's woman almost does not care if the dress is put together with pins. If it gives her the fashionable appearance she is satisfied."⁴⁹

Originals and Adaptations

Fashion as a device to encourage obsolescence of goods meant that at any one time there were a great variety and multiplicity of styles. To create these styles, designers and manufacturers followed the general tendencies and ideas occurring in their society in movements of art, architecture, politics, high-society life, and by studying cultures and civilizations of the past and present. Culled from the same sources, styles frequently followed a general idea. In the 1920s, for instance, the fashionable style included decorative effects imitative of Russian peasant motifs or Egyptian inspired designs.⁵⁰

⁴⁷ Ibid., 75.

⁴⁸ Elizabeth Hawes, *Fashion is Spinach* (New York: Random House, 1938), 108-9.

⁴⁹ *Women's Wear*, August 10, 1910.

⁵⁰ Payne, Winakor, and Farrell-Beck, *The History of Costume*, 573.

When a particular arrangement of elements in a style caught the public's imagination, other designers and manufacturing interests would imitate the garments. Some manufacturers would change minor details such as color, pattern, and use or type of trimmings. Other manufacturers would copy the garments in exacting detail substituting the more invisible elements such as fiber type or quality of materials. Manufacturers copied exactly or made minor changes to more closely approximate their target markets' price range. They copied or adapted to save money on hiring their own designers as well as avoiding possible financial losses incurred from product failures. Nearly all price ranges in the apparel industry adapted/copied, especially since there were few visual differences between copies and the originals to the inexperienced eye.⁵¹

Different interests classified garments as adaptations, copies, or originals. Because of the tenuous differentiation between these classifications, one of the more controversial issues argued in the trade press during the period 1910 to 1941 was at which point adaptations ceased being copies and became original creations. In accounts of *Women's Wear Daily*, the NIRA hearings of 1934, and in the *FOGA v. FTC* Supreme Court case, the various definitions of the terms adaptations, copies, and originals were regularly discussed. Some within the apparel industry classified all garment styles as originals claiming each garment uniquely combined diverse elements into new creations. Others believed garments that followed the lines and silhouettes of popular styles were adaptations as they each reflected the prevailing fashion yet were stylistically unique in some minor way. Others within the

⁵¹ Jessie Stuart, *The American Fashion Industry* (Boston: Simmons College, 1951), 28; Parsons, "No Longer;" *Fashion Originators Guild of America v. Federal Trade Commission*. 312 U.S. (1941).

apparel industry argued most garments were copies since they contained changes so small as to be nearly invisible.

Manufacturers regularly advertised their goods as originals, adaptations, or copies depending on their meaning of the words and the ideas the manufacturers wished to convey to consumers. In an ad from 1919, Maurice Rentner, advertised his company's goods as "in distinctly, original adaptations" of various fabric names and garment styles such as "kitten's ear crepe," "satin-madelon," and "paullette chiffon," etc (Figure 2.1). Through this ad, M&H Rentner is proclaiming that their creations are original garments adapted from or inspired by prevailing fashions or fabric ideas. The truthfulness of originality of their garment styling is difficult if not impossible to verify.

Falltime's Silhouettes

In distinctly
Original
Adaptations
of

KITTEN'S EAR CREPE
MOONGLO METEOR
SATIN-MADELON
PAULLETTE CHIFFON
DUVETYN DE LA REINE
TRICOTINE
SUPER TWILL
TRICOLETTE
DOMINETTE TRICO
SYLVANETTE

No 2983 - A Rentner Frock
of Kitten's Ear Crepe



M&H Rentner
LARGEST MAKERS of DRESSES in the WORLD

Figure 2.1 M&H Rentner advertisement.

Source: "Falltime's Silhouettes," *Women's Wear Daily*, June 24, 1919, 21.

Many within the apparel industry wrestled with the suggestion of "original" designs, believing all garments to be imitative adaptations. Writers such as M.D.C. Crawford contemplated whether any styles were truly original, since pre-existing ideas, styles, and

trends were the basis for all garments.⁵² Many in the apparel industry confessed that past creations were the inspiration for their garments. However, the crux of the piracy issue would be at what point adaptations became direct copies. It was generally agreed that adaptations were acceptable, and a normal aspect of fashion circulation. Maurice Rentner, chairman of the FOGA argued that likenesses of a certain style or “derivation through inspiration” were acceptable as long as manufacturers did not present “only insignificant changes in detail.”⁵³ The assessment of whether a garment was an adaptation or copy was highly subjective and most unclear. Rentner himself conceded that the argument concerned “a conflict of individual interest.”⁵⁴ An exact definition of an original design remained ambiguous. Undoubtedly, many consumers assessed garments of similar style as nearly identical and purchased based on price considerations rather than exacting evaluations of minute style variations. It was for this reason that some within the apparel industry sought to protect their “original” designs from all manners of adaptations and copies.

Fashion, Class, and Social Status

In the following section, I discuss theories regarding dress and fashion as status symbols. I particularly contextualize these theories in relation to the structure and characteristics of the early twentieth century women’s apparel industry. Social differentiation and stratification, also known as status, or social position, is a relative value placed by a society on a role or group of roles. Roles define the individual in his or her society by describing the special tasks or functions he or she has in that society. Ascribed roles are

⁵² M.D.C. Crawford, “We Need Interpretive Creation-Not Copying,” *Women’s Wear*, June 28, 1919, 3.

⁵³ Maurice Rentner, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 113.

⁵⁴ *Ibid.*

conferred upon birth; sex, nationality, and age. Achieved roles are gained through choice and decision; career, marriage, or avocation. Within societies, individuals order themselves and others on a superiority-inferiority scale with respect to the comparative degree to which they possess or embody socially approved or desired attributes or characteristics. This hierarchical positioning identifies one with others in a social position and serves to differentiate from others especially in lower status groups due to the degree to which certain characteristics are embodied. Visual signs and symbols of class make manifest placement and belonging to a particular status group.

One of the most obvious signs and symbols of class distinction is clothing. Clothing can facilitate the assumption of a role both by aiding the individual's actual performance and by persuading others that he or she belongs in the role. The use of clothing is a common way to demonstrate one's roles and therefore status. Clothing is a universal cue to status; it is a status symbol. Of all of the various functions of clothing, including modesty, protection, and beautification, comparative anthropological studies suggests that status display is the most universal.⁵⁵

Dress and Fashion as Status Symbols in Open Class Systems

Societies with open class systems are considerably more advantageous to the promotion of fashion. Characteristics of open class systems include mobility within and between classes, openness for change, and greater distribution of economic resources throughout the population. Twentieth century American life was representative of an open

⁵⁵ Penny Storm, *Functions of Dress*, (New Jersey: Prentice Hall, 1987); F.M. Keesing, *Cultural Anthropology* (New York: Holt, Rinehart, & Winston, 1958: 202-4; Emile Benoit-Smullyan, "Status, Status Types, and Status Interrelations" *American Sociological Review* 9 (1944): 151-161; Gideon Sjoberg, "Are Social Classes Becoming More Rigid?" *American Sociological Review* 16 (1951): 775-783.

class system. Based largely on materialistic gain, the American open class system judged individuals primarily on their ability to control their economic resources, their ability to consume, and their purchasing power. The power of clothing to represent status was strong in this open class system characterized by the opportunity and desire to achieve wealth, great and abundant economic resources, a growing economy, the expanding social roles of women, increased opportunities for consumption, and the maturation of mass marketing. Twentieth century Americans equated consumption with social class perhaps because of the perceived relationship between consumption and wealth or income; wealth or income with occupational position; occupational status with social class; and thus, consumption with social class⁵⁶

Theories of Fashion Diffusion

Veblen (1934) wrote extensively about the demonstration of social class and the emulation of status through the display of ornaments and clothing. Veblen's theory of conspicuous consumption or competitive emulation stated that individuals copied those of higher status whom they wished to imitate and that clothing primarily functioned to show the social status of the wearer. Demonstrating Veblen's theory of competitive emulation, the purchasing of ready-to-wear clothing allowed women the occasion to display their social status, aspire to higher status levels, or give the appearance of higher status. The class-symbolic functions of women's dress were extolled in fashion magazines of the period with headlines such as "If at first you don't succeed, change the way you dress." Clothing was one way in which individuals could climb the ladder to success both personally and financially.

⁵⁶ Melanie Archer, and Judith R. Blau, "Class Formation in Nineteenth Century America: The Case of the Middle Class," *Annual Review of Sociology* 19 (1993): 17-41.

To improve their appearances and likelihood of success in both love and work women were encouraged to adopt fashionable clothing.⁵⁷

With increased technical advancements, in textiles especially, that made expensive originals and cheaper reproductions more similar, fashions diffused to all economic classes. According to the trickle-down theory of fashion diffusion, when the highest classes adopted a fashion, the classes below, wanting to move up or even to appear already moved up, proceeded to adopt the new fashion. The fashion continued a downward adoption through the classes until it reached the lowest class economically able to afford the style variation offered to them, usually made with less desirable materials and poorer workmanship. By the time the lowest price ranges adapted and modified the style, the upper ranges changed their styles to differentiate from those they considered inferior. The adoption by the highest classes of a new fashion, making obsolete the older style, made the cycle begin again. In the dissemination of fashion, innovators first created the newest styles, leaders implemented the style into their lifestyles, and followers embraced and popularized the style into a fashion. By its very nature, the concept of fashion created a similarity of styles. In order for a garment to be “in fashion” a critical mass of people needed to adopt it and that meant the trickling down of at least some styles.⁵⁸

In nineteenth century America, fashion more successfully demarcated class distinctions. Although lower classes sought to maintain fashionable appearances, high fashion items were somewhat restricted to the upper classes who could afford the trims,

⁵⁷ Thorstein Veblen, *The Theory of the Leisure Class* (New York: Random House, 1934); *Ladies Home Journal*, November 1934, 32; *Mademoiselle*, July 1939, 71.

⁵⁸ Storm, *Functions of Dress*; Phyllis J. Tortora, and Keith Eubank, *Survey of Historic Costume*, 4th ed. (New York: Fairchild Publications, 2005), 467; Georg Simmel, “Fashion,” *International Quarterly* (1904): 130-155.

flounces, and fine fabrics that distinguished the elite from the lower classes.⁵⁹ As the twentieth century progressed, however, a number of factors equalized fashion among the classes. Styles were simpler with fewer decorative effects and less fabric, making them easier to imitate. Standardization of products, a necessary facet of mass production, limited the degree of status differentiation through clothing. Equitable distributions of goods enabled a degree of material equality. Individuals craved symbols of upper class membership; yet, demarcations between the classes were less severe. According to Barber and Lobel writing in 1952, the delineation between adjacent social classes was vague in the United States. They stated,

The American class system is a finely-graded continuum of strata rather than a series of sharply separated ranks with little mobility between them. The result of this kind of class structure, in combination with American egalitarian values, has the possibility of asserting the equality and similarity of everyone in the society, despite the actual class differences which exist.⁶⁰

The preceding quote is not to say, however, that all Americans enjoyed the vagueness of class distinctions. Throughout time and in various cultures, sumptuary laws prevented imitation of higher classes by limiting the adoption of specified items by lower classes. In twentieth century American life, however, no such sumptuary laws existed, and as the upper class reduced its proportionate share of consumer power and the middle class raised its portion, it became increasingly difficult for the upper class to prevent imitation. The elite were less able to afford garments too costly for the rising business person to copy and less able to enact and enforce laws to limit the behavior of an increasingly powerful middle class.

⁵⁹ Joan Severa, *Dressed for the Photographer: Ordinary Americans and Fashion, 1840-1900* (Ohio: Kent State University Press, 1995).

⁶⁰ Paul Blumberg, "The Decline and Fall of the Status Symbol: Some Thoughts on Status in a Post Industrial Society," *Social Problems* 21 (1974): 480-98; Bernard Barber and Lyle Lobel, "Fashion in Women's Clothes and the American Social System," *Social Forces* 31 (1952): 124.

They resorted to frequent, and often major, fashion changes to demonstrate their superiority.⁶¹ Further, the apparel industry itself had become a major style change force by the twentieth century, making style change a constant characteristic of the apparel industry, and thus consumption habits.

The Inherent Similarity of Fashion

Individuals desire to be unique and concurrently fit into a specific group. Fashionable dress allowed one to concomitantly conform to a group while safely differentiating oneself. There was a wide enough range of fashionable dress to effectively express oneself as a unique individual through color choice, textures, and the choosing of accessories. Yet, even these attempts at differentiation were somewhat limited by the available choices. Fashion enhanced one's freedom to differentiate by choosing clothes that expressed individual tastes while also limited it by forcing one to stay within the limits of the alternatives of fashionable dress. Merchants did not typically carry unfashionable goods, further restricting free consumer choice. Fashion limited the genuine variety available to consumers and at the same time contributed to building shared experiences and taste as people were restricted to purchasing particular types of clothing.⁶²

Although styles changed rapidly in the twentieth century, the very concept of fashion encouraged women to dress in similar manner. In order to become a fashion, styles needed to be copied and much imitated. Improvements in the technical proficiency and the rapid adoption of ready-to-wear apparel created clothing with "gross similarity and subtle

⁶¹ Desmond Morris, *The Human Zoo* (New York: McGraw Hill, 1969); Storm, *Functions of Dress*.

⁶² Storm, *Functions of Dress*; Elizabeth Hurlock, *Psychology of Dress* (New York: Arno Press, 1976); Herbert Blumer, "Fashion Movements," *From Collective Behavior: An Outline of the Principles of Sociology*, ed. Robert Ezra Park (New York: Barnes and Noble, 1939).

differences in fashion.”⁶³ Even when style variations were numerous, only a few garment styles would be truly fashionable. This idea is supported by a 1930 estimate that, of the thousands of models presented by the Parisian haute couture in one season, only twenty were copied by U.S. manufacturers in all price ranges.⁶⁴

Scholars have stated that stylistic similarities in fashion of the early twentieth century were in part due to the consolidation of the middle class and its culture of consumption. Leach described the availability of fashion to consumers of all economic levels as a key feature of the success of early department stores. According to Kidwell and Christman, the vast availability of ready-to-wear clothing in the early twentieth century was the primary reason for the democratization of clothing. Madelyn Shaw commented that, in the twentieth century, social class was much more fluid in the United States than in Europe. She continued to state, that while there was a clearly demarcated leisured society in the United States that showed their wealth through possessions, there was also a need for stylish apparel among the countless middle class women who worked outside of the home.⁶⁵ Women were more able to afford and had more opportunities for participation in the following of fashion.

Style and Design Piracy

One of the most distinctive characteristics of the women’s clothing trade during the early 20th century was the ease and rapidity with which rival firms copied the innovative product designs of the leading firms. Successful styles in high price markets were quickly

⁶³ Paul H. Nystrom, *Fashion Merchandising* (New York: The Ronald Press Co., 1932); Paul H. Nystrom, *Economics of Fashion* (New York: The Ronald Press Co., 1928; Bernard Barber and Lyle Lobel, “Fashion in Women’s Clothes and the American Social System.”

⁶⁴ Paul M. Gregory, “Fashion and Monopolistic Competition,” *The Journal of Political Economy* (1948): 71;

⁶⁵ Leach, *Land of Desire*; Kidwell & Christman, *Suiting Everyone*; Shaw, “American Fashion: The Tirocchi Sisters in Context.”

copied by close competitors. Firms producing for the mid- and low-priced markets copied and adapted the designs, cuts, materials, and accessories to supply their lower income customers. Designs developed by the most exclusive custom tailors and dressmakers were copied in sequence by jobbers and high grade ready-to-wear manufacturers, smaller firms working on tighter economic margins and economies of scales, and ultimately by the smallest and most marginal contractors and sweatshops.

Design piracy affected the structure and conduct of the women's clothing industry. The price of a successful new product quickly declined as competitors introduced imitations. Flooding the market with inexpensive reproductions often devalued high grade products below their cost of production because copies were more affordable to the majority of consumers and bought more readily than the more expensive originals. Design piracy induced the leading firms to continually develop new styles to stay ahead of their competitors in the high grade market and to distinguish themselves from the imitators in the lower priced lines. Throughout the season new designs were introduced and old designs were altered, fixed, and retouched. Design piracy precluded leading firms from advertising or disclosing complete and timely information about their new product lines to the general public, the trade papers, and the retailers. Moreover, design piracy exacerbated the risks of managing inventories. Retailers were cautious in their orders of new and expensive apparel because they feared that cheap imitations would quickly appear on their competitors' shelves.⁶⁶

⁶⁶ Julius H. Cohen, *Law and Order in Industry: Five Years Experience* (New York: Fairchild Publications, 1970), 87-88; Lewis Levine, *The Women's Garment Workers: A History of the International Ladies Garment Workers Union* (New York: B.W. Huebsch, 1924), 406-407; Smith, "A Study of Uneven Industrial Development," 199.

The history of design piracy in the United States apparel industry has been largely overlooked by textile and apparel historians. Many writers have commented on the proliferation and prevalence of design piracy in the apparel industry and have mentioned the FOGA as a self-help organization in the attempt to control design piracy. Legal scholars have examined the government's attitudes regarding piracy from the standpoints of intellectual property rights, collective bargaining agreements, and anti-trust legislation. These legal commentaries lack, however, the apparel industry's and the apparel consumer's perspective concerning U.S. ready-to-wear design piracy.

Style and Design Piracy from the U.S. Apparel Industry Perspective

Very little research concerning design piracy from the perspective of the U.S. apparel industry has been published. Scholars have examined attempts by the French haute couture, or elite fashion creators, to regulate the copying of their goods. Other scholars have touched upon the U.S. apparel industry's attempts to create original fashions, not dependent upon Parisian models or on specific court cases regarding trademark infringements.⁶⁷

Addressing the relationship between fashion and the Parisian apparel industry in the nineteenth and twentieth centuries, Nancy Green suggested couturiers struggled with the desire to produce haute couture custom goods and the economic need to prepare ready-to-wear clothing. According to Green, highly skilled tailors in the late nineteenth century defended their work by identifying their mode of production with art and relegating ready-to-wear to artless, industrial production. As the ready-to-wear industry grew in economic power and developed in most of the late nineteenth century industrialized societies, French

⁶⁷ Nancy Green, "Art and Industry: The Language of Modernization in the Production of Fashion," *French Historical Studies* 18 (1994): 722-748; Nancy Troy, *Couture Culture: A Study in Modern Art and Fashion* (Massachusetts: MIT Press, 2003), 284.

hegemony in the fashion business was challenged. Confronting the debate between the unique and the reproducible, French industrialists began to admit that elegance was no longer enough to ensure sufficient sales. Green stated that self-criticism and a call for modernization and industrialization by certain industry and governmental spokes-people were aimed at the French audience in order to stimulate greater productivity and maintain competitiveness. While many believed the French to control all things elegant, and commented on the “uniformization” of Americans, the French had long adapted exports to United States sizing, commercial techniques, and even “style.”⁶⁸

Troy discussed concepts of originality and reproduction, relevant to Parisian artists and designers of the early twentieth century, who attempted to protect and prolong their fashion dominance. The issues surrounding copying and copyright by the French couturiers were “matters of great concern because they raised crucial questions involving the legally and culturally constructed relationship between art and industry.” Related to apparel design, Troy analyzed the history of the *Syndicat de Defense de la Grande Couture Françoise et des Industries*. This was a group of leading Parisian designers that sought to protect the top echelon of couture houses from piracy by U.S. manufacturers, retailers, and buyers. Through an examination of newspaper and trade publications, she stated that the French couturiers found themselves in a web of contradictions as they attempted to prevent copying on the one hand and sought to exploit the practice of copying by licensing designs, in an attempt to control their reproduction and circulation. Faced with uncontrolled and often illegal or unauthorized copying of unique models, designers were forced to prohibit or try to limit mass

⁶⁸ Farrell Beck & Gau, *Uplift*; Nancy Green, “Art and Industry: The Language of Modernization in the Production of Fashion,” 722-748.

production in order to protect their businesses. Troy found that the initial strength of the Syndicate to protect designs during World War I was illustrative of how important the couture industry was to France, and how issues of copying and protecting apparel designs were complicated on many levels.⁶⁹

Scholarly examinations of U.S. notions of originality are fairly recent. Schorman noted promotion of individuality and customized fashion habits by magazines such as *Vogue* and *Ladies Home Journal* as something of a contradiction in terms because their “exclusive” designs simultaneously passed through the hands of thousands of readers. Schorman stated that through advertising copy in fashion magazines and mail order catalogs, mass production and distribution incorporated terms of exclusivity and the emphasis upon custom work. He discussed questions of national identity with the influx of East European Americans to America, particularly during the Spanish American War of 1898.⁷⁰

Milbank provided a brief sketch of copying in the United States apparel industry.⁷¹ She stated that U.S. designers and manufacturers in the 1920s had yet to learn the art of self-promotion and copied or claimed to copy Parisian styles. Although New York based magazines occasionally gave credit to local couturiers, they never mentioned ready-to-wear designers. American women in the 1930s could buy the actual designer originals, the store-made exact copies (using the same fabrics and notions as the originals); blatant copies that did not begin to duplicate the original quality, and adaptations, or similar styles with slightly

⁶⁹ Troy, *Couture Culture: A Study in Modern Art and Fashion*, 284.

⁷⁰ Rob Schorman, *Selling Style* (Philadelphia, PA: University of Pennsylvania Press, 2003).

⁷¹ Caroline Rennolds Milbank, *New York Fashion: The Evolution of American Style* (New York: Harry N. Abrams, 1989).

changed details. Milbank stated that as the 1930s progressed, clothes designed by Americans for Americans began to fill the gaps between the Paris major and midseason collections.

Milbank identified the 1930s as the formative years that helped establish New York's wartime reputation as the fashion capital of the world. Fashion design was promoted in the 1930s through the work of Dorothy Shaver at Lord & Taylor and design exhibits at the Chicago World's Fair in 1933, and the New York World's Fair in 1939. Other historians have argued that America's reputation dissolved to a degree after the War with the re-introduction of Paris couture to the United States by fashion writers, editors, and buyers.⁷² These scholars looked at concepts of copying from a Parisian haute couture perspective, through an analysis of fashion magazines that were promoting originality yet were selling fashion that was reproducible, and from the standpoint of promotion of U.S. fashion by department stores and publicly staged events.

Style and Design Piracy from the Legal Perspective

Piracy is not a problem peculiar to apparel, yet the neglect of Congress to address this problem is well-documented. As noted by Leslie Hagen, when the piracy of musical recordings reached the \$100 million mark in 1971, Congress deemed the problem chronic enough to warrant copyright protection for the recordings. Likewise in the face of more than \$100 million a year in pirated computer chip designs in the semiconductor chip industry, Congress in 1984 granted copyright-like protection to the semiconductor chips. In 1981, apparel manufacturer Jack Mulqueen exceeded \$200 million in gross sales. Nearly all of these receipts were due to sales of garments which the company's president readily admitted were copies of original creations of other designers. The lack of protection for apparel

⁷² Valerie Steele, *Paris Fashion: A Cultural History* (New York: Oxford University Press, 1988).

designs may be due to the complex issues of free competition, the promotion of creativity, and issues of restricting class mobility inherent in regulating style piracy.⁷³

The U.S. government has never protected works of fashion against design plagiarism. Piracy is possible in the U.S. apparel industry because intellectual property rights do not protect clothing designs. The term intellectual property refers to the creative ideas and expressions of the mind and intellect that have commercial value and may receive the same legal protection of a tangible property right. Federal intellectual property laws include three separate types of protection: copyright, patent, and trademark. These intellectual property laws enable owners to select who may access and use their property and to protect their property from unauthorized use. The substantial loss of revenue to original designers and other market distortions suffered by the fashion industry as a result of design piracy have long called for a remedy. United States law, however, is incomplete as far as providing protection to fashion designs through intellectual property laws. In discussing the complexity of design protection via laws of intellectual property rights, Ralph Brown suggested,

The whole body of the law is two faced...One face recognizes that *Homo Sapiens* thrive on imitation and so does the economy. The other looks with distaste on copiers. They reap where they have not sewn; they compete unfairly. Behind the distaste is a more rational concern that easy copying discourages originality and free riding copiers may diminish investment in socially useful innovation.⁷⁴

Early legal scholarship concerning design piracy provided a history of pertinent court cases and the various bills regarding design piracy presented before the House and the Senate

⁷³ Anne Theodore Briggs, Student Author, *Hung Out to Dry: Clothing Design Protection Pitfalls in United States Law*, 24 Hastings Communications and Entertainment L. Journal 169, 169-200 (Winter 2000); Leslie Hagen, *A Comparative Analysis of Copyright Laws Applied to Fashion Works: Renewing the Proposal for Folding Fashion Works in the United States*, 26 Texas Int. L. Journal, 341-388 (1991).

⁷⁴ Ralph Brown, *Design Protection: An Overview*, 34 UCLA L. Rev. 1337, 1337-1404 (1987).

from 1914 to the time of their publication.⁷⁵ More recently, scholars have discussed legal decisions regarding the protection of apparel design. These essays were specifically from a legal, rather than an apparel industry perspective. Many of the commentaries regarding design piracy in the U.S. apparel industry supplied detailed technical information that illustrated the difficulty in providing official court supported protection to fashion as well as discussing possible legal solutions to the piracy problem. Rather than discussing these authors' hypothetical resolutions to the piracy issue, I will discuss the general hindrances of the U.S. intellectual property law framework to protect apparel designs.

Copyright protection for apparel designs is precluded under section 101 of the Copyright Act, which provides only limited protection to designs of "useful articles." The Copyright Act authorized Congress "to promote the progress of science and useful arts, by securing, for a limited time to authors and inventors, the exclusive right to their respective writings and discoveries."⁷⁶ Protection has been broadly construed by the courts to include fabric designs, but distinguishes the actual dress design as an unprotected useful article. This interpretation of the act protects the fabric design; however, the garment that is created from the fabric is not protected under copyright law.

Since 1914, seventy-three bills to protect design through copyright have been introduced in Congress. All of these bills have failed largely because providing such protection to garment designs would extend the law to include utilitarian or useful objects

⁷⁵ See Maurice Weikart, *Design Piracy*, 19 Indiana Law Journal 235, 235-257 (1943-1944) and David Goldenburg, *The Long and Winding Road, A History of The Fight Over Industrial Design Protection in the United States*, 45 JCPS 21, 21-48 (Fall 1997) for a history of design piracy legislation.

⁷⁶ U.S. Constitution, art. I § 8.

and this extension would potentially allow for monopolies in the apparel industry.⁷⁷ As quoted in Mencken's legal commentary, *A Design for the Copyright of Fashion*, in 1977, former Register of Copyrights Barbara Ringer stated that the issue of design protection is "one of the most significant pressing items of unfinished business."⁷⁸

The design patent statutes grant protection to "a new, original and ornamental design for an article of manufacture."⁷⁹ Patent protection can apply to utilitarian inventions or ornamental design. While this definition of patent protection might first seem to apply to the protection of clothing, the design of an article of manufacture must be novel, must advance beyond the prior art in a way that is non-obvious, original, ornamental, and meet the test of invention. Courts have consistently held that garment designs do not meet these requirements.⁸⁰ Further the length of time needed to determine requirements for patentability may take up to two years and the costs of obtaining a patent make this form of intellectual property protection an impractical source for protecting clothing designs, which typically have a very short style life of approximately one season or, at most, three months. Finally, even if designers secure patent approval in the Patent and Trademark Office, the courts often find design patents invalid and patent infringement is found in only about half the cases brought to court. Thus, for garment designs, the protection provided by a design patent would come too late, if at all, because fashions change rapidly.⁸¹

⁷⁷ Rocky Schmidt, *Designer Law: Fashioning a Remedy for Design Piracy*, 30 UCLA L. Rev. 861, 861-880 (1983).

⁷⁸ Jennifer Mencken, *A Design for the Copyright of Fashion*, B.C. Intell. Prop. & Tech F. 121201 (1997).

⁷⁹ Schmidt, *Designer Law*.

⁸⁰ Brassieres have been patented. See: Farrell Beck & Gau, *Uplift*.

⁸¹ Roger Meiners and Robert Staaf, *Patents, Copyrights, and Trademarks: Property or Monopoly*, 13 Harvard Journal of Law and Public Policy 911, 911-934 (Summer 1990); Christine Magdo, Student Author, "Protecting Works of Fashion from Design Piracy," LEDA, Harvard Law School (2000);

The primary function of trademark law is to protect marks or design features that primarily serve to identify the source of goods. A trademark is a name, sign, symbol, or device attached to goods offered for sale as to distinguish them from similar goods.

Internationally known trademarks within the apparel industry include the multi-national companies of Chanel with the double C logo and the signature LV Louis Vuitton logo. In the United States, trademark laws provide protection against counterfeiters that create look-alike products passed off as the true original; they do not protect the design of the goods themselves. Early U.S. manufacturers who applied false Paris labels to their products would have been guilty of violating trademark laws. However, most fashion pirates do not falsely mark their goods as coming from the originator. They place their own identification on the copies. Copyists of designs do not violate trademark laws since pirates simply copy the designs without using the name or trademarks of the designer of the works they have copied.

The principle of unfair competition is similar to trademark laws, whereas protection under unfair competition is limited to cases in which an unauthorized copy is “palmed off” as the product of an original designer. Palming off is the attempt to pass off another’s goods or products as one’s own. To be considered unfair competition, the original creator must show that the sale of the copy is likely to confuse the public as to the source of the article. Such confusion would only be found to exist if the original designer had established the identity of his product so firmly in the minds of consumers that it becomes associated with him alone. In order for works of fashion to be protected by laws of unfair competition they must acquire what is known as “secondary meaning,” which is a “connection in the consumer’s mind

Safia Nurhabhai, “Style Piracy Revisited”, *NYSBA* 10, no. 3, (Winter 2001): 1-11; Peter Shalestock, Student Author, “Forms of Redress for Design Piracy: How Victims can use Existing Copyright Law”, 21 *Seattle U.L. Rev.* 113, 113-126 (Summer 1997).

between the mark and the product's producer.”⁸² Given the short style life of garment designs, the seasonal nature of the garment industry, and the fast entries and even faster exits in the apparel business, there is little likelihood of establishing a secondary meaning in designer apparel. The courts have consistently refused to apply the doctrine of unfair competition in design piracy cases.⁸³

In large part due to the inability to rely on the courts or Congress for protection, garment manufacturers resorted to self-help by forming the Fashion Originators Guild of America (FOGA) in 1932. The FOGA was a trade association of garment manufacturers and retailers who banded together in attempt to control design piracy. To further this goal, retailers and manufacturers signed “declarations of cooperation” whereby they pledged to deal only in original creations. The Guild maintained an exclusive design registration bureau, and as part of its elaborate enforcement system, the bureau instituted the use of red-cards. The cards listed non-cooperating retailers and Guild members were forbidden from dealing with red-carded retailers. At one point, the Guild controlled 60% of the dress market.⁸⁴ Although highly effective in combating design piracy, Guild's practices were held by the Supreme Court to violate the Sherman Anti-trust Act and, therefore, could not continue. This case provided one of the first and most pivotal court cases regarding protection of fashion works and has become a benchmark case regarding the difficulty of receiving protection for works of fashion design.

⁸² Brown, *Design Protection: An Overview*.

⁸³ Brown, 1341; Schmidt, *Designer Law*.

⁸⁴ Fashion Originators Guild of America v. Federal Trade Commission. 312 U.S. 4346 (1941).

Summary

This chapter provided a framework for an analysis of the history of design piracy within the U.S. ready-to-wear clothing industry. The first section of this chapter explored the development of the women's ready-to-wear clothing industry. By the beginning of the twentieth century, ready-to-wear clothing that offered a variety of styles, quantities, and prices became available in almost all markets, and was growing rapidly in the women's dress industry. Ready-to-wear transformed clothing "made for somebody" into clothing "made for everybody."⁸⁵ Partly due to the technical advancements that allowed for mass-production and the relative affordability of production equipment, entry into the apparel manufacturing industry was easy. Small shops could quickly begin on low capitalization, with few employees. Further, the smallness of many shops allowed for flexibility in adoption of fashion changes. With these changes in the structure of the apparel industry, manufacturers began to use fashion as a way to both compete with each other and to appeal to customers at various income levels. They changed style rapidly, and used decorative trims to hide otherwise poor quality fabrics. In addition, the ready-to-wear production of dresses was introduced on a large scale. Dress manufacturers generated sales by offering many garments and by changing their styles frequently from season to season and even with-in seasons. Style variations stimulated demand. Further, the changing status of women in the workforce and as consumers necessitated inexpensive and stylish clothing. Due to these developments and

⁸⁵ Kidwell and Christman, *Suiting Everyone*.

changes in the apparel industry, design piracy came to be considered “a way of life in the garment business.”⁸⁶

The second section of this chapter described design piracy. Among the most distinctive characteristics of the women’s clothing trade during the early 20th century was the ease and rapidity with which rival firms copied the new, innovative product design of the leading firms. Successful styles in high price markets were quickly copied by close competitors. Designs developed by the most exclusive custom tailors and dressmakers were copied in sequence by jobbers and high grade ready-to-wear manufacturers, smaller and less prosperous firms, and by the smallest and most insignificant contractors and sweatshops. Legal commentaries discussed design piracy from a judicial perspective. They defined and provided limitations for copyright, design patents, and trademarks for protecting [or not protecting fashion works.

⁸⁶ Kitty Dickerson and Jeannette Jarnow, *Inside the Fashion Business* (New Jersey: Prentice Hall, 2002), 150.

CHAPTER THREE: AMERICAN FASHIONS FOR AMERICAN WOMEN

Scholars have identified World War II as the period when U.S. designers began to achieve world-wide recognition for their apparel creations.¹ Nevertheless, the U.S. ready-to-wear industry slowly began to cultivate and even demand the idea of American design as early as the 1910s, as reported in *Women's Wear*. This chapter examines the emergence of U.S. design, not dependent on following and copying the Parisian dictates of fashion. The beginning of the cultivation of the idea of U.S. design is important to the analysis of design piracy and copying as it sets the stage for the FOGA's incorporation as an association "to promote the sale, identification, and recognition of original style and merchandise" of American apparel interests, particularly FOGA members.² This chapter is divided into the following sections: the need and a desire for an American art of dressing, the copying of Paris for design inspiration, developments that encouraged American design, and the encouragement, education, and promotion of the U.S. designer.

The Need and Desire for an American Art of Dressing

At the beginning of the 20th century an increasingly complex set of fashion organizations in the women's ready-to-wear industry began to exert an influence on transmission of fashion ideas. Burgeoning retailing and manufacturing structures recognized a need to both forecast and control fashion change, but found it difficult to predict. In one of

¹ Sandra S. Buckland and Gwendolyn S. O'Neal, "'We Publish Fashions Because They Are News': The New York Times 1940-1945," *Dress* 25 (1998): 33-41; Madelyn Shaw, "American Fashion: The Tirocchi Sisters in Context," *From Paris to Providence, Fashion, Art and the Tirocchi Dressmakers' Shop, 1915-1947* (Providence, R.I.: Museum of Art, Rhode Island School of Design, 2000), 105-132; Jessica Daves in *Ready Made Miracle* notes that American production of U.S. produced goods did not wholeheartedly occur until World War II. Milbank noted the years between the stock market crash of 1929 and the outbreak of World War II as most formative for American design.

² Fashion Originators Guild of America, Incorporation Papers, March 1932, New York Department of State.

the first issues of *Women's Wear*, editors endeavored to identify sources of fashion change for industry readers, crediting influential society women, prominent actresses, Parisian dressmakers, and clothing manufacturers. But most U.S. apparel manufacturers were slow to develop their own design talents, and tended to rely on a growing world of style commissioners who sold authorized copies of Parisian designs for design inspiration and outright copying.³ Employed by manufacturing firms and the custom salons in department stores, American designers created salable adaptations of prevailing French fashions.

From the beginning of the twentieth century, at all price levels, U.S. made garments clothed the vast majority of American women. American businesses adapted Parisian designs to American sensibilities; retail outlets, for the most part, sold U.S. manufactured clothing. For the ready-to-wear industry, the capacity to create unique styles played a major role in its rapid growth and the ability to reach consumers of all economic levels. Manufacturers and designers became convinced of the need to create their own styles, yet recognized the continuing influence of Parisian creations. American designers often lacked the elite patronage that French couturiers enjoyed. Instead, women of all economic levels expected fashionable modes delivered in price points they could afford. American fashions were viewed as primarily imitative, with few original styles.⁴

As the twentieth century progressed, increasingly strident voices began to demand development of an American style not dependent on Paris. American customers were perceived to be different from their French counterparts. American women were believed to

³ "We are Advertising Foreign Styles While they are Copying our own Smart Women," *Women's Wear*, October 15, 1912, 1.

⁴ Shaw, "American Fashion: The Tirocchi Sisters in Context"; Jessie Trimble, "Why Paris is the Capital of Fashion," *The Delineator* (1907): 291, 408; Grace Aspinwall, "Lady Duff-Gordon," *Good Housekeeping* (1910): 573.

be healthier, more athletic, and with more active lifestyles. But, without access to the training and the resources of Paris, American designers had to fight for credibility. Although editorials and advertising in trade publications argued the need for original American fashions with demands to promote the national economy, cries of patriotism, and disappointment in “the freakish, tasteless, and audacious Parisian models,” the celebration and copying of Parisian models was still the norm. Fashion writers, designers, and commentators questioned why U.S. manufacturers and designers, who had adapted Parisian designs all along to fit American tastes, did not originate their own creations.⁵

A debate for American fashions for American women wore on in the U.S. press with advertisements, articles, and letters to the editor celebrating, questioning, and decrying the possibility of American created fashion. In the 1920s, associations and advertising finally began to pay homage to U.S. designers based on their own artistic merit. Designers did achieve celebrity status in the 1940s. This would not have been possible, however, without the groundwork of the previous forty years.

The Copying of Paris for Style Inspiration

Before a discussion of the rise of American created styles begins, it is important to understand the ways in which U.S. fashion had previously “originated.” The most widespread technique for developing garment styles was through the copying of models by Parisian dressmakers and fashion houses. Paris’s fashion houses were the leading creators of innovative designs. Often collaborating, all segments of the French fashion industry

⁵ “We are Advertising Foreign Styles While they are Copying our own Smart Women,” 1; “Paris Losing its Vogue,” *Women’s Wear*, December 1, 1912, 16; Jesse Trimble, “Why Paris is the Capital of Fashion,” 291, 408.

continuously experimented with new designs, cloths, embroideries, cloth patterns, colors, textures, and accessories. French garments were unveiled to private customers in salons, as well as more public displays held at fashion houses and sporting events such as the horse races at Auteuil, Longchamps, and Grand Prix. American firms anxiously anticipated the opening of each fashion season in Paris, sending representative buyers to the fashion houses and dressmaking establishments. To purchase Parisian models U.S. firms often pooled their resources. Style commissioners who were independent tour guides/business people/advisors arranged the transactions between U.S. buyers and French fashion houses. They also facilitated the movement of garments through the maze of French and U.S. customs laws. Purchased Parisian gowns passed through many hands; first the original buyer and then frequently to other arriving Americans in Paris.⁶

Due to the tenuous nature of the apparel industry, firms wanted to create garments guaranteed to sell. While many Americans, in an attempt to develop the new country's identity and create its own fashion story, revolted somewhat against the dictates and influence of Paris fashion, many still identified and sought the cachet of European modes. For upstart as well as established firms, the easiest way to avoid bankruptcies and forced dissolutions was through the copying of established fashions from Paris haute couture designers and fashion houses.

Identification of Paris with Fashion Creation

In part, the identification of fashion creation with Paris in the early part of the twentieth century was due to the “exclusive” nature of that industry. In Paris, law, custom,

⁶ Bernard Smith, “A Study of Uneven Industrial Development: The American Clothing Industry in the Late 19th and Early 20th Centuries” (PhD diss., Yale University, 1989).

and tradition were all against the design pirate.⁷ As early as 1745, statutes protected civil and ecclesiastical designs of the silk fabrics of Lyons and Tours. In 1789, at the dawn of the French Revolution, King Louis XVI issued a decree which further extended design protection to all the fabric industries of France, and stated that French foreign commerce was the result of the genius and taste of the French designers, that France by her laws, would protect those who promoted her trade with the world. During this time, Paris became the established leader of fashion in the Western world. A combination of fashion leadership and example on the part of Louis XIV and his court, combined with concerted efforts on the part of the French government to promote and protect the silk weaving industry in France, provided the foundation on which the Paris couture and dressmaking industry eventually grew and flourished.

In 1793, the National Assembly extended design protection to all decorative industries in France. Adding to existing laws, Emperor Napoleon stated that determinations over registered design disputes would be settled by a jury of experts in the same industry. Article 10 of the present French law provided for the confiscation of all copies and instruments used to produce these copies. Successful maintenance of their monopoly of the fashion market was aided by governmental protection, and the prosecution of style piracy as a criminal offense.⁸

Quality and workmanship were important selling points of the Parisian haute couture. High quality items indicative of superior status contained intrinsic (beauty) and extrinsic

⁷ In the U.S. on the other hand, the copying of styles had been declared a legitimate means of competition. Leonard Drake and Carrie Glaser, *Trends in the New York Clothing Industry* (New York: Institute of Public Administration, 1942): 29.

⁸ M.D.C. Crawford, *The Ways of Fashion* (New York: G.P. Putnam's Sons, 1941), 226; Sylvan Gotshal and Alfred Leif, *The Pirates will Get You* (New York: Columbia University Press, 1945).

(cost) value. Workmanship, the quality of the construction techniques, included meticulousness in finishing garments; such as hand finished hems and decorative elements and other such laborious techniques not readily available in most ready-to-wear American apparel. Parisian and American retailers and the press promoted the great care and fine materials of French fashions. Anspach (1969) suggested that mass fashion in America identified status levels through the “hierarchical relationship between high fashion, mass fashion, and past fashion.” She noted that these fashion types reflected American values of time: high fashions or haute couture have high status; mass fashion or ready-to-wear medium; and past fashion, low.⁹

Demand for Parisian Goods

Many high-status American customers desired Parisian-created goods in part because of the exclusive nature of the Parisian industry. Other less affluent consumers bought Parisian goods in great number before World War I due to exchange rates that allowed Americans inexpensive travel to Europe and provided significant purchasing power over French goods. Throughout the nineteen teens and twenties Americans spent an enormous amount of money in Paris. The U.S. Department of Commerce figured that Americans spent \$660,000,000 in Europe between 1913 and 1926. Noted fashion historian, Valerie Steele, proposed that during the time period between World War I and World War II American women “with money to burn” were perceived to have “swarmed over Paris, perverting and destroying fashion through their taste for the spectacular.”¹⁰

⁹ Penny Storm, *Functions of Dress* (New Jersey: Prentice Hall, 1987); Karlyne Anspach, *The Why of Fashion*, (Iowa: Iowa State University Press, 1969): 28.

¹⁰ Valerie Steele, *Paris Fashion: A Cultural History* (New York: Berg, 1998).

Although the stock of U.S. money grew during and after World War I, this war severely undermined France's economic strength and stability. War expenditure, inflation, and post-war reconstruction, financed partly through the printing of money, reduced the franc's purchasing power by seventy percent from 1915 to 1920 and a further 45 percent from 1922 to 1926. With its nation's economy struggling for recovery, the French fashion industry targeted its American customers and designed to American needs; especially since German and Austrian interests ceased to "deal with the enemy" and English women were considered to be economically conservative. Coupled with the attractive currency exchange rates presented by economic problems faced by France and the cultural advantages of being the leader of fashion, Paris was a desirable destination for many Americans to shop.¹¹

During the early part of the twentieth century, the rate of exchange between francs and U.S. dollars remained fairly consistent between a low of 5.020 and a high of 9.830. From 1920 to 1924 the exchange rate fluctuated from 11.97 to 22.16 francs per U.S. dollar. Peaking at 35.84 French francs per U.S. dollar in 1926, the exchange rate remained at approximately 25.00 French francs per U.S. dollar throughout the mid 1930s, just following the collapse of the U.S. stock market in October 1929. These numbers make clear the increasing purchasing power Americans held in France during this time. One writer who lived in Paris from 1920 to 1930 stated Parisians did not have to work during the 1920s and 1930s because Americans were able to and willing to pay any price the French requested for goods and services.¹² Although Americans spent a large amount of money in Paris during the

¹¹ Sheryl F. Leipzig, "It is a profession that is New, Unlimited and Rich!: The Promotion of the American Fashion Designer in the 1930s" (Ph.D. diss., Iowa State University, 2005); Buckland, "Promoting American Fashion."

¹² William Bailey, *Americans in Paris, 1900-1930: A Selected, Annotated Bibliography* (New York: Greenwood Press, 1989), Appendix; Eleanor L. Dulles, *The French Franc 1914-1928* (New York:

nineteen teens and twenties, high tariffs as well as rising wholesale and retail prices in Paris meant that Americans spent a lot of money in Paris, yet they may not have received good value for their expenditure.

Methods of Copying Parisian Styles

In spite of the laws protecting French styles from piracy, French designer goods were consistently copied throughout the twentieth century. Merchants and manufacturers could copy Parisian designs either legally or through dishonest means. The Parisian haute couture had developed a system for the legalized copying of their garments under the auspices of the *Chambre Syndicale de la Couture*. For a negotiated price, buyers could purchase the original garments, paper patterns of the garments, or the garments' linings. Reference lists demarcating every item needed to duplicate the garment were included in the negotiated price.¹³

With the patterns and reference sheets, custom salons could exactly duplicate their Parisian counterparts. Less high-end salons, department stores, manufacturers, and designers also purchased the reference sheets but modified many details to American tastes and in varying quality levels and price-points. United States manufacturers made substantial alterations in the designs, colors, and fabrics of prevailing fashionable styles. The *American Cloak and Suit Review* noted that the emergence of an "American" style of clothing combined the artistic cuts of the haute couture of Paris with the practical designs desired by the U.S. woman. By 1914, it was so evident that American designers would look to the

The Macmillan Company, 1929); M.S. Rukeyser, "American Returns from Europe," *World's Work* (1927): 82-89; Eleanor K. McDonnell, "Plain Tales from the Tourists," *Saturday Evening Post* (1930): 125.

¹³ Sandra S. Buckland, "Promoting American Fashion 1940 through 1945: From Understudy to Star," (Ph.D. diss., The Ohio State University, 1996), 11.

general idea of Parisian couture but then make extensive changes to details that one leading member of the *Chambre Syndicale de la Couture* stated,

It is altogether surprising to see these [buyers] come to Paris and buy goods because they have the air of knowing exactly what they want. One of them says, 'you are wrong to use taffetas.' Another declares, 'Americans will not wear tartans this season.' Why not make it themselves? Once they agreed to accept what the Parisian dressmakers had discovered. Today they decide among themselves whether to adopt certain novelties or reject certain daring ideas. The whole proceeding is entirely un-commercial.¹⁴

It was clear that one of the most important components of Parisian fashions was the French labels and names sewn into the garments.

American firms became world renowned for their skill in carefully adapting haute couture garments into less expensive versions. Companies publicized their wares as exact copies or adaptations of well-known French modes by particular French designers. The manufacturing company Simpson Crawford Co. was so proud of their adapting skills that they displayed in their store window an original Drecoll imported gown costing \$485, reproduced in every detail by their dressmakers for sale at \$24.75. By comparing the original Drecoll model with an American-made copy, the company was convinced that fashion forward American women would realize U.S. dressmakers were the peers of those of Paris, at least in technical skill, if not design sense.¹⁵

Unauthorized copying of Paris abounded in the twentieth century. Unscrupulous means to exploit French modes ranged from the sophisticated to the simplistic. To gain insight into the latest styles, copyists could simply glance at items displayed in a store, during a fashion show, photographed or sketched in advertisements, or observed on fashionable

¹⁴ Bernard Smith, "A Study of Uneven Industrial Development; "Threaten to Bar American Buyers," *The New York Times*, March 4, 1914, 4.

¹⁵ "Style vs. Quality," *Women's Wear*, December 13, 1912, 1; *Women's Wear*, October 28, 1912, 4.

women in the streets of Paris. In the millinery trade, one manufacturer stated that copyists merely clipped advertisements of high priced goods from the newspaper, inscribed such notations as “our price \$3.00,” mailed it to clients, and then produced replicas in inferior materials. Employees were often bribed in France and the United States to describe design activities in their plants. Factory and workshop workers often acted as spies, faithfully passing along style details to competitors. As garments were purchased, copied, and then returned, pirating was detrimental to productive retail sales.¹⁶

Due to technical improvements and the sheer number of manufacturers involved in the production of clothing, U.S. manufacturers quickly copied popular styles in great quantities. Expressing anger and frustration at the speed and huge number of which her models were blatantly copied, Madame Paquin stated in 1913,

It is just as painful for us to see one of our creations spoiled by an unskillful copy as it is for the painter to see one of his works copied by an ignorant pupil who reproduces the picture by the dozen.¹⁷

By the early nineteen-teens, frustrated Parisian designers ceased relying solely on French law to protect against piracy and created their own self-help anti-piracy initiatives. Individual designers such as Paquin attempted to use trademarks, serial numbers, and copyrighted names of garments to dissuade and prosecute copyists. Paris dressmakers attempted to slow

¹⁶ Paul H. Nystrom, *Fashion Merchandising* (New York: The Ronald Press Co., 1932.) Smith, “A Study of Uneven Industrial Development;” Babette Muelle, “New York Dressmakers,” *Good Housekeeping* (1903): 302-303; A.C. Johnston & Florence A. Fitch, *Design Piracy: The Problem and Its Treatment Under NRA Codes* (Washington: Office of N.R.A. Administration, 1936); “Paris Police Seize American as Leader in Style Piracy,” *Women’s Wear Daily*, February 7, 1933, 21; “Clearance of Exclusive French Models at Wanamaker Store,” *Women’s Wear*, January 1, 1921, 4; “Franco-American Board Reports on Exploitation of French Models,” *Women’s Wear*, May 19, 1919, 3; Helen Josephy and Mary M. McBride, *Paris is a Women’s Town* (New York: Coward-McCann, Inc, 1929), 75; Bernard Roshco, *The Rag Race: How New York and Paris Run The Breakneck Business of Dressing American Women* (New York: Funk & Wagnalls, 1963).

¹⁷ “Paquin Designs New Label Band,” *Women’s Wear*, February 24, 1913, 3, 6 -7.

down the speedy transmission of ideas by holding back their new designs in February 1912 at the opening of the Auteuil racing season. Greatly anticipated by those interested in fashion, the races at Longchamps, Grand Prix, and Auteuil were where haute couture designers traditionally presented their newest styles. The great dressmakers and milliners instead chose to send out mannequins dressed in winter furs and spring-like straw hats. The reason given was to keep the clothes from being “immediately copied by the smaller houses and wholesale dressmakers, who only vulgarize models.” American buyers complained to the press concerning the “nerve of the French” to suppress transmission of the newest styles.¹⁸

In addition to individual initiatives, Parisian dress makers developed group methods for controlling piracy. In July 1914, the Couturier’s Defense Syndicate was established under the leadership of Paul Poiret (president) and Jacques Worth (vice-president), and included the haute couture designer members Premet, Cheruit, Rodier, Paquin, Callot, Lucien Vogel et Compagnie, Atuyer, Bianchini, and Ferrier. Poiret surmised that “unless something is done to stop the pirating of fashions, there will be no great dressmakers left in Paris in ten years.”¹⁹ Methods to slow down the unauthorized copying of designs and thus control piracy included the refusal of foreign buyers, particularly Americans, from viewing fashion shows, the prevention of photographers from selling pictures of their newest fashions, and attempts to prevent the newspapers from bringing out fashion supplements in which exclusive ideas were broadcast to the world. The Syndicate discussed refusing to show models to any

¹⁸ “Hold Back the Styles,” *The New York Times*, February 25, 1912, sec.3, 1.

¹⁹ “To Stop Pirating of Dress Fashion,” *The New York Times*, May 29, 1914, 4.

persons except those purchasing the models. In part to make styles difficult if not impossible to copy, Parisian designers such as Poiret created intricate and quite complex draperies.²⁰

The attempts of the Syndicate to limit the number of copyists may have allowed for U.S. apparel industry growth and creative fashion development independent of Paris. In describing the possible effects of Paris designers withholding styles from Americans, Francis, a designer stationed in Paris, stated,

If Paris wants to continue to develop and force the American people to become creators instead of copyists, this is the very best way for Paris to go about it. It puts a premium on the development of American designing and it forces America to a much more intense and conscious development than she could possibly have under the old method. If the best French models are withheld from American buyers, America will produce designers, or go elsewhere to procure models.²¹

Some of the rules discouraged, or at least made harder, the unauthorized copying of Syndicate wares. Barring Americans from viewing the latest styles, however, did not end copying. Buyers were needed to view and purchase styles. Many of these houses sold the originals or even their copies of the originals to other firms for profit. Copying continued unabated. Due to these holes in Syndicate rules, dissemination of fashion and growth and development of lesser known French fashion houses and American firms occurred.²²

Developments that Encouraged American Style Independence

One of the many phases of business and manufacturing evolution in the U.S. ready-to-wear industry was the call for and increased support of American fashions. During the nineteen-teens, the growth of the U.S. industry had risen to such a point that manufacturers, designers, and retailers argued that, "It should be a matter of national pride to keep this

²⁰ "Threaten to Bar American Buyers," *The New York Times*, March 4, 1914, 4; "To Stop Pirating of Dress Fashion," 4; "Modistes Gain Thirty Percent," *The New York Times*, February 15, 1913, 4.

²¹ "Francis of Paris has Radical Views on the Present French Situation," *Women's Wear*, April 23, 1913, 1, 12.

²² Troy, 284.

industry, which is becoming one of the largest in the country, truly American.”²³ According to Edward W. Bok, senior editor of *Ladies Home Journal*,

Each garment bought in the United States means the support of some people who spend their money with us. Every merchant should have sufficient pride in his bosom to say to his trade, ‘this garment is of American goods; American labor and I stand in back of the maker’s label.’ We stand in front of the American flag with a reverence short of worship. Let us do the same in pride of our American products.²⁴

Considered un-American in spirit and enterprise, the reliance on Paris for fashions forced U.S. manufacturers into second place, “to scramble to catch up with the Frenchman.”²⁵

By the turn of the century, the United States was growing and thriving economically and socially. Even though the United States was rapidly developing with seemingly limitless resources, Americans spent fortunes in Paris on clothing and entertainment. According to early twentieth century writers, World War I had some positive results on the creation of an independent U.S. ready-to-wear industry.²⁶ *The New York Times* commented,

Not the least beneficial result to this country of the European outbreak will be the opportunity for American manufacturers of women’s wear to throw off the shackles of custom that have bound them to Paris for so many years and to make the creations of their own minds takes the place of copies of the ideas of designers overseas.²⁷

Styles continued to be copied from Paris during World War I, but certain economic and social conditions caused growth in U.S. creative design talents. Although exchange rates favored the U.S. dollar in France, and Americans spent fortunes in Paris during the nineteen-teens and nineteen twenties, there is evidence that high tariffs and rising wholesale and retail

²³ “As To American Fashions,” *The New York Times*, December 26, 1912, 8.

²⁴ “In Her Own Right,” *Women’s Wear*, December 13, 1912, 7.

²⁵ “Home Fashions For America,” *The New York Times*, December 8, 1912, Section 3, 12.

²⁶ Elizabeth Miner King, “War, Women, and American Clothes,” *Scribner’s Magazine*, (1917): 592-598.

²⁷ “Paris may see end of style control,” *The New York Times*, August 6, 1914, 15.

prices of Parisian goods negatively impacted American purchasing of Parisian created clothing forcing many American consumers and retailers to purchase U.S. made goods.

Tariffs

Historically, the tariff has been the most effective weapon in the arsenal of U.S. business promotion against foreign competition. Tariffs (duties on foreign goods that are or could be domestically produced) have been touted as protecting industries for national defense, contributing to national prosperity, and raising the standard of living for U.S. workers. Due to the protectionist policy of tariffs during the early part of the twentieth century, infant industries grew into giants, and lack of competition allowed for organization and monopoly. The consistent rise in tariffs throughout the early twentieth century was a partial explanation for the growth of the U.S. apparel industry's development of its own creative talents.²⁸

Tariffs repeatedly rose following the end of the Civil War in 1865 to the 1930s, negatively affecting the purchasing of women's apparel from France. Exports from Paris to the United States declined sharply in the early to mid twentieth century. They dropped 50% from the first to second financial quarter of 1912, as garments were assessed duties as high as

²⁸ Protectionism, in the form of high tariffs, was firmly established as an enduring policy in the U.S. by the end of the Civil War partly due to national fiscal needs. For the subsequent half century, duties were raised repeatedly. World War I had the further effect of cutting off or restricting imports from industrialized countries, giving greatly increased protection to many U.S. industries. After World War I, several industries such as dyestuffs and other chemicals stressed their infancy and argued that without protection they would be unable to withstand competition. Although efforts were made to reduce the tariffs between the Civil War and the New Deal policies of Franklin D. Roosevelt, they were for the most part ineffective. The prosperity of the U.S. served as impetus for the continuation of high tariffs. The Depression which began in 1929 stiffened even more the American protective system. Due to the high customs duties, imports to the U.S. fell from \$4.4 billion to \$1.5 billion from 1929 to 1933. F.W. Taussig, *The Tariff History of the United States* (New York: G.P. Putnam's Sons, 1914), 361; Percy W. Bidwell, *The Invisible Tariff* (New York: Council on Foreign Relations, 1939); Merle Fainsod, Lincoln Gordon, and Joseph Palamountain, *Government and the American Economy* (New York: W.W. Norton And Company, 1959).

50 to 150 percent of their value. In the four years from 1926 to 1930, French exports dropped 40%. The American government imposed a duty of up to 90 percent on the cost of original Parisian models, explained by the advent of the Great Depression.²⁹ Continual increases in duties meant that fewer U.S. dressmaking establishments made regular trips to Paris, and, when they did, only the larger firms bought many Parisian models. R. J. Shoninger, the President of the American Chamber of Commerce stated that the high tariffs and duties caused Americans to find the Parisian market less attractive than previously and helped boost American fashion production. According to Shoninger,

Not long ago, hundreds of American dressmakers made regular trips to Paris twice a year, returning with an average of a dozen new models each, they passed more or less duty free. Now duties are charged and the result is only the large firms buy Paris models. Of course, it is quite natural that none of the great Paris dressmaking establishments should be willing to acknowledge this fact, but from all accounts it is now beyond doubt that America, and New York especially, has become a fashion center to be reckoned with, even by Paris.³⁰

Rising Wholesale and Retail Prices

In addition to the tariffs, rising wholesale and retail prices of French goods from 1914 to 1927 negatively impacted the desire for and purchasing of French garments by American consumers. According to some reports, wholesale prices jumped from 300 to 500 percent of previously recorded levels. According to *Women's Wear* in 1919, the availability of luxury goods grew increasingly scarce and increasingly expensive.

The dress that could be bought before the war for 800 francs is 2200 francs and over today. The modest cotton voile blouse of 40 francs of other days is replaced by one for 85 francs today. Before the war 25 francs would buy the fine handkerchief linen chemise adorned with superb embroidery and real Valenciennes lace. Today you pay 85 francs for a linen one trimmed with shirred bands of cotton tulle and consider yourself lucky. Some American women would have their boots made by a French

²⁹ James Laver, *A Concise History of Fashion*, (New York: Doubleday, 1965).

³⁰ "America Lifting Paris Fashion Yoke," *The New York Times*, July 14, 1912, 4.

maker and kick because 80 francs seemed so high, for today, the same boot maker is asking 800 francs, and the quality of the leather is actually inferior.³¹

The exorbitant rise in prices hit the French people harder than the Americans, due to currency rates. The high tariffs and rising wholesale and retail prices of goods prompted the smuggling of Parisian gowns into the United States via Canadian ports without the payment of revenues to U.S. customs officials. It also seemed to spur American design independence.³²

Disappointment in Paris

Partly due to negative economic conditions in Paris as well as declining exports to the United States, wealthy foreigners represented an enormous segment of the French fashion industry's revenue. The wants, desires, and needs of the American woman significantly contributed to the style of garments created by Paris couturiers and dressmakers. Parisian firms adopted their garments to American tastes and with it the structure and methods of Parisian couture were changed. Both French and American industry executives, entertainers, and average consumers stated disappointment in Paris partly because of these changes. Vocal American consumers (often quoted in *Women's Wear*) turned away from Parisian styles, seeking American-made garments.³³

Parisian firms significantly changed their methods of creation and garments to suit American tastes. French designer Jean Patou decorated the sportswear section of his salon in a "paneled wood, such an interior as you might see in an exclusive shop in America." He also

³¹ Eleanor L. Dulles, *The French Franc 1914-1928*, Appendix, 143; "Paris Advises Americans to Shop at Home," *Women's Wear*, December 12, 1919, 1, 17.

³² "See New Conspiracy to Smuggle Gowns," *The New York Times*, December 12, 1912, 24.

³³ "Dress Show at McAlpin," *The New York Times*, June 13, 1913, 6; "Mme. Nardica Says American Fashions Are Already First," *Women's Wear*, January 3, 1913, 6; "Lady Duff Gordon says American Women are Creating their own Fashions," *Women's Wear*, November 11, 1912, 9.

included an “American” bar to attract male patrons.³⁴ By seeking to appeal to American interests, French concerns underwent increased commercialization and interest in quantity rather than quality production. This radically altered the nature of the French fashion industry in the twentieth century.³⁵ Some writers feared that the “dressmakers of royalty have passed, and now France is run by tradesmen.”³⁶ Singers and actresses complained of hastily and poorly sewn gowns, publicly doubting and in some cases renouncing the renowned craftsmanship of Paris. For some Parisians the catering of Parisian style to U.S. tastes had disastrous results for the French design aesthetic. Fernard David, the French Minister of Commerce stated in 1912, “Dressmakers here have lately sought inspiration in America with the result that their models have lacked their former characteristic cachet of elegance and distinction.”³⁷

French haute couture designers once created gowns specifically for a particular woman’s complexion and figure. Demanding Americans seeking gowns necessitated more constant production by the French. Society women desired exclusive designs; working class U.S. women demanded the fashionability created by French designers offered at U.S. manufacturers’ prices. While some Parisian firms still catered to their select, elite clientele, the sheer amount of “numbers” needed by the Americans left little time for personalized dressmaking. The French, and some Americans, decried the increasing commercialism as grotesque and vulgar.³⁸

³⁴ Therese Bonney and Louise Bonney, *A Shopping Guide To Paris* (New York: Robert M. McBride & Company, 1929), 17, 35.

³⁵ Ethel Traphagen, “The French Fashion Factory,” *The North American Review* (1930): 19-22.

³⁶ “The Coming of American Fashions,” 5.

³⁷ “America Lifting Paris Fashion Yoke,” *The New York Times*, July 14, 1912, Section 4, 4.

³⁸ “Made in Paris,” *Women’s Wear*, October 25, 1912, 10.

The continual production of clothing for a greater variety of people, meant designs were increasingly available to a large number of people at the same time. American women complained “we have become sick and tired of being charged preposterous prices for supposedly personal models, and finding that model copied a hundred times over in Paris and in New York.”³⁹ When wealthy, prominent, society women wore a gown, second rate designers and houses copied these designs for less wealthy women. American buyer Edith Rosenblum complained to *Women's Wear* that American manufacturers would receive the same style of garment from the French even if they were willing to pay more money for an exclusive haute couture garment.⁴⁰

According to Poiret, methods of American manufacturing promoted the standardization of style. Poiret complained that U.S. manufacturers came to Paris in search of “dresses that are easy to wear, easy to make, and little by little they led our couturiers to a type of dress, almost standardized, that each woman dons like a uniform without thinking of her personality, or even of her silhouette!” Even Parisian women were concerned with duplications of designs. In the Bois-de-Boulogne, numerous young Parisian women intentionally dressed exactly alike in blue taffeta dresses and matching hats to make a point concerning their frustration with the duplication of styles. The women told reporter, M. Marcignac, they had found it “impossible to wear a toilette or hat original either in color or in cut without seeing a few days later, their model [in cheap, inferior materials] for sale in all the large stores and made by every petty dressmaker.”⁴¹

³⁹ “Mme. Nardica Says American Fashions Are Already First,” 6.

⁴⁰ “Edith L. Rosenblum’s Letter,” *Women's Wear*, February 8, 1912, 1.

⁴¹ Poiret as quoted in Nancy Troy, *Couture Culture: A Study in Modern Art and Fashion* (Massachusetts: MIT Press, 2003).

323; “Parisians Adopt Uniform,” *Women's Wear*, May 31, 1912, 1, 4.

False Parisian Labels

Tariff legislation and rising wholesale and retail prices negatively affected the importation of Parisian designs to the United States. Consumers of both ready-to-wear and custom-made designs continued, however, to demand the latest fashions and attached value to a Parisian label. Some companies imported Parisian labels and paid the customs duty of 50 cents a pound on these labels to sew them into their American made authorized copies. Other enterprising U.S. companies created their own counterfeit French labels. Deemed important selling points to consumers by both large and small retailer, false labels, both imported from Paris and created in the United States, sold for about 25 to 50 cents a piece. Some manufacturers felt that these false labels were deceptive to the consumer, while others argued that, “any American woman knows that she can’t get a new Paris hat for twenty dollars. If she doesn’t she’s a fool, and she deserves to get swindled” by the false labels.⁴² Proponents of a campaign for “American fashions for American women” blamed American women for the dependence on Paris. According to a leading U.S. dressmaker,

It certainly cannot be that our dressmakers haven’t sufficient creative ability to please American women. I believe the fault lies entirely with the women and not with the gownmakers. It is a form of snobbery that we should do away with. There are dozens of shops in New York where American-made clothes bear French labels, because American women would not buy them otherwise. If this isn’t snobbery, I would like to know what is.⁴³

Others felt that the purchasers who used the labels in deceiving their customers were the ones upon whom the responsibility, legally or morally rested.⁴⁴

⁴² Samuel Hopkins Adams, “The Dishonest Paris Label: How American Women are being fooled by a Country-Wide Swindle,” *Ladies Home Journal*, March 1913.

⁴³ “Publicity,” *Women’s Wear*, December 24, 1912, 7.

⁴⁴ “Two More Prominent American Women Come Out For Open Recognition On Merit Of American Styles And Merchandise,” 7; “Paris Labels,” *Women’s Wear*, October 25, 1912, 12; “Costumes,” *Women’s Wear*, October 25, 1912, 12.

The plethora of false labels led one writer to state, “Paris is very often only a label, and very often, the label is a lie.”⁴⁵ In 1912, one French house complained that of the 1000 models found in retail outlets bearing their labels only 200 were legitimate.⁴⁶ In a *Ladies Home Journal* article titled “The Dishonest Paris Label: How American Women are being fooled by a Country-Wide Swindle,” Samuel Hopkins Adams commented, “in purchasing a so-called imported cloak or gown in this country you have one chance out of fifty of getting what you pay for. In purchasing a so-called imported hat you have one chance out of two hundred.” Included in his report were numerous pictures of false labels discovered in dresses, gowns, and hats (Figure 3.1).

⁴⁵ “American Fashions For American Women,” 12.

⁴⁶ “Costumes,” *Women’s Wear*, February 18, 1913, 1.



Figure 3.1 The dishonest Paris label.

Source: Samuel Hopkins Adams, "The Dishonest Paris Label: How American Women are being fooled by a Country-Wide Swindle." *Ladies Home Journal*, March 1913.⁴⁷

False labels were described by many writing in the fashion trade press to be "advertising bait and merchandising bluff."⁴⁸ The problem of false labels was so great that Paul Poiret copyrighted his label. He published warnings that declared he had no problem with those who imitated his garments and labeled these goods, "a copy of a Poiret model." Rather Poiret objected to false, counterfeit labels. He stated:

⁴⁷ The Dishonest Paris Label by Samuel Hopkins Adams Copyright March 1913, Meredith Corporation. All rights reserved. Used with the permission of *Ladies Home Journal*.

⁴⁸ "How American Retailers Promote Foreign Goods," *Women's Wear*, October 18, 1912, 2.

Copyists, even among my best friends, who falsely place my label on their own creations, will do so at their peril, for I shall turn the fullest punishment of the law upon those who offend in this manner.⁴⁹

A list of legitimate American purchasers of French merchandise was published in *Women's Wear* to prevent unscrupulous enterprises from selling pirated copies into which counterfeit labels were sewn. Little to nothing was gained by this attempt.⁵⁰

The false labels disappointed some U.S. women, which may have led to the decline in the purchasing of imported gowns and the promotion of American design. According to fashion editor, Dorothy Dix, "American women are flocking to American fashions not only because of the merit and real values from a design viewpoint but also because of the so frequent fraud and disappointment of the so-called foreign goods."⁵¹ The counterfeit labels falsely promoted French designers. Although he also used the counterfeit labels, James Blaine, head designer for the U.S. firm Thurn, lambasted the practice.

America has made Paris and it is a pity. All that time we were sewing in fake labels we were building up the reputation of the Paris houses, and all the time we were killing our own chances. That is what I mean when I say that America has made Paris. We have been doing the same work here with the same materials and the same designers which Paris has had and we have been giving Paris all the recognition.⁵²

According to Nathan Nadoolman, women's tailor and chairman of the fashion committee of the National Ladies' Tailors and Dressmakers Association, the supporting of French design and garment styles did a double injustice to the welfare of the United States, first by forcing the American designers to deny their own creations and second, because the

⁴⁹ "Poiret Issues a Warning," *Women's Wear*, October 17, 1913, 3.

⁵⁰ "Announcement," *Women's Wear*, October 3, 1913, 10.

⁵¹ "Grean Lectures to the Women Students at the Teachers College of Columbia on American Fashions," *Women's Wear*, November 23, 1912, 8-9.

⁵² "Head Designer for Thurn Comments on How America's Publicity Has Boosted Paris," *Women's Wear*, December 23, 1912, 6.

constant boosting of “French” modes diminished the U.S. industry from realizing great economic profit. The loss in profits caused idleness and unemployment to thousands of needleworkers, as well as loss in profits to U.S. companies, and to general American prosperity. The promotion of anything foreign angered manufacturers because the false labels belittled and hid their work.⁵³

By 1912, *Women’s Wear*, *The New York Times*, *The Dry Goods Economist*, *Women’s Home Companion* and other trade magazines routinely printed ideas for getting American fashions and designers recognized based on merit. One exasperated writer for *Women’s Wear* stated,

Simply American labels on American goods. That is the whole question and the whole solution. The premises are already quite familiar and their repetition seems superfluous to those who have followed the matter. Surely there can be no defensible objection against allowing American women to know what they are really buying?⁵⁴

Although it was evident that many writers, manufacturers, designers, and retailers were angered that U.S. created goods were seemingly only salable with a Parisian label, U.S. women presumably preferred and demanded the cachet of a French label and continually sought novelties and up-to-the minute ideas in fashion. Much work would need to be accomplished before American goods were appreciated and more importantly sought after and purchased.

⁵³ “Nadoolman says American Newspapers Force American Designers to Deny their Own Style Creations,” *Women’s Wear*, October 22, 1912, 1.

⁵⁴ “Two More Prominent American Women Come Out for Open Recognition on Merit of American Styles and Merchandise and Announce Intention to Support Movement,” 7.

Development of an American Design Presence

The need and desire for an American art of dressing not dependent on Paris, plus economic and social conditions in both countries, led to the beginning stages of the development of a U.S. creative design presence in the early 1900s. American fashions for American women were desired by out-spoken individuals as quoted in the trade press and other newspapers. Organizational structures needed to be put into place, however, to truly encourage, educate, support, and thus promote the United States as a fashion center. Numerous proposals were offered in the pages and editorials of *Women's Wear Daily*, including the creation of museums and style libraries, the formalized education of nascent American designers, and the need for the media to publicize American designers.

What are American Fashions?

American women were considered to have distinct personalities that required clothing made by those who thoroughly understood these sensibilities. Evolution from Paris dependence to U.S. originality was the result of both a need and a desire to develop a characteristically American art of dressing. American designers and manufacturers adapted borrowed fashions from Paris to the needs, physique, and temperament of the American woman. Why could they not initiate their own design creations? A paradigm shift in American society and industry needed to occur concerning the goals of production. According to Ida Tarbell,

The very heart of the question of clothes of the American woman is imitation. That is, we are not engaged in an effort to work out our individuality. We are not engaged in an effort to find costumes which by their expression of the taste and the spirit of this people can be fixed upon as appropriate American costumes, something of our own.⁵⁵

⁵⁵ Ida Tarbell, *The Business of Being a Woman* (New York: The Macmillan Company, 1912): 122-3.

Most writers agreed that Paris would continue to be the fountain head of fashion innovation except in those instances when the designs would not do for the supposed tasteful, common-sense American women.

As early as the turn of the century, there was a growing dissatisfaction with the ornate garments offered in Paris. Although many retailers and manufacturers faithfully copied Parisian designs, there were some out-spoken proponents that lambasted the:

Absurdities and occasional immodesties of French fashions. The preposterous French hats, the uncomfortable drapery favored in Paris are too much in vogue. The Frenchwoman alas still sets the fashions for the world, but her taste is open to question.⁵⁶

In 1912 the *New World* commented that, "Paris was mentally and morally unbalanced. [The fashions] will be folly in Paris, freak in New York."⁵⁷ Stating the purpose of the first "American Fashions for American Women" fashion contest, in which Americans were encouraged to design and manufacture U.S. styles, *The New York Times* avowed, "American women too long have endured the imposition of foreign fashions designed by foreign dressmakers without any sound reference to American conditions and American appropriateness."⁵⁸

⁵⁶ "Home Fashions For America," *The New York Times*, December 8, 1912, Section 3, 12; "Taste In Women's Dress," *The New York Times*, April 18, 1909, 10.

⁵⁷ By 1940, some of the very elements of French fashions that were decried as "freakish" were missed by some American women. In a *New York Times* article, the writer quipped, "Devotees of French couture may miss the insanity. In every French collection there were always several pieces of inspired lunacy-not to be worn by any self-respecting female, but none the less profound influences on fashion for five years to come." "American Dresses for American Women Editorial," *Women's Wear*, July 6, 1912, 15; Elizabeth Duval, *The New York Times Magazine*, September 15, 1940, 89; "Costumes," *Women's Wear*, February 18, 1913, 1.

⁵⁸ Sarah Bernhardt, "Can the American Woman Design her Own Clothes?" *Ladies Home Journal* (1912): 9; B.W. Parker, "The Commerce of Clothes," *Good Housekeeping* (1909): 524-526; "Style and the American Woman," *Women's Wear*, April 26, 1912, 9, 13; "American Styles for American

Organized in 1912, the Society of American Fashions for American Women “patronized any movement leading to the encouragement and development of higher standards in the art and craft of women’s wearing apparel and fabrics in America.”⁵⁹ Invitations were initially sent to manufacturers, those who worked with the building blocks of fashion creation. The society was then opened to every branch of the apparel trade. Members fought false labels and other misrepresentations of merchandise that occurred in the U.S. apparel industry. This society created and vocally promoted an “American fashions for American women” campaign in the nineteen teens largely through the outspoken and often quoted chairman, Alexander Grean, a dress manufacturer.⁶⁰

At the heart of the call for “American fashions for American women” was the notion that French manufacturers and designers produced fundamentally distinctive clothing unsuited to the American lifestyle. Celebrated as taller, heavier, healthier, and stronger; American women were considered more athletically inclined than their French counterparts. Elements of dress that were considered particularly “American” included the shirtwaist, lingerie, tailored garments, sports clothes, fur coats, as well as ideas in neckwear, veils and other accessories.⁶¹ Other than these garments, the distinction between French and American designs was subtle. According to one *New York Times* fashion judge,

Women,” *Women’s Wear*, October 8, 1912, 1, 8, 12; “Fashion Contest for Times Readers,” *The New York Times*, February 25, 1912, 1.

⁵⁹ “Society of American Fashions for American Women,” *Women’s Wear*, October 8, 1912, 1.

⁶⁰ According to Grean, textile manufacturers were first targeted as members because “it is important that we begin at the foundation of the dress industry.” Textile manufacturers were indeed the first to produce truly American made merchandise. As an example of this in 1911, Wanamaker’s offered the “first successful American towels of pure linen made in Massachusetts.” “New York,” *Women’s Wear*, July 27, 1911, 9.

⁶¹ Anna Burnham Westermann, “Can America Originate its Own Fashion?” *Ladies Home Journal*, (1909): 11-12; “American Styles for American Women,” 8; “New Angle on American Versus Paris Styles,” *Women’s Wear*, March 27, 1920, 2.

This contest constitutes the first comprehensive presentation of American genius applied to the designing of women's dress. It seems to foreshadow a new war of independence, in which, no doubt, American enterprise, adaptability, and taste will soon find some effective means of adequate self-expression.⁶²

This statement enthusiastically endorsed the American system of production. The question remained, however, what exactly distinguished American design from Parisian ideas? Annie Russell, a committee member of *The New York Times* fashion contest, commented,

It is very hard to frame in words that subtle difference between the gown which is French in spirit and the one that is American. There were many designs which were unanimously rejected, not because they were not beautiful but because we felt them to be expressions of French ideas and ideals and in some indescribable way, alien to the average American woman...It is a quality, not a fact that distinguishes French and American design.⁶³

The ambiguity expressed in this commentary makes clear the difficulty of describing and assessing the nationality of a garment. The actress Sarah Bernhardt maintained that it should be easy to create an American costume, as we did not have a national heritage to follow, yet was at a loss to describe the distinguishing characteristics of a truly "American" garment.

Urged to choose high-quality garments of good material, design, and workmanship, American women were advised to follow their own stylistic sensibilities rather than economically and emotionally depend on the ever-changing Parisian models. Social commentator Ida Tarbell believed the following of every fashion folly to be a waste of intelligence and a ruse of the less fortunate woman.

From every side the adoption of meaningless fashions is corrupting national taste and wasting national substance. The worst of this is not only that it forces too much attention from useful women, but that it gives such poise and assurance to the ignorant and useless!⁶⁴

⁶² Ida Tarbell, *The Business of Being a Woman*, 122-3.

⁶³ "American or French," *Women's Wear*, February 24, 1913, 3, 6 -7.

⁶⁴ Ida Tarbell, *The Business of Being a Woman*, 128-9.

In this quote, Tarbell seemed equally concerned that fashion would blur easily visible class boundaries and waste the usefulness of intelligent middle and upper-class women. In an article originally printed in the *New York Evening Post* and reprinted in *Women's Wear*, American women were encouraged with militaristic gusto to shun the following of every French fashion.

The women of America are being summoned to a new war of independence. This time it is not against the domestic despot who holds the vote and pays the family bills. The new enemy lives far across the seas, in the *Rue de la Paix*, the *Place Vendome*, and the *Avenue de l'Opera*. There the Parisian dressmaker sits and plots his fall designs, which designs are immediately copied by the dressmakers of the rest of the world. It is proper that our own country should be the first to rebel against this ancient tyranny. In the first place, we are, on principle, the enemies of foreign domination. In the second place, we spend more money in Paris shops than any other nation. In the third place, we are the one nation that can afford to take the chance.⁶⁵

During the early part of the twentieth century, supporters of American design posited that U.S. designs, which would arguably be of a better quality than Parisian models, would remain popular for a longer period of time. This would leave a woman with the time to consider “more important matters such as her greater self-development.”⁶⁶ As the twentieth century progressed, however, fashion change became a staple of the manufacturing and retailing community, and women faithfully updated their wardrobes to accommodate the latest fashions. Previously, manufacturers produced large quantities of goods that they hoped would be popular sellers for relatively long durations of time. As manufacturers produced smaller quantities of goods and retailers carried smaller stocks, rapid style change was possible and encouraged. Women were thus encouraged to actively participate in fashion by following and purchasing garments representing the newest style changes.

⁶⁵ “The Judgment of Paris,” *Women's Wear*, January 9, 1913, 3.

⁶⁶ “The Coming of American Fashions,” *Ladies Home Journal*, February 1913, 5.

Encouragement, Education, and Promotion of the American Designer

The growth of the ready-to-wear industry, plus a growing spirit of nationalism, opened the door to demand for designers in the American apparel industry. Once the need and desire for American creative talents was established, where were these designers to come from? Numerous proposals were discussed, beginning almost as early as the movement of “American fashions for American women,” to support and encourage emergent creative talents in the United States. These included a call to teach design students independence from Paris and techniques for teaching students creative design, the establishment of style libraries and museums for American designers, and the plea for U.S. stores to recognize American design talent and to use advertising to promote American fashion. The demand and desire by manufacturers for American fashions had been growing for some time. For American fashions for American women to be a success, consumers needed to be interested in purchasing U.S. made garments. Consumers needed to be educated to understand and appreciate American design.

The designer came into being in the United States with the enormous rise of the ready-to-wear industry. Years before, the dressmaker, with the aid of fashion magazines and client wishes, designed each garment as more or less of an original based on prevailing French fashions. In contrast, in the early twentieth century, it was not unusual for a manufacturing establishment to create hundreds, if not thousands of dresses made within a few weeks based on variations from one model. Although there were American dress designers in the United States by the early twentieth century, many worked for specialty shops, department stores, or ready-to-wear manufacturers who preferred to cultivate client loyalty to a brand name or trademark rather than to a particular designer name. Some

twentieth century ready-to-wear designers started as private dressmakers. With the proliferation of inexpensive ready-to-wear, many could not compete with the prices offered by the ready-to-wear manufacturers and went to work for larger firms that could afford to hire a designer.⁶⁷

Museums and Style Libraries

American designers were encouraged to adapt from the same historic sources used by the French fashion houses. These sources included historic paintings and sculpture, literary works, and costumes, as well as current trends in architecture, dress, and leisure. Since the turn of the twentieth century, American manufacturers had been acknowledged for excellent workmanship and adaptations of French designs. All that was missing was inspiration for designs ideas.

To ensure a nurturing environment for designers, manufacturers, and the extended U.S. fashion community, fashion industry leaders sought to foster a relationship with New York museums including the Metropolitan Museum of Art, the Brooklyn Museum of Art, and the American Museum of Natural History. Taken together these collections included costumes, textiles, furniture, and sundry items. Fashion industry writers such as *Women's Wear Daily* editor M.C.D. Crawford insisted that through the study of art, fashion history, and the artistic heritage of different countries and periods that was included in museums, American fashion design potential would develop.

A young country, America did not have the same artistic atmosphere as France. In explaining the dominance of Paris, *Women's Wear* from 1912 noted, "On the side of the

⁶⁷ For a further discussion of American fashion designers please see: Crawford, *The Ways of Fashion*; Grace D. Ely, *American Fashion Designers* (New York: Personnel Group, 1935); Shaw, *American Fashions*, M.D.C. Crawford, "How Is a Costume Created?" *Arts and Decoration* (1921): 228-229.

Paris fashions is all the weight of long customs, great publicity, and real atmosphere, merit, and natural public preference. There is all the glamour of Paris.”⁶⁸ Could Americans create new marvels in fashion if provided with the same artistic knowledge as Europeans? Designed to inspire and edify, educational lectures were presented by eminent artists and university professors. Lectures included the topics of “History of Woolens, Worsteds, Silks, Ribbons, and Velvets,” “Concerning the Practical Phases of Art Work,” “About Dyestuffs of the Ancient World,” “On Costume Design, Specifically The Various Colors, Lines, and Values of The Proportions of the Human Body,” and “Textile Designers Studying Primitive Art At Schools And Museums.”⁶⁹ These lectures were designed to impart a similar knowledge and love of art as was considered common in Paris.

Education

Encouraged to develop domestic U.S. designing talent, public education in textile and apparel arts grew in the twentieth century. As early as 1911 there were independent schools of design such as The Anna Morgan School of Expression in Chicago, The Cooper Union and The Pratt Institute in New York City, and lesser well known schools such as Professor I. Rosenfeld’s School of Designing on Second Avenue in New York City. By the 1920s, the apparel industry began the very slow process of recognizing the creativity of its own designers. According to a 1936 study on design as an occupation, in the 1920s firms went “looking for American designers.”⁷⁰ There was a plethora of programs and schools by the 1930s to educate young native-born American designers. These schools included state

⁶⁸ “American Styles for American Women,” 8.

⁶⁹ Mary Donahue, “Design and the Industrial Arts in America, 1894-1940: An Inquiry into Fashion Design and Art and Industry,” (PhD diss., The City University of New York, 2001); Ethelwyn Miller, “Americanism: The Spirit of Costume Design,” *The Journal of Home Economics* (1918): 207-211.

⁷⁰ *Costume Design*, 7.

universities, teacher colleges, liberal arts colleges and universities, private art schools, and vocational colleges. State universities and teacher colleges typically offered courses in conjunction with home economic programs, stressing the selection of clothing and fundamentals of clothing construction. Artistically minded schools, such as the Pratt Institute in New York, taught students fashion design, sewing, and drawing as well as pertinent business methods. Within the more commercially minded vocational schools, students typically decided between programs in fashion illustration and dress designing. Depending on the talent and needs of the student and the availability of jobs, students were encouraged to consider working in any area within the apparel industry, including manufacturing, retailing, fashion journalism, and even modeling. Prominent apparel industry members urged young designers to take history of textiles, costume design, and artistic courses and urged travel to exotic and domestic locales.⁷¹

The combination of mass production with the growing desire for beauty and distinction made evident the importance of the study of psychology as related to fashion. Nascent designers were encouraged to analyze fashion tendencies in light of recent events and probable future trends and to recognize important silhouettes. Students were encouraged to train their powers of observation and analysis by keeping journals and scrapbooks, cutting out illustrations of dresses, suits, coats, hats and shoes, recording the popular designs. According to one dressmaker and tailor speaking to a group of students at the Teachers College of Columbia University, "It makes no difference how clever you may become with

⁷¹ Julia Coburn, "So You Want to Be A Designer," *Ladies Home Journal* (1935): 22-5; "Designers, Stop Guessing!," *Women's Wear*, March 20, 1912, 9; "The Chicago Dressmakers' Club Convention," *Women's Wear*, March 15, 1911, 1, 2; Catharine Oglesby, *Fashion Careers: American Style* (New York: Funk and Wagnalls Company, 1936), 69.

the pencil. The most important thing is to cultivate your aesthetic taste by observing and studying everything that is beautiful and harmonious in nature and in art.” This dressmaker stated that it was more important to learn artistic drawing than pattern cutting because the United States had enough pattern makers; it needed artists. Young students needed to develop “interpretive design creations” and not blatantly copy Paris or U.S. designs.⁷²

Training was different for those hopeful designers of custom dress than those heading for careers in the ready-to-wear industry. High fashion designers apprenticed within couture houses and had the luxury of name association with particular lines or types of clothing. U.S. ready-to-wear manufactures and retailers demanded efficiency and salable goods from their designers. In the ready-to-wear apparel industry, successful styles effected a compromise between the creative ideas of the haute couture and the necessary economies of trade of mass production. To succeed in ready-to-wear, designers needed to create a great number of variations based on one model.

At least in the early part of the twentieth century, women were discouraged from pursuing careers in design, because of the assumption that they would marry, have children, and abandon the profession. Leading proponents of the “American fashions for American women” urged manufacturers to pay designers enough money so that they could, “Work designs, eat designs, drink designs, and at night he must dream designs or pay a fine for

⁷² M.D.C. Crawford, “We Need Interpretive Creation-Not Copying,” *Women’s Wear*, June 28, 1919, 3; Henry Creange, “Safeguarding Industry Against the Pilfering of Ideas,” *The Guilds of America* (New York: The Guilds of America Foundation, Inc., 1932), 3-4; “Grean Lectures on American Fashions,” *Women’s Wear*, November 23, 1912, 8-9; Henrietta Harman, “Development of the American Designer,” *Journal of Home Economics*, 423-6; “What Makes a Good Designer?” *Women’s Wear*, April 18, 1913, 4.

every dream that is alien to the profession.”⁷³ As the twentieth century progressed women were encouraged to pursue careers in design.

American apparel interests endorsed developments of consumer appreciation of the real value, both artistic and economic of purchasing American made clothing. Promotion of the American designer occurred as early as 1913. A particular film mentioned in *Women's Wear*, available in 1,400 American cities, devoted about three minutes to an exposition of the cause and purposes of the “American fashions for American women” movement, and then seven minutes of pictures showing models by the U.S. dressmakers Grean, Henry Newman, and others.⁷⁴

Advertising

One reason American designers struggled to achieve fame in the early part of the twentieth century was due to the lack of attention from the press. Parisian designers were celebrated as superior creators of exquisite design, whereas American designers were routinely commended for their technical abilities for copying Parisian design. Advertising to consumers publicized the French designers Poiret, Doucet, Paquin, and Cheruit, while American designers were rarely mentioned in advertising spreads. According to dress designer James Blain, the newspapers were to blame for the “bewitching and hypnotizing of women” for all things Parisian.⁷⁵ Each season, Parisian design decisions, tendencies, and innovations filled American department and specialty store ads. American stores rarely commented on U.S. made merchandise. According to *Women's Wear*,

⁷³ It is interesting to note that the author of the quote used the pronoun “he” whereas the title of the article was “Girls who Apply for Positions,” *Women's Wear*, April 18, 1913, 4.

⁷⁴ “American Fashions Shown by Motion Pictures,” *Women's Wear*, January 11, 1913, 5.

⁷⁵ “It Was America That Made Paris,” *The New York Times*, December 22, 1912, 11.

If we had the support of our own press (who are giving Paris so much free advertising) if they would recognize our talents without fearing that an ad might get lost by boosting our home industries, American women would soon generally realize the great mistake in buying the poorly finished and hurriedly made French dresses.⁷⁶

If the trade press promoted the advertising campaign of American designs for American women stores would be “Courageous in advocating and pushing American made goods.”⁷⁷

American dressmakers wondered why the U.S. press gave so much space to French and other foreign merchants, especially since these advertisements competed with U.S. made clothing sold in retail shops. Manufacturers, however, were partly to blame for not advertising and making known their own designers. In advertisements to consumers manufacturers rarely listed their designers, choosing to highlight the company name. Interestingly, theatre programs publicized and recognized their American costume designers. According to one dressmaker, in 1912 there were 50% more American-made gowns worn in the theatre than 1911, and 85% more than in 1910.⁷⁸

Suggestions for promoting American made goods varied. Many writers stressed advertising American made goods in U.S. newspapers. Other manufacturers and designers suggested developing special departments in stores or even the development of special chain stores that only carried American crafted merchandise. To “build up consumer appreciation

⁷⁶ “[Clara] Simcox [Importer] Says Exclusive American Fashions Are Not Working Against Public Opinion But With It,” *Women’s Wear*, October 24, 1913, 1, 9; “We Are Advertising Foreign Styles While They Are Copying Our Own Smart Women,” 1.

⁷⁷ “American Fashions for American Women,” *Women’s Wear*, September 7, 1912, 13.

⁷⁸ It might have seemed more reasonable and profitable to show a play with advertised American designers. The same might not have been necessarily true of ready-to-wear sales. American Fashions for American Women,” 1; “Nadoolman Says American Newspapers Force American Designers to Deny Their Own Style Creations,” *Women’s Wear*, April 23, 1913, 1, 12; “The ‘Paul Poiret’ of America,” *Women’s Wear*, November 4, 1912, 7; “Two More Prominent American Women Come Out for Open Recognition on Merit of American Styles and Merchandise and Announce Intention to Support Movement,” 7.

of good materials and good design even in inexpensive merchandise” American retailers were urged to “sincerely and intelligently back talent”⁷⁹ The women’s ready-to-wear department of the Bush Terminal Sales Building hired U.S. designers to create “works of art” that were to be produced by the Bush manufacturing department and exclusively sold in their women’s wear department, thus creating, promoting, and selling American made ready-to-wear clothing. It wasn’t until 1919 that a U.S. magazine published six pages of illustrations of the costumes designed by U.S. designer Harry Collins.⁸⁰ While the trade press clung tenaciously to French ideas of fashion, this was one of the first U.S. magazines to celebrate an American designer.⁸¹

In the 1930s, the recognition of the importance of promoting American fashions by the U.S. retailer and the press resulted in, to a degree, the sponsorship of American designing talent.⁸² By 1940, however, the apparel industry was still grappling with the possible success of American fashion for American women. Some writers argued that the mass production of ready-to-wear clothing was something to marvel at, “like the production of automobiles, breakfast cereals, and canned foods, which are so integral a part of the American scene.”⁸³ Others, such as Marjorie Belle Clark in the September 1940 *Textile World*, continued to wonder if Americans had the proper mindset for producing works of art. According to Clark,

In America, there are few people concerned with the business of feminine fashions who think first of the artistic achievement. Here we must make money. If we produce

⁷⁹ “Fashion Still has Place in New York,” *Women’s Wear Daily*, October 8, 1941, 5.

⁸⁰ M.D.C. Crawford, “Suggests Establishment of Special Stores to Carry Merchandise of American Craftsmen,” *Women’s Wear*, July 1, 1919, 2. Crawford did not mention the title of the magazine.

⁸¹ “To Create U.S. Styles for Bush Terminal Building,” *Women’s Wear*, July 3, 1919, 5; “Design Department,” *Women’s Wear*, August 22, 1919, 2.

⁸² Helen Cornelius, “American Designer Movement,” *Journal of Home Economics* (1934): 500-501.

⁸³ Selma Robinson, “America Dresses Herself,” *Woman’s Home Companion* (1941): 15.

something beautiful and in good taste, it must also fit into the wardrobes and budgets of many people in order for enough of it to be sold to yield a profit.⁸⁴

Charles Rendigs, head of Nanty Frocks, high priced dresses selling for \$150 to \$550 in 1930s, echoed Clark's statement in 1960. According to Rendings,

We in America don't have time for originality. In France, a designer can sit with a cigarette in his mouth and think. He can go out to lunch for two hours and if he doesn't want to come back, he might not; he has time to be original. All you need to be successful in this country is to take a French garment with the originality etcetera add American ingenuity, talent, and machines then it can be done right.⁸⁵

Summary

While some writers called the work of "American fashions for American women" prior to 1940 premature, it is evident that many voices requested and demanded a style independent of Paris. In 1941, when some within the ready-to-wear apparel industry claimed U.S. design styling and selling was "floundering" partly due to the absence of Paris, M.D.C. Crawford stated that "1914 to 1918 began the greatest era of prosperity and creative design in the costume industries of America."⁸⁶ Clearly in this early period of the twentieth century, the recognition of American-made garments was important to the development, growth, and promotion of the U.S. women's ready-to-wear apparel industry.

The beginning of the twentieth century witnessed an influx of manufacturing and retailing businesses interested in promoting the consumption of fashion. At all price levels, U.S. made garments clothed the majority of U.S. women. American firms once solely reliant on Paris for garments and inspiration became convinced of the need to create their own styles. But, Parisian tradition, atmosphere, and laws that protected designers' works, were all

⁸⁴ Marjorie Belle Clark, "America...Refuge for Fashion," *Textile World*, (1940), 72.

⁸⁵ Fashion Institute of Technology Special Collections.

⁸⁶ M.D.C. Crawford, "One of Best Things Written on Subject," *Women's Wear*, April 29, 1941, 21.

on the side of the Parisian designers. For the campaign of American fashions for American women to be successful, several changes needed to occur including a spirit of pride in American made garments and disappointment in Paris.

World War I caused changes to the structure of the Parisian and U.S. apparel industries. American tariffs on Parisian goods were raised in part to assist the U.S. clothing industry. Paris, devastated by printing of paper money, sought to appeal to U.S. consumers. In doing so, however, commercialism, particularly evident in the multiplicity and uniformity of styles, prevailed. Further, rising wholesale and retail prices discouraged some Americans from purchasing from France. But, many Americans still desired the cachet associated with Parisian labels. American industries recognized their opportunity to grow and prosper by exploiting the desires of Americans for French garments by creating their own clothing with attached counterfeit Parisian labels.

Perhaps angered by the lack of credit given for their creations, members of the ready-to-wear industry developed a spirit to actively change the perception of American made clothing. Numerous proposals were discussed beginning almost as early as the movement of “American fashions for American women” to support and encourage emergent creative talents in the United States. These included a call to teach design students independence from Paris, to establish style libraries and museums for American designers, and a plea for U.S. stores to recognize American design talent and to use advertising to promote American fashion. Consumers also needed to be educated to understand and appreciate American design and garment styles.

In the 1930s, the recognition of the importance of promoting American fashions by the U.S. retailer and the press resulted in the sponsorship of American designing talent.⁸⁷ This would not have been possible, however, without the earlier attempts and foundation laid by early twentieth century writers, industry executives, and consumer interest groups. Appreciation of both the artistic beauty of American-made clothing and the economic benefits of developing an industry not dependent on Paris needed to occur. Efforts to educate designers, consumers, and the press concerning the benefit of supporting and developing American design seemed at times to be personal crusades. Coupled with the steep growth in apparel industry volume and profits, these efforts resulted in the strident arguments for American creative design talents. In the next section, I will discuss efforts to further promote American design through attempts to protect the works of fashion designers.

⁸⁷ Helen Cornelius, "American Designer Movement," 500-501.

CHAPTER FOUR: AMERICAN STYLE PROTECTION ARGUMENTS

Discussed in this chapter are the arguments by U.S. ready-to-wear women's apparel industry interests to regulate or to allow style piracy to flourish. The rapid growth of mass production, supported by the great number of firms created in the early twentieth century, stimulated style piracy. Manufacturers once satisfied with traveling to Paris to receive style inspiration grew in confidence and ability, and realized the need to create their own fashion identity. Other manufacturers producing primarily in the lower price ranges copied the successful garments of their American counterparts. This system of American style piracy created a large number of firms producing in all price ranges. Businesses did not have to hire designers or risk creating product failures; they simply needed to copy the successful styles of other American firms. But was style piracy hindering the growth of American creative talent? Arguments both for and against style piracy were heatedly debated. Discussed in this chapter are industry attempts to regulate style piracy as well as some of the more common ideas concerning the style piracy dilemma.

Style and Design Piracy

The practice of copying both garment styles and company trademarks began early in the development of the U. S. ready-to-wear apparel industry. Although dressmakers often copied and/or adapted the ideas of French couture designers for the custom market, the rise of the ready-to-wear industry meant an increased number of designers and manufacturers attempting to trade on the reputation of Parisian style. As more manufacturing firms entered the U.S. scene, many began hiring their own designers. However, a large percentage of manufacturers in the industry were so in the habit of copying European creations, were so lacking in originality and in facilities for doing their own designing, or lacked capital to

invest in designers, that they turned their attention to the copying of styles originated by the leaders of the United States.¹ While the ethical considerations of copying remained ambiguous, one writer expressed relief and pride that the time had come “that it is considered vulgar to pirate French dressmakers instead of those of our own country.”²

As the women’s ready-to-wear industry expanded rapidly in the 1890s, a trickle-down process of copying within the U.S. industry became a widespread practice. Style change was considered “the very essence of the industry,” but something that created “a market with laws all its own.”³ One of the most idiosyncratic characteristics of the women’s trade was the rapidity with which rival firms copied high end manufacturers. Copied quickly, innovative styles were available at successively lower price points to consumers of economically diverse standings almost immediately.

In 1913, according to the managing editor of the magazine *Dress Essentials*, “No sooner does a new idea or a new design appear upon the market today that it is fallen upon, seized, copied, and mangled by a horde of pirates who crouch in ambush awaiting the opportunity of stealing a ride upon the originality and brains of some enterprising competitor.”⁴ The short life of a dress was due to the fact that new ideas were constantly being developed, and accepted by the public. According to M. D. C. Crawford, “The demand from the public is constantly for new things, for designs that appeal to a rapidly

¹ Grace D. Ely, *American Fashion Designers* (New York: Personnel Group, 1935), 21; Catharine Oglesby, *Fashion Careers: American Style* (New York: Funk and Wagnalls Company, 1936), 20; *The Clothing and Textile Industries in New York and Its Environs* (New York: Regional Plan Of New York And Its Environs, 1925).

² “Two More Prominent American Women Come out for Open Recognition on Merit of American Styles and Merchandise,” *Women’s Wear*, December 24, 1912, 7.

³ Helen Everett Meiklejohn, *Dresses: Impact of Fashion on a Business* (N.Y.: McGraw-Hill Book Co., Inc., 1938), 303.

⁴ Alphonsus Haire, “Pirated Designs,” *The New York Times*, January 20, 1913, 10.

advancing artistic standard.”⁵ Described by Cohen, after the expense of “thousands of dollars” to create a style intended to appeal to the American customer, copies appeared “within forty-eight hours.” The only recourse was “multiplicity and rapidity of design at such frequent intervals” that competitors would “lag behind.”⁶ Hence, manufacturers constantly introduced large numbers of new style variations. One manufacturer claimed 300 “active numbers” or styles at a time, with styles tending to persist for only about six weeks.⁷

The pervasiveness of style piracy affected the organization of the women’s apparel industry. Styles copied at lower price points flooded the market with cheap imitations of higher end goods. Piracy permeated the industry; even copies were copied. According to Ida Tarbell,

From top to bottom we are copying. The French or Viennese mode, started on upper Fifth Avenue, spreads to 23rd St., from 23rd St to 14th St., from 14th St. to Grand and Canal. Each move sees it reproduced in materials a little less elegant and durable; its colors a trifle vulgarized, its ornaments cheapened its laces poorer. A travesty, and yet a recognizable travesty.⁸

Style piracy was easy to accomplish, especially with the system of American production. The high-price houses hired designers, sent them to Paris to research and sometimes copy the new styles, and took the risks associated with being innovative. Producers and sellers who successfully anticipated a fashion trend would receive profits assumed to be a reward for risk-taking. Those manufacturers, who guessed wrong on a presumed best-seller, took losses on unsold inventory and markdowns.

⁵ M.D.C. Crawford, “High Time That Design Piracy Should Disappear,” *Women’s Wear*, February 7, 1919, 21.

⁶ Julius Henry Cohen, *Law and Order in Industry: Five Years Experience* (N.Y.: The Macmillan Co., 1916), 88.

⁷ Bertha June Richardson, *The Woman Who Spends: A Study of Her Economic Function* (Boston: Thomas Todd Co., 1916), 69. This was originally published in 1904. See also Emma M. Hooper, “Remodeling Last Year’s Gowns,” *The Ladies’ Home Journal*, June 1893, 26.

⁸ Ida Tarbell, *The Business of Being a Woman* (New York: The Macmillan Company, 1912): 122-3.

It was far easier and cheaper to copy the successful garments of American producers rather than research the latest trends, hire designers, risk product failure, or even spend the money on travel and customs duties for French goods. American sub-manufacturing firms often produced garments for more than one company. Company executives sent spies to these factories for purposes of observing and copying the most salable items. Reproduced within twenty-four hours, garments seen in factories, fashion shows, displayed in store windows, or illustrated in the press were quickly ubiquitous.

Many U.S. firms, particularly the small and medium sized firms producing goods in the lower price ranges, saved money on operating costs by avoiding trips to Paris, by simply copying the garments of other American firms who themselves had copied the Parisian examples. Manufacturing firms copied rival firms of all price points. In estimates provided by *Women's Wear*, in 1913, a Parisian model was obtainable in New York for \$300 to \$400. Copied dresses in similar materials and with like ornamentation of these Parisian models were available for as little as \$100 in the United States. For \$25, adaptations of the original model in poorer materials and without the detailed workmanship were available. The fabric quality and delicacy of trimmings would certainly be less intricate in the \$25 gown, yet the style of the garment would be recognizable.⁹

Style Protection Arguments

Style piracy affected the structure of the apparel industry. One of the greatest complications of the style piracy dilemma, however, was that few parties agreed on the implications of style piracy. In many ways, the style piracy debate intensified because of the Great Depression's influence on women's consumption habits. As already discussed, during

⁹ "Sales of Copied Models," *Women's Wear*, October 10, 1913, 2.

the Great Depression, thousands of able-bodied, willing workers were unemployed.

Accustomed to buying ready-to-wear in a variety of price and quality levels, women chose to buy less-expensive garments rather than cease buying altogether. Women comfortable paying \$16.95 for their dresses shopped around for one at \$10.95, while the \$10.95 customer settled for a \$6.95 dress. By 1933, the wholesale price of 79% of all dresses was \$4.75 or less. The shift in consumer demands from high priced to low priced dresses caused a fundamental shift in the competitive relationship of the dress industry. More high priced than low priced firms went out of business. To meet consumer demand, lower priced firms grew tremendously.¹⁰

Reacting to this situation, higher-priced manufacturers sought to forestall their own obsolescence in the industry and safeguard their investments by adding to their merchandise the element of fashion individuality. If garments could be protected based on style exclusivity, dress manufacturers and retailers would have an all-important selling point for fashion-conscious women. But, piracy allowed low priced houses to thrive. Consumers needed to have high priced fashions interpreted at lower prices. The arguments both for and against style protection were ambiguous and complex.¹¹

Arguments in Support of Style Protection

Supporters of regulation against style piracy believed the practice detrimentally affected all individuals involved in the production and consumption process. As long as a style remained exclusive (protected against imitations) its creators and sellers would obtain profits of innovation. Leading trade publications called for collective action by both

¹⁰ Leonard Drake and Carrie Glaser, *Trends in the New York Clothing Industry* (New York: Institute of Public Administration, 1942), 78.

¹¹ Many of these arguments were presented at the N.I.R.A. hearings regarding the code of fair competition for the dress industry and the FOGA v. FTC court case, which will be discussed in much further detail in chapter five.

manufacturers and retailers to deal with piracy as early as 1910. *Women's Wear* called the practice the “copying evil.”¹² Proponents believed style protection would eliminate “the ever-present fear which exists today that to create new ideas is only to furnish one’s competitors with added material for carrying on their campaign of style piracy and price slashing.”¹³ Those who supported design protection believed the interests of manufacturers, retailers, consumers, and laborers would be best served by some form of design protection.

The manufacturers’ interest

According to supporters of style protection, the practice of piracy resulted in great economic losses and disadvantages to manufacturers. Style piracy allowed manufacturers of all price levels the opportunity to profit from others’ work. Manufacturers who spent the time, effort, and money to create original garments would see their profits diluted when imitators created similar goods in lower prices, which consumers willingly bought. The original garment styles would most probably be un-saleable especially if cheaper imitations were available. Some consumers, mainly those of lesser economic status could only afford the cheap imitation; while other, wealthier customers would not tolerate purchasing the higher quality original garment because cheaper variations were also available. Supporters of protection argued that copyists caused unfair trade practices; that they profited from the hard work of originators and then undersold these same originators.

Constantly creating new style variations, manufacturers of original merchandise struggled to retain their businesses. These companies spent money to develop and produce

¹² *Women's Wear*, Oct. 29, 1910, as quoted in Bernard Smith, “A Study of Uneven Industrial Development: The American Clothing Industry in the Late 19th and Early 20th Centuries,” (Ph.D. diss., Yale University, 1989).

¹³ Alphonsus Haire, “Pirated Designs,” 10.

original goods. Because styles were copied quickly, these original manufacturers needed to constantly revise their creations, generating slight variations of previous models. Since styles changed so quickly, manufacturers often produced small quantities, rather than large numbers of any one garment. Piracy promoted the production of constantly changing, small inventories of merchandise. Further, cancelled orders were a frequent complaint of manufacturers. Pilfered copies available in retail stores often meant withdrawn orders for manufacturers of the original styles. Stated by Johnston and Fitch, “manufacturing became a series of sprints between originators to make and sell their dresses and pirates to quickly copy the style of each popular dress, followed by slack periods in which all waited for another popular style to be developed.”¹⁴

With protection, the proponents of control assumed that the situation would be reversed, and that the expenditures of money, effort and time involved in creating original styles would be recovered. It was also assumed that stability of the industry would ensue. Rather than frantically produce new style variations, manufacturers could rely on the merits of their production and extensively reproduce successful styles. According to supporters of style protection, the protecting of garment styles against copying would eliminate rapid style changes and constant variations, lengthening the seasons of operation and avoiding wastes resulting from swift change.

The retailers' interest

According to those who proposed the prohibition of style piracy, copying was a heavy burden on retailers. Primarily, style piracy encouraged retailers to adopt a hand-to-mouth

¹⁴ A.C. Johnston & Florence A. Fitch, *Design Piracy: The Problem and Its Treatment Under NRA Codes* (Washington: Office of N.R.A. Administration, 1936), 40.

buying approach from manufacturers. Orders were small and many retailers hesitated to reorder garments as anything fashionable would be quickly copied in lower price levels. If retailers did stock a number of dresses in a particular style there was always the risk that copies would saturate the market, and consumers who had purchased the original might later see a copy of it at another store at a lower price. The consumer might think that the retailer from whom she bought the original lacked ability to select distinctive models or that she had been overcharged. The customer returned goods to the retailer and discontinued shopping in certain outlets. If retailers could not sell their merchandise due to style piracy, prices were marked-down at an economic loss to the retailer.

Those who wanted style protection believed that if garment designs were protected, retailers would be able to anticipate and order large amounts of goods, thus saving time and money on cancelled orders and marked down merchandise resulting from piracy. These proponents argued that piracy caused cheap imitations of goods and that protection would eliminate inexpensive knock-offs, restoring customer loyalty and purchasing habits. One of the main complaints of piracy was the multiplicity of similar styles. The presumption of supporters of protection was that a style that appealed to some women would automatically appeal to many women. The prohibition of copying, according to proponents, would allow for a greater diversification of products because manufacturers would have to create their own style ideas in garments. In light of the business failures caused by the Great Depression, supporters of protection argued that the diversity of garment styles created for specific price points would permit retailers ample opportunities to become more specialized, presumably creating niche markets less susceptible to business failure.

The consumers' interest

One of the ways in which pirated copies appeared so quickly on the market was through the use of cheap materials. These materials were often of poorer quality than the more expensive resources used by the higher priced manufacturers. According to supporters of style protection, great waste resulted from the use of poor quality merchandise. Retailers and manufacturers were forced to continuously turnover their merchandise because consumers desired new items. Rather than purchase expensive goods of high quality materials that might not sell to consumers, retailers ordered cheap imitations of the popular, expensive garments. Proponents of style protection argued that women drifted away from quality high-priced merchandise to similarly styled, lower quality, inexpensive dresses due to design piracy. The assumption was that if styles were protected, women would once again purchase expensive garments. This argument did not take into account the effects of the Great Depression on women's consumption habits. This argument also assumed ability to judge the quality of materials, which not everyone possessed.

According to supporters, style protection would eliminate the practice of selling clothing made of inferior materials. Manufacturers forced to create original merchandise would be compelled to create salable goods. One proven way of selling goods was through high quality standards. High quality goods, not dependent on style variations, would lengthen the usability of garments. Women would thus save time, money, and energy purchasing goods less sensitive to change. In addition, consumers who desired distinctive articles could safely rely upon the exclusiveness of protected items. The perpetuation of class distinction through dress was a common underlying argument of the proponents of style protection. If styles were protected, styles would presumably be recognizable as clothing items targeted to

high, middle, or low consumers. Style protection would serve to obviously differentiate between the elite and the less economically able. Arguments for style protection were counter to the broad consumer trend during this period of purchasing lower quality, fashionable goods.

The interests of labor

According to supporters of protection, piracy negatively affected the interests of labor, from the designers to the most unskilled workers. Piracy utilized the products of a relatively few number of designers because companies copied established fashions rather than hiring designers to create new modes. If protection was given to industry, the competent designers trained in vocational schools and colleges would find profitable work.

Another concern was that price became the basis of competition, since firms tried to offer similar styles at the lowest possible costs to themselves and to their consumers. To save costs, employees were paid minimum wages for long hours. Wages were frequently lowered as price became the primary competitive edge for many companies. Needleworkers were especially affected by piracy. Frequently paid by the piece, they couldn't learn styles fast enough to master new construction techniques and details, and thus could not make a living wage. It was asserted that the protection of styles would result in better working conditions including higher pay for employees, because manufacturers would need a more constant supply of stable goods, rather than constantly producing garments with only minor style variations.¹⁵

¹⁵ A.C. Johnston & Florence A. Fitch, *Design Piracy*; May Allinson, *Industrial Experience of Trade School Girls in Massachusetts* (Boston: The Department of Research: Women's Educational and Industrial Union, Studies in Economic Relations of Women, Vol. 9, 1917), 217.

Arguments Against Style Protection

Those industry members opposing style protection argued that the growth of the dress industry was due to two primary forces; the ability to supply fashionable merchandise at low prices and to the frequent changes of fashion which caused the obsolescence of articles before their actual utility had been exhausted. They contended that frequent turnover of styles, caused by copying, accounted for the sizable volume of business done by the ready-to-wear apparel industry. Manufacturers who were opposed to style protection frequently produced goods in the lower price points. These manufacturers were concerned that style protection would destroy their ability to create fashionable garments at cheap prices. It was after all, their purpose to copy the latest high-fashion, high-price styles into garments lower income consumers could afford. Those who opposed style protection felt that the manufacturer, retailer, consumer, and laborer would be hurt by style protection and that style protection was only in the best interest of the higher priced manufacturers.¹⁶

The manufacturers' interest

Supporters of design piracy asserted that protection would cause greater industry problems than allowing piracy to continue unchecked. If designs were protected, manufacturers would be slowed down in the creative process, trying to prove originality and avoid possible infringements. Further, infringements would be innumerable, some deliberate, but others innocent because of simultaneous origination of styles by different individuals. Opponents of protection worried that the complexity of the arguments concerning original garments versus adaptations of pre-existing garments would be overlooked by design

¹⁶ Many of these arguments were presented at the N.I.R.A. hearings regarding the code of fair competition for the dress industry and the FOGA v. FTC court case, which will be discussed in much further detail in chapter five.

protection legislation. In addition, better capitalized manufacturers could hire highly skilled designers, register all of the desirable styles, and thus preempt others in the field from creating salable merchandise.

The retailers' interest

Opponents of style protection believed retailers would bear the burden of responsibility of anti-piracy enforcement. In most proposed style protection plans, retailers were required to discern pirated and original goods purchasing only the novel ones. The matter of enforceability of plans for style protection afforded the most abundant field for condemnation by opponents of style protection. The administration of a broad plan for style protection across the dress industry would be so burdensome as to be wholly impracticable; the enforcement of rights near impossible. In the dress industry alone there might potentially be over one million styles that could be registered as original each year.¹⁷

Retailers specializing in the lowest priced brackets would be hurt the worst. Opponents feared that women used to purchasing stylish merchandise at cheap prices would rebel against purchasing lower priced merchandise not exactly in fashion that distinguished her from wealthier citizens. Some worried that women might revert to the practice of home dressmaking with consequent damaging affects on the dress industry.¹⁸

The consumers' interest

It is in the relation to consumer interests that the opponents of style protection affirmed some of their most fervent arguments. First, for a garment to become a fashion, it needed to diffuse to a critical mass of people. Opponents of style protection argued that

¹⁷ A.C. Johnston & Florence A. Fitch, *Design Piracy*.

¹⁸ William Silverman, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 156-166.

effective and cheap reproductions of style goods diffused garment styles to all economic levels, and thus created fashion. They argued that middle and lower income consumers had a right to enjoy current fashions. Style exclusivity due to protection would cause obvious class distinctions visible through clothing. It was assumed that current fashions would be unavailable to lower income consumers until exhausted by more wealthy citizens. Consumers had a legitimate interest in obtaining copied merchandise. Opponents pointed out that, in 1934, about 80% of the public purchased in the “popular priced” or lower price points. Opponents of style protection argued that protection would provide support only to high-priced manufacturers and the wealthiest clientele who presumably did not want others of lesser economic classes in similar styles of garments.¹⁹

The interests of labor

Those against regulation assumed that laborers were not harmed by style piracy. The excess of styles produced due to piracy created a huge number of jobs for both skilled and (mostly) unskilled workers. Style protection, according to supporters, would lengthen seasons and cause greater stability of styles. Opponents of protection reasoned that greater stability and longer seasons would mean less available work, especially for unskilled and temporary labor.²⁰

Regulating Piracy

If the arguments for and against regulating style piracy were contradictory, creating an agreeable style protection plan was nearly impossible. There was little agreement even

¹⁹ Ibid., 151-160; Samuel Hartman, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 156-166.

²⁰ Sachar, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 148, 150-151.

among advocates of style protection as to how accomplish their goals. First, would protection extend to an entire garment or for mere elements of a dress? Would the creator of the original garment have exclusive rights over who duplicated the garment? Further, once protection was given to a garment, how long would the term of protection last and when would protection begin?²¹ The inherent mutability of fashion made answers to the questions vague at best.

In the 1930s, recommended solutions for ending style piracy included the already existing processes of trademarks, copyrights, and patents. A trademark may be defined as a convenient way of disclosing the commercial source or origin of goods which are sold in trade. Although the practice had existed in men's wear for several decades, few women's wear manufacturers or companies appear to have adopted the suggestion. The women's industry was quite disorganized with a plethora of small and medium sized firms in the early twentieth century. The apparel industry was also marked by high insolvency rates. Trademarks were successful largely because they caused name-brand identification with certain products. The fluidity of a firm's existence in the women's trade did not lend itself to style protection based on stability of name recognition. Individual owners of firms often entered the apparel industry in one capacity, left to pursue other opportunities (or were forced to resign or dissolve the business), only to create a new business with a different name. Trademarks clearly would not have followed individual business owners through their many entrances and exits, name and employee changes in the trade. Further, it is questionable if women in the early twentieth century identified with a product name. It is more likely women

²¹ Kenneth Hutchinson, "Design Piracy," *Harvard Business Review* 53, no. 2 (Winter 1940): 191-198.

purchased garments on style and price considerations, and chose to shop in familiar retail stores.²²

Copyrighting and patenting apparel styles were other recommended solutions to the copying problem. While some designers tried to copyright and patent their garment styles, these attempts proved largely unsuccessful. Copyright laws protected only two dimensional works of art such as paintings and poems. Originators of fashions often tried to copyright other aspects of their creations to ward off imitators. Some manufacturers and designers numbered or named their more important models (Figure 4.1). Madame Simcox was one such U.S. designer who named and then copyrighted the names of her designs. Each dress included copyright papers protecting the work from appropriation by outsiders. Legal owners of the style would have a right to sue interlopers for the amount stated in the papers of copyright. Copyrighted names merely created an influx of advertisements that stated styles were based on or adaptations of various designer garments recognizable by name.²³

²² "Trademark Use Was Exploited by Ancients," *Women's Wear*, August 1, 1919, 31.

²³ Irene Blunt, "Fighting the Design Pirate," *Journal of the Patent Office Society* 15 (1933): 29-35.



Figure 4.1 Dress with copyrighted numbers. This manufacturer was included in Bonwit Teller advertising.

Source: “Exclusive, Registered, Fashions of American Design,” *The New York Times*, May 6, 1934, sec.2, 18.

Patent law protection required proof of style originality and novelty. Typically, patents were granted for technical innovations; an example of this would be the “Whirlpool” stitching used in brassieres to stabilize the shape of the cup.²⁴ The securing of patents required from two to six months, and sometimes years. Waiting for patents, designers would lose time in marketing the product and would run the risk of having the style pirated before

²⁴ Even this patent was sidestepped by clever competitors, using different stitch configurations. See: Jane Farrell-Beck, and Colleen Gau, *Uplift: The Bra in America* (Philadelphia, PA: University of Pennsylvania Press, 2002), 66.

receiving title. Patents were expensive, as patents for three and a half, seven, and fourteen years typically cost \$10, \$15, or \$30, plus \$20 for lawyer's fees. The cost of the patents proved absurd as some manufacturers created hundreds of different dress styles which would remain popular for a limited time. Some designers did patent elements of the dress garments including technical elements such as the type of stitching, use and placement of zippers, and even the names of garments. Many manufacturers introduced their garments with patented names.²⁵

In addition to the expenses of securing patents, patent holders were then responsible for enforcing the patent, having to watch for and sue infringers. In one such case the manufacturing company of Forsch, Benjamin Company sued the Morris W. Haft & Bros. Company for infringement on patented elements of a particular patented garment (Figure 4.2). Due to the infeasibility of patent and copyright laws, industry spokespeople proposed other strategies such as brand name advertising and the creation of product standards (including the regulation and stabilization of price) to deal with the chaotic pace of product innovation and style piracy.²⁶

²⁵ Kenneth Hutchinson, "Design Piracy," *Harvard Business Review* 53, no. 2 (Winter 1940): 191-198.

²⁶ "American Styles for American Women," *Women's Wear*, November 4, 1912, 1; John P. Nikonow, "Patent Protection for New Designs of Dresses," *Journal of the Patent Office Society*, March 1935, 253-4; "They Steal Styles and Numbers," *The New York Times*, June 20, 1914, 11.

Design Patent in Dispute.

Feb. 18, 1935.

L. H. FORSCH

Des. 94,604

LADY'S SUIT

Filed Dec. 17, 1934

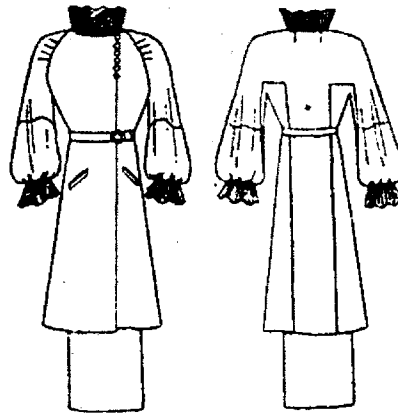


FIG. 1.

FIG. 2.

L. H. Forsch

INVENTOR

*Illustration attached to papers in suit of Forsch, Benjamin Co.
against Morris W. Haft & Bros., Inc.*

Figure 4.2 Design patent in dispute. The illustration is the patent registration, including front and back views of the garment produced by the Forsch, Benjamin Company.

Source: "Design Patent in Dispute," *Women's Wear Daily*, April 3, 1935, 2.

Legal Attempts to Regulate Piracy

The ineffectiveness of patent and copyright laws to protect styles caused great concern among many in the apparel industry. Numerous bills were introduced in Congress to remedy the piracy problem. One of the first U.S. acts to address the problem was the Kahn Act of 1913. European artists banded together and decided to not attend the Panama-Pacific International Exposition of 1914 unless their goods were protected against copyists. It did not extend, however, to U.S. designers or their goods. The lack of protection angered many

creative clothing artists. The Kahn Act did inspire American manufacturers to lobby Washington for style protection.²⁷

In January of 1914, Representative William A. Oldfield of Arkansas, chairman of the House Committee on Patents, introduced the first measure on style registration in Congress. Thorvald Solberg, head of the Copyright Office, accumulated considerable evidence of the widespread need for such legislation. The bill languished before it could pass because of the succession of Mr. Oldfield as committee chairman by Representative Martin A. Morrison of Indiana.

Frustrated by the lack of results, designers, manufacturers and others interested in the protection of styles formed the Design Registration League in 1914. This league sought special legislation through Congress, which would provide a workable, inexpensive and quick means of protecting or establishing ownership rights of a commercial style. Design League work resulted in the introduction of a few bills to Congress. Lobbied by the Design League, Representative Martin A. Morrison of Indiana introduced a bill to Congress in 1916. The eponymous Morrison Bill afforded copyright registration to the author of any new and original style of apparel, “as embodied in or applied to any manufactured product,” including surface styles. This bill would have provided protection to textile printing. With American involvement in World War I in 1917, the Morrison Bill was laid aside.²⁸

Representative Albert H. Vestal of Indiana and Senator Arthur Capper of Kansas presented a new draft of a bill for style protection in 1925. The Vestal Bill recommended to the House in 1925, would “encourage and promote the production of artistic styles in the

²⁷ Sylvan Gotshal and Alfred Leif, *The Pirates will Get You* (New York: Columbia University Press, 1945), 11, 15.

²⁸ *Ibid.*, 16.

United States by furnishing adequate protection against piracy for artistic articles.” The Vestal Bill favored prompt and inexpensive registration of styles (first in the patent and then in the copyright office); a two year term for a two dollar fee, and a right to an eighteen year extension for twenty dollars. The Vestal Bill eliminated the need for affidavits of originality, and made fraudulent applications to the Copyright Office a misdemeanor. Secretary of Commerce Herbert Hoover strongly supported the Vestal Bill, stating that Paris abounded in styles for textiles, leather, jewelry, etc, and that the “United States needed to achieve a larger measure of artistic independence.”²⁹

Certain department stores feared that if passed into law, the Vestal Bill would hamper the free flow of goods and that the bill suggested that retailers as a group would be held accountable for selling infringing goods. Retail stores also feared the prospect of false claims, intimidation by manufacturers, inability to reorder, and a monopoly of fashions by those who registered their garment styles. When the bill was argued before the House, Congressman Vestal stated that style copyright would open the door to greater employment of designers, enable manufacturers to produce larger quantities more cheaply, establish honest competition among manufacturers, and afford consumers a choice of competing designs at competing prices in every range. The Bill was passed by the House in the winter of 1930 to 1931 but Congress adjourned before it was presented to the Senate.³⁰

The Senate committee led by Chairman Sirovich discussed how to give protection to designers and manufacturers without doing harm or injury to somebody else, particularly the retailer. The committee decided that the Vestal Bill was far too broad in its scope. Professor

²⁹ Ibid., 27-38.

³⁰ Oscar Geier, “What has Been Accomplished towards Protecting Textile Designers,” *Journal of the Patent Office Society* 16 (1934): 221-227.

Karl Fenning of Georgetown University was called by Chairman Sirovich to prepare a new bill passable by Congress. He evolved a hybrid plan of style registration. This plan stated that the Register of Copyrights would establish a searchable file of styles. Garments deemed original and novel would receive a certificate of copyright within seven days with a term of copyright of 5 years. Introduced as a bill in 1933 and again in 1935, the bill failed to receive approval each time. By 1940, a total of thirty-nine different bills were introduced to Congress. The closest to enactment was the Vestal Bill and another, titled S.3047, which amended the copyright law of 1909, by the Senate in July of 1935.³¹

Trade Association Attempts to Regulate Piracy

Besides relying on governmental legislation, industry players suggested trade unions to support and protect their investments. Discussed in the following section were those pertinent to protecting against design piracy. The women's ready-to-wear apparel industry grew at an amazing rate in the early twentieth century. Both small and large firms entered and exited the apparel business often and in numerous variations. Firms would begin, dissolve, and begin again. There was little standardization of uniform trade practices within the ready-to-wear apparel industry. Crude business practices and "thoughtless disregard for the rights of their employees and public" were common.³² According to economics and finance professor Jesse Pope, as the nineteen-teens progressed there was increased wealth

³¹ Sylvan Gotshal, *Today's Fight for Design Protection* (New York: Sylvan Gotshal, 1957); Irene Blunt, "Fighting the Design Pirate;" Henry Williams, "Report of the Committee on Protection of Designs," *Journal of the Patent Office Society* 15 (1933): 807-813; Geier, "What has Been Accomplished Towards Protecting Textile Designers;" Joseph Rossman, "Proposed Registration of Designs," *Journal of the Patent Office Society* 17 (1935): 995-998; Walter Derenberg, "Commercial Prints and Labels: A Hybrid in Copyright Law," *Journal of the Patent Office Society* 22 (1940): 452-468; Thomas Hudson, "A Brief History of the Development of Design Patent Protection in the U.S.," *Journal of the Patent Office Society* 30 (1948): 380-400.

³² Jesse E. Pope, *The Clothing Industry in New York* (New York: Burt Franklin, 1905): 195.

and respectability of firms which changed the organization of the apparel industry. Trade unions were formed to affect apparel industry conditions such as sweatshops, child labor, piracy, and other abuses.³³

Perhaps following the lead of the men's shirt trade which used trademarks and logos to identify goods and protect against piracy, the *American Cloak and Suit Review* advocated collective action by the larger manufacturers and retailers to deal with style piracy. It called for the "reputable" producers to put company labels on their merchandise to "protect the legitimate trade from the pirates and harriers that...grow fat from their spoils."³⁴ It suggested that such seals could distinguish the worthy merchandise from the cheap imitations. The National Cloak, Suit, and Skirt Manufacturers Association and its allied Dress and Waist Division formed style committees to regulate the introduction of new styles. They sought "the emancipation for all legitimate American trade interests from an irksome and unnecessary dependency upon Parisian openings." The committees urged association members to reduce the number of new styles they introduced. They suggested general guidelines for the style of coat and shirtwaist sleeves, and the length, fabric, cut, and color of jackets and skirts, presumably to limit the magnitude of style changes. These attempts were fairly successful in the cloak and suit trade mainly because of the great organizational structure of this industry. In addition, cloaks and suits were more standardized products, easier to regulate, than those of the dress industry.³⁵

³³ See also: Henry Creange, "Safeguarding Industry Against the Pilfering of Ideas," *The Guilds of America* (New York: The Guilds of America Foundation, Inc., 1932), 3-4.

³⁴ *American Cloak and Suit Review*, November 1912, 110 as quoted in Bernard Smith, "A Study of Uneven Industrial Development: The American Clothing Industry in the Late 19th and Early 20th Centuries," (Ph.D. diss., Yale University, 1989), 202.

³⁵ Smith, "A Study of Uneven Industrial Development," 204; "The Cloak Designers' Convention," *Women's Wear*, March 22, 1912, 1.

Much of the early work by trade associations in the dress industry in the nineteen teens and nineteen twenties served more as propaganda for the promotion of American style not dependent on Paris than as collective action to end style piracy. Throughout the nineteen teens the Society for American Fashions for American Women suggested the protection of styles as providing support and protection to the dress industry. They offered few concrete suggestions for protecting garment styles however.

Other people and organizations vehemently cried for anti-piracy initiatives in the trade press of the nineteen teens. Frequently quoted were the members of The National Ladies' Tailors and Dressmakers Association. They met in June of 1912 for a convention in which they proposed ways to protect American ideals, to promote New York City as a world center of style and merchandise, and to protect against piracy. Speakers urged the notion of American styles for American women in order to break away from the tyranny of foreign designers. Mentioned throughout the 1930s, this organization accomplished little in regard to concrete plans for stopping style piracy.³⁶

The silk textile industry had greater success than the dress industry in attempting to protect textile styles. This success in protection of print styles was accomplished for two reasons. First of all, the silk textile industry had the support of most industry players. Converters, dyers, weavers, etc. participated and supported the program. Second, the originality of styles in printed fabrics was far broader than that of dresses. A paisley pattern could have any number of variations of color, line, shape, and type, to make nearly all paisley

³⁶ "National Ladies Tailors and Dressmakers Association Plan Fashion Congress," *Women's Wear*, April 11, 1911, 5; "Style Congress of Ladies Tailors and Dressmakers Opens," *Women's Wear*, June 27, 1912, 1; "Leading Tailors and Dressmakers Organize for Protection and Elevation of Their Industry," *Women's Wear*, October 9, 1919, 1, 38.

patterns a unique variation. Whereas, the popular lines of garment styles take into account more of the silhouette and general look than intricacies of pattern.

In 1928, the Silk Textile Industry, which would later become the National Textile Association, established a style registration bureau for the protection of print styles. Before putting a style into production manufacturers needed to submit their style plan to the bureau to obtain a comparison with all others of a similar type to determine whether it resembled a style already in use. Manufacturers were able to save production expense and loss of time in fruitless promotion of an already available print style. The bureau was a clearing house of style. Printers agreed to refuse to print any style not registered with the bureau. The term of registration was 2 years, later reduced to one year, later to six months or a season. Renewals were possible. There was a four dollar fee for registering and a \$1.50 fee for renewal. The success of the plan was attributable to a number of factors including a closely knit trade association and the very nature of print styles which may be varied to obtain an almost infinite number of different styles. For its first year, the Silk Textile Industry Bureau of Registration was touted as a success; 3,045 registrations were granted.³⁷

The self-registration and regulation of the silk textile industry was not meaningful to courts of law however. Regardless of the certificates offered to designers, copyright law did not extend to fashion works. The *Cheney Bros. v. Doris Silk Corporation* decision in 1929 made this point clear and shook the efficacy of the registration bureau. The Cheney Brothers had marked the selvage of polka-dot fabrics with the notice: "Original Design-All Rights Reserved," in the attempt to protect against undue copying. The Doris Silk Corporation

³⁷ Gotshal and Leif, *The Pirates will get You*, 54; A.C. Johnston & Florence A. Fitch, *Design Piracy: The Problem and Its Treatment Under NRA Codes*, xii.

copied the polka-dots of the Cheney silks. Cheney took the Doris Silk Corporation to court claiming that the polka dot style was illegally copied by Doris. Cheney asked for a preliminary injunction restraining Doris from manufacturing or selling silk piece goods with this style. The motion was denied. Copying of garment styles and decorative designs was not forbidden by law. Judge Julian W. Mack of the United States District Court did indicate that while the “plaintiff suffered a grievance for which there should be a remedy, judges have only limited power to amend the law.”³⁸ Pirates took this decision as license to copy.

The 1930s were the most prolific decade for attempts to regulate style piracy. This was because of the damaging affects of the Great Depression on higher priced manufacturing and retailing interests. As was noted in Chapter Two, the Great Depression caused more high end firms than low end firms to go out of business because women needed to purchase economically more affordable garments. Perhaps ignoring the effects of the Depression, some within the higher priced establishments believed piracy was the root of the general public’s interest in lower priced clothing, which ultimately caused high-priced business dissolutions and bankruptcies. Discussed briefly in this section were the more prominent organizations in the 1930s which sought to end piracy.

The Dress Creators League of America incorporated on November 11, 1932. Their stated purposes were to “band together manufacturers who are the creators of styles and fashions for mutual protection and benefit and for the protection of property rights in original styles and fashions, and to prevent the copying and pirating of such styles by others.” Members of the Dress Creators League manufactured dresses in the \$10.75 price line and as such were not included within the initial FOGA policy which provided protection to high-

³⁸ Gotshal and Leif, *The Pirates will get You*, 63.

priced lines \$22.50 wholesale and up. Before the FOGA changed their policies to include lower priced affiliates, the Dress Creators League ran advertising spreads proclaiming their goals, and regularly held fashion shows of group members (Figure 4.3). After the FOGA included lower priced houses into their guild, the Dress Creators League retained their distinctive name yet participated in the Guilds' program as a protective affiliate. The Dress Creators League did not have a registration bureau or a formulated plan for stopping industry-wide piracy. After FOGA dissolution, the League seemed to disappear. A less publicized group with aims similar to the Dress Creators League was the National Association of Style Creators incorporated in 1934.³⁹

The Fashion Group International was founded in 1931 by prominent women in the fashion industry. Originally established in New York City during the 1940s, the group had a network of branch groups in cities across the country with the purposes of bringing together women executives in the fashion industry. During the 1930s and early 1940s, the group held regular meetings where topics relevant to executives in the fashion industry as well as covering topics of interest to consumers.⁴⁰

³⁹ Dress Creators' League of America, Incorporation Papers, November 1932, New York Department of State; Samuel Zahn, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*; The National Association of Style Creators, Incorporation Papers, November 1934, New York Department of State.

⁴⁰ Sandra S. Buckland, "Promoting American Fashion 1940 through 1945: From Understudy to Star" (Ph.D. diss., The Ohio State University, 1996), 52.

Announcing

THE FORMATION of the
DRESS CREATORS LEAGUE
 OF **AMERICA INC.**

an organization dedicated to foster originality and to serve a broad range of other constructive purposes in the \$10.50 field.

MEMBERS

Adorable Frocks, Inc.
 Baum, Kravat & Baum
 F. E. D. Dress Co., Inc.
 Goldman Froek Co., Inc.
 Hartman-Adelman, Inc.
 International Dress Co., Inc.
 Jomark, Inc.
 Moskowitz & Parnes, Inc.
 New York Dress & Costume Co., Inc.
 Parisian Mfg. Co., Inc.
 C. H. D. Robbins Co.
 Rosen Bros. Frocks, Inc.
 Sakin & Levine, Inc.
 Sheila-Lynn Dresses, Inc.
 Sol Wood Co., Inc.

The under-signed firms, specializing in the creation and production of dresses at \$10.50 have formed the Dress Creators League of America as a medium of co-ordinated activity and enlightened expression for the fashion originators in their division of the industry and to tender a maximum of tangible co-operation to retailers the country over.

Membership in this group is confined to those houses that concentrate upon individuality of design, through the maintaining of extensive designing staffs and through the exclusive interpretation of imports.

Comprised of houses that conform to the highest standards of ethical practice, the League will conduct consistent endeavors through which the stability of their field can be enhanced and through which an equitable relationship can be assured to retail merchants and sources of supply.

DRESS CREATORS LEAGUE OF AMERICA INC.

Figure 4.3 Dress Creators League of America inaugural announcement.

Source: "Announcing the Formation of the Dress Creators League of America, Inc." *Women's Wear Daily*, December 1, 1932, 14.

Similar to the situation in the nineteen teens, the nineteen thirties witnessed a great number of fleeting organizations. *Women's Wear Daily* regularly printed brief articles concerning initial meetings of associations. A number of these industry organizations were founded in support of more ethical ways of doing business; concerning both style piracy and the trade practices between retailers and manufacturers. Due to their transitory nature, a brief mention of a few of these groups follows.

The American Society of Style Creators formed in 1930 with the objective of “developing and fostering the ability and talent of American creators and bringing about better understanding and business relations with foreign couturiers.” The National Association of Style Creators, Inc., incorporated in New York State November 16, 1934 “to protect creators and originators of styles in the dress manufacturing industry.” Formed to end unfair practices in the garment industry, including piracy, the Garment Industries Board of Trade, Inc. consisted of dress manufacturers who were not members of the FOGA.⁴¹

Not all groups were for the prevention of style piracy. The stated purposes of the Popular Priced Dress Manufacturers Group included: “to promote the general welfare, progress, and development of the popular priced dress industry and to promote its services to the public; to improve relations between labor and employers; and to secure to its members freedom from unjust and unlawful exactions.” The Popular Priced Manufacturers Group incorporation coincided with the inclusion of piracy provisions in the Dress Code Authority's List of Fair Trade Provisions, created under the auspices of the National Recovery Administration. The Popular Priced Dress Manufacturers Group strongly encouraged the

⁴¹ The American Society of Style Creators, Incorporation Papers, 1930, New York Department of State; The National Association of Style Creators, Incorporation Papers, November 1934, New York Department of State.

Federal Trade Commission to investigate the FOGA, which led to the legal decision against the Guild.⁴²

Summary

This chapter briefly discussed the arguments by U.S. ready-to-wear women's apparel industry interests to either regulate style piracy or to allow it to flourish. American growth of manufacturing firms caused a new problem in the United States; firms copied other American firms. While some within the industry felt this piracy was detrimental to all involved in the industry from manufacturers to consumers, others felt piracy was the cause of rapid economic growth and development. The arguments both for and against piracy in the industry were contradictory, complex, highly subjective, and not easily resolved. This was in part why the piracy issue continued to be so derisive well into the twentieth century.

Almost everyone in the apparel trade accepted that piracy affected the industry in some way, even if the results of such effects were ambiguous. Piracy unarguably speeded the transmission of fashion. To meet consumer demand for new goods, manufacturers were on a constant cycle of create, copy, create. Retailers stocked small amounts of goods, rather than carry large amounts of potentially unmarketable merchandise. Women did not have a large selection of items to choose from, but rather were forced to select from the slight style modifications offered by manufacturers and stocked by retailers. Copying allowed style reproductions in all economic levels. Women of vastly different economic means were able to wear similar styles. Some, especially in the lower price ranges argued this was a positive

⁴²The Popular Priced Dress Manufacturers Group will be discussed in the next chapter. Popular Priced Dress Manufacturers Group, Inc., Incorporation Papers, September 1934, New York Department of State; Chas Call, "Pleasing Guilds and Pleasing Chains Two Different Games," *Women's Wear*, November 26, 1935, 14.

diffusion of garment styles; others, particularly in the higher price ranges believed this a detriment to wealthy women who desired exclusivity.

Legal and industry groups sought to thwart piracy. Numerous bills were introduced to Congress to provide protection for apparel styles. They all failed, ultimately due to the complexity of the issue and lack of consensus of industry members. Industry attempts at self-regulation were more successful, yet these successes were largely in segments of the industry more organized with more standardized products than the women's apparel trade. Organizations within the dress trade appeared, advertising would-be solutions to abuses of the trade, only to disappear as abruptly. Piracy was not to be easily solved by propaganda or press releases of monthly meetings.

CHAPTER FIVE: THE FASHION ORIGINATORS GUILD OF AMERICA

One of the more successful attempts to control style piracy in the dress industry was by The Fashion Originators Guild of America (FOGA), in existence from 1932 until 1941. This chapter examines the ethical, economic, and social considerations in the historical arguments for and against style protection, and analyzes the role of designers, manufacturers, retailers and consumers in both the initial success and ultimately the failure of the FOGA to control copying. The guild's administrative program against design piracy was an important historical piece, illustrating the controversial debates concerning the ability to regulate fashion's oldest "creative" practice. The historical arguments offered critical insight into how and why design piracy became a standard practice in the ready-to-wear apparel industry. The FOGA was an important early case study that highlighted the consequences of a program of industry-wide self-regulation. This case study places the piracy dilemma within the apparel industry context.

The FOGA

The FOGA incorporated in New York State on March 14, 1932 with the stated objective to protect the "originators of fashions and styles against copying and piracy of styles of any trade or industry."⁴³ The Guild, founded by designer and manufacturer Maurice Rentner,⁴⁴ was an organization of twelve leading ladies' dress manufacturers located in the

⁴³ Fashion Originators Guild of America, Incorporation Papers, March 1932, New York Department of State.

⁴⁴ Maurice Rentner was born March 3, 1889 in Warsaw Poland. Rentner helped his father in the manufacture of buttons, and was then a salesman of children's wear. Between 1912 and 1923 Rentner associated himself with his younger brother in M & H Rentner, establishing his own company under his name after the partnership dissolved. Rentner, a devotee of the French designer Molyneux, popularized dressmaker suits, a feminine dressy style, and draped afternoon dresses. He was one of the first manufacturers of ready-mades in the U.S. to employ designers to create original clothes. Rentner was one of the original stockholders of the garment center buildings at 498, 500, and

New York City area. Other executives of the FOGA included dress manufacturer Herbert Sondheim, vice-president; dress manufacturer Charles Gumprecht, second vice-president; sports wear manufacturer J.A. Livingston, treasurer, Albert M. Post, executive director; dress manufacturer James M. Golby, executive secretary, and Sylvan Gotshal, FOGA attorney and counselor at law.

The Guild was built on a foundation of retailer-manufacturer collaboration in a movement to protect and popularize original designs. Guild aims were not to regulate dress industry price, production, or quality. The Guild sought to “revive women’s interest in fashion by stimulating her desire for originality in style and fabric and to overcome the mistaken idea that an imitation can replace an original.”⁴⁵ Secondary objectives listed by the Guild were:

to promote cooperation and friendly intercourse in the wearing apparel industry; to establish and maintain uniformity and certainty in the customs and commercial usages of trade; to acquire, preserve and disseminate information and literature which will tend to augment the sale of the commodities manufactured or sold; to advance the trade and commercial interests of its members and to foster the industries of its members throughout the Americas and to promote the sale, identification, and recognition of original style and merchandise of the industries and its members.⁴⁶

The FOGA sought to do all of these things through extensive advertising and promotional campaigns in New York City newspapers and apparel industry trade magazines, through the establishment of a registration bureau for original dress styles, and through the issuance of labels to original dress manufacturers.

512 Seventh Avenue. He was known as “The Dean,” “The King,” and “Napoleon.” Taryn Benbow-Pfalzgraf (ed.), “Maurice Rentner,” *Contemporary Fashion* (Detroit, MI: St. James Press, 2002).

⁴⁵ *Women’s Wear Daily*, November 29, 1932, 9.

⁴⁶ Fashion Originators Guild of America, Incorporation Papers, March 1932, New York Department of State.

Initially, the FOGA worked through publicity: letters, ads, and articles to create an interest in American styles, and targeted the better priced manufacturers, wholesaling at \$22.50 and higher, to join the Guild's program. The FOGA regularly paid for full-page advertisements in *Women's Wear Daily*. They used the ads to both communicate with FOGA constituents and address opponents' negative claims (Figure 5.1).

**To Bring Back
the Demand for
Good Clothes**



the FASHION ORIGINATORS
GUILD OF AMERICA, inc.

first
An extensive campaign of advertising in metropolitan newspapers and in the leading fashion magazines
—to revive woman's interest in fashion and better clothes.

second
Extensive editorial publicity through news articles in newspapers and magazines, (all of whom are only too eager to give this reconstruction plan their support)
—to stimulate woman's desire for originality in design and fabric.

third
The establishment of a system of protecting original designs and the manufacturers and sellers thereof, against style copying
—to eliminate the recent consumer-acceptance of inferior clothes, by removing its cause.

fourth
The creation within a short time, of a distinctive identification (a definite mark or symbol) by which an original can be immediately distinguished from a copy
—to impress upon women that fashion and quality go hand in hand with original designs; and to reestablish her confidence in good clothes and stores that sell them.

Only through the success of this movement will the manufacturing and retailing of ready-to-wear be brought back to a profitable basis. We ask your active cooperation.

FASHION ORIGINATORS GUILD OF AMERICA, inc.
498 Seventh Avenue, New York City

Figure 5.1 Fashion Originators Guild of America inaugural announcement.

Source: "To Bring Back the Demand for Good Clothes," *Women's Wear Daily*, March 29, 1932, 9.

Shortly after incorporation, the Guild sought the cooperation of local retail guilds and in 1933 individual retailers. Cooperating retail members agreed that they would not purchase from manufacturers that did not conform to the ethics and regulations of the FOGA; would not knowingly buy or sell copies of styles legitimately registered with the Guild; would accept the decision of the style piracy division of FOGA on all questions of alleged piracy; and would stamp all orders for women's merchandise with the following warranty clause:

This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted.⁴⁷

Small, individually owned retail shops and departments stores joined the program. The Guild advertised to such a degree in the early 1930s that it was difficult to turn a page of *Women's Wear Daily* without seeing either a promotional message from the Guild or the joined advertising of the Guild with retail and manufacturing shops. During the years 1932 to about 1936, the Guild was everywhere within the pages of the trade press, with multiple ads, announcements of Guild-sponsored fashions shows, and full-page announcements. The Guild even permeated tangentially related sections of *Women's Wear Daily* including reports in the regional markets of the United States, including St. Louis and Chicago, among others. Although the Guild's focus was on the reviving women's interest and desire for American, original, quality goods, advertisements were almost always targeted to retailers and manufacturers and quite rarely, if ever, to consumers.

The Guild was innovative in its tactics. In an advertisement from October 1932 the Guild announced special mid-winter showings of members' creations. The timing of the

⁴⁷ Fashion Originators Guild of America v. Federal Trade Commission. 312 U.S. 4346 (1941).

shows in October was rare in the fashion industry. By this time, most manufacturers would have been showing the next season's garments. By showing mid-season clothing, the Guild encouraged retailers to sell new merchandise to women when they could actually use them; rather than offering spring fashions during the cold of winter. One can only surmise the tremendous pressure small retail shops felt to join the Guild's program due to the unusual tactics employed and the intensity and ubiquity of Guild promotion (Figure 5.2).

the members of the
FASHION ORIGINATORS
GUILD OF AMERICA—
announce Special Mid-Winter Open-
ings beginning Tuesday, October 11th

the decision to hold these showings is embodied in the following resolution:

Whereas the fixation by the Fashion Originators Guild of America of the Fall Showing of quality merchandise demonstrated that showing upon dates scientifically fitted to the needs of the well dressed woman and the problems of the retailer is economically sound and constructive, and WHEREAS there now appears to be a firm and continued demand for reasonable quality merchandise calling for an additional correctly dated showing featuring mid-winter merchandise NOW, therefore, be it unanimously resolved that the members of the Fashion Originators Guild of America shall on and after October 11, 1932 present a mid-winter collection of quality merchandise particularly suited and designed for the fashionable woman's mid-winter needs and be it further RESOLVED that the Spring Showings heretofore given on or about November 1 be at such deferred dates as shall later be fixed by the Guild.

This action by the Guild is in recognition of the important change in the buying attitude of clothes-conscious women. There has been a pronounced reaction on the part of the public in favor of quality merchandise. This welcome trend is accompanied by a definite change of buying habit. Although the fashion-conscious woman is now reverting to her former custom of paying for one good dress what she has recently been paying for three cheap ones—the economic condition is such however, that she cannot, or does not assemble an entire wardrobe at one time. Rather she now buys her wardrobe "piece by piece," as the need arises, or as the weather or social occasions dictate.

In the light of these circumstances, it is evident that creators and retailers should encourage upholding the season to and through December. By showing the women new, timely fashions when she wants them, throughout the season, retailers and manufacturers will be able to maintain a normal profit for a longer period. Therefore, it is obvious that it would be sheer folly for stores to hold private sales and clearances before the very end of the season. As its part in furthering trade and consumer interest in timely apparel, the Guild is launching a Mid-Winter Season featuring new merchandise that will inspire the woman to complete her wardrobe and hence stimulate a continuance of normal business.

It is logical that through enlightened cooperation between originators and retail merchants, this lengthening of the season can be profitably and successfully promoted. In view of this, members of the Fashion Originators Guild have agreed that October 11th would be the proper date for launching new collections designed expressly to accelerate this new trend for the better. With the same goal in mind, the Guild's Spring Showings will also be postponed to a date considerably later than that of previous years. The Guild feels certain that retailers who collaborate in the furtherance of this program will receive tangible benefits in the form of both profits and prestige.


 **FASHION ORIGINATORS**
GUILD OF AMERICA

Figure 5.2 FOGA mid-season showing announcement

Source: "The Members of The Fashion Originators Guild of America," *Women's Wear Daily*, October 4, 1932, 9.

The larger and more powerful retail associations such as the National Retail and Dry Goods Association (NRDGA) and the Associated Merchandising Corporation (AMC) avoided joining the Guild's program for two reasons. First, these groups were composed of some of the larger, more established retail stores such as Filene's and Lord & Taylor. These stores did not need any of the support and promotion of the Guild. Second, the NRDGA and AMC primarily represented retail interests. Under the Guild's program, responsibility for patrolling and penalty for having pirated merchandise fell squarely on retailers. Spokespeople for the NRDGA stated that Guild programs would cause "great inconvenience and possible loss and embarrassment to the retailer." These groups were not completely opposed to style protection, but hoped for less penalization of the retailer than the Guild offered. Later in the Guild's program, many within the NRDGA and AMC would further object to the Guild's perceived efforts to "split the ranks of retailers" by "picking on" individual stores such as the red-carded Bloomingdale's and Lord & Taylor in New York.⁴⁸

The Guild allowed apparel industry executives the opportunity "to recognize that they are a part of a great and intricate structure and not just a lot of little czars, each following his own will and each helping to destroy or to confuse each other."⁴⁹ By 1932-33, some of the manufacturers and retailers that agreed to cooperate with the Guild included Hattie Carnegie, Bergdorf Goodman, Saks Fifth Avenue, Filene's Brothers, Jo Copeland, Milgrim's, Tailored Women, Jay Thorpe, Bonwit Teller & Co, Anna McCormick, and Nettie Rosenstein.⁵⁰ Most

⁴⁸ "Stores Will Test Fashion Guild Ban. *The New York Times*, February 20, 1936, 38.

"Design Piracy," *The Nation*, December 1931, 668; Henry Creange, "Safeguarding Industry Against the Pilfering of Ideas," 3-4.

⁴⁹ M.D.C. Crawford, "End of Rash Individualism Started Era of Good Trade," *Women's Wear Daily*, January 22, 1936, 4.

⁵⁰ *Fashion Originators Guild of America v. Federal Trade Commission*. 312 U.S. 4442 (1941); "Design Protection Gains in Many Lines," *The New York Times*, sec. 2, May 6, 1934, 19.

of these members handled both manufacturing and retailing of their own clothing lines in addition to selling the designs of other manufacturers. These companies dealt within the upper brackets of ready-to-wear apparel.

The FOGA was divided into four divisions: the dress division composed of manufacturers of ladies and misses' dresses; the coat division, composed of manufacturers of ladies and misses' coats; the junior miss division, composed of manufacturers of junior misses' dresses; and the sportswear division composed of manufacturers of knitted ladies sportswear (Figure 5.3). The FOGA also included a textile and fabric division which numbered approximately 100 manufacturers, converters, dyers, and printers of silk and rayon fabrics. A "Protective Affiliate" division, composed of non-member ladies' garment manufacturers, cooperated in the style protective program of the Guild. Protective affiliates dealt in the lower price ranges, between \$10.50 and \$16.50, and thus did not qualify for full-membership in the Guild's program.⁵¹

⁵¹ "Firm Admitted to Guild," *The New York Herald Tribune*, January 16, 1935, 34; Fashion Originators Guild of America v. Federal Trade Commission, 312 U.S. 457-468 (1941).

Rhinestone Resplendence
by KALMOUR

Edanese Crepe Angela
... a lovely mat texture ... drapes superbly and sets these
lightning pinpoints in effective brilliance. "Circlet" (at the left)
trails an enchanting train, \$39.75. "Etoile" (at the right) flows
into Crepe an deepery, \$29.75. You can identify them in your
local shop by the Kalmour tag. In white, flesh, blue or black.
Sizes 12 to 20. — MADE IN U.S.A. —

KALLMAN & MONRIE, Inc., 530 SEVENTH AVE., NEW YORK

Rhinestone Resplendence is the
Fashion Originator's
Guild of America which
means they will not be
outshined here in the nation.

Figure 5.3 FOGA Dress manufacturer member advertisement

Source: "Rhinestone Resplendence," *Harper's Bazaar*, November 1935, 24a.

Rather than imitate the *Chambre Syndicale de Parisienne* system of registration that allowed for legalized copying, the FOGA attempted to restrict all copying within the United States. Guild directors reasoned that copying caused a “regimentation” of styles that subverted the “artistic and economic interests” of the United States apparel field.⁵² To facilitate a program to “confront the demoralizing and destructive practice in the trade, known as style piracy,” the Guild established a system to register the original styles of Guild members.⁵³ Registration of original styles was an easy process. Manufacturers submitted a slip of paper with a sketch and brief description of their style, and signed an affidavit of originality (Figure 5.4). The style was assigned a model number by the Guild, stamped with the Guild’s logo, and dated to establish priority so the originator could have exclusive retail rights. Sketches were not cross-referenced or compared with other registered styles and sketches were returned to the manufacturer. Foreign models, generic styles, and licensed copies of foreign styles were not subject to registration. The registered styles were kept in the National Federation of Textiles, Inc. clearinghouse of styles under the Industrial Design Registration Bureau. The period of protection in theory was limited to six months, in practice to three.⁵⁴

⁵² “Restriction of Copying Foreign Models,” *Women’s Wear Daily*, April 11, 1935, 2.

⁵³ “To Bring Back the Demand for Good Clothes,” *Women’s Wear*, March 29, 1932, 9.

⁵⁴ “Queries Cover FOGA Price Range Scope,” *Women’s Wear*, April 23, 1936, 31; “Guild’s Work Good in Upper Brackets,” *The New York Times*, February 23, 1936, 17; Gotshal, *Today’s Fight for Design Protection*, 54; A.C. Johnston & Florence A. Fitch, *Design Piracy: The Problem and Its Treatment Under NRA Codes* (Washington: Office of N.R.A. Administration, 1936), xii; *Fashion Originators Guild of America v. Federal Trade Commission*. 312 U.S. 128 (1941).



Figure 5.4 Herbert Sondheim registered sketch with the FOGA.

Source: Courtesy of Special Collections, Gladys Marcus Library, Fashion Institute of Technology.

Once registered, manufacturers obtained labels for their styles which stated, “Registered with the Fashion Originators Guild of America” or “An Original Design Registered by a member of the Fashion Originators Guild” (Figure 5.5). According to a 1936 district court ruling, these labels “came to have a definite significance as indicating that the dresses bearing the label represented quality merchandise manufactured according to original styles by skilled workers.”⁵⁵ The Guild estimated that members and affiliates registered

⁵⁵ “Complete Text of Master’s Report That Upholds FOGA’s Style Protection Is No Monopoly,” *Women’s Wear*, November 10, 1936, 39.

40,000 to 50,000 styles a year, and about half of these styles were in the price range of \$16.75 and up.⁵⁶

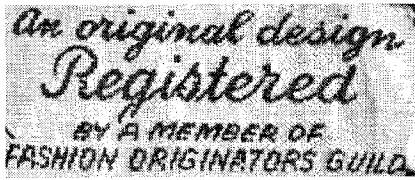


Figure 5.5 FOGA label.

Source: From the collection of Jean L. Parsons.

Ironically, while the Guild worked to promote “bona-fide originators” Rentner himself copied imported models.⁵⁷ His son-in-law and fellow dress manufacturer Arthur Jablow expressed to an interviewer in 1982, “It was... We used to laugh about that, how do you rationalize that kind of thing? (Organizing a group against piracy and pirating foreign styles). All of them were copying from Paris.” Following the cease and desist order of the Guild, Rentner copied imported models. According to Jablow,

That’s right I remember the ‘New Look,’ Dior came out in ’45; Maurice made the best copies of that ‘New Look.’ He made a taped waistline in a suit that 90% of them couldn’t do in New York City. And it was very interesting to see how all the retailers bought those suits, with the full-flared skirts. And he was the one that created that thing. He out-Diored Dior.⁵⁸

In order to protect original styles, the Guild enacted a set of agreements known as “Declarations of Cooperation” between manufacturers and retailers. These signed agreements included clauses that retailers would not knowingly or intentionally purchase copied merchandise and that the retailer would return to the manufacturer any copies bought

⁵⁶ “Designs Filed at Peak,” *The New York Times*, sec. 2, September 13, 1936, 8.

⁵⁷ “Fashion Originators to Confer,” *The New York Times*, March 7, 1932, sec. 2, 3.

⁵⁸ The New Look actually appeared in 1945. Arthur Jablow, *The Reminiscences of Maurice Rentner From Varying Perspectives*, August 1982, The Oral History Collection of the Fashion Institute of Technology, New York.

through misrepresentation or error. The Guild employed secret investigative shoppers who searched member and non-member stores for supposed copies of merchandise. These copies were evaluated by a group of retailers, buyers, and merchandise managers, known as “The Impartial Retail Arbitration Committee on Style Piracy.”⁵⁹ The arbitration tribunals were composed of three individuals, either chosen by the Guild, or by the Guild and the red-carded retailer. The arbitration committee rendered the decision based upon visual inspection of the garments, and the committee acted by majority vote. The stores’ merchandise would be removed from sale awaiting the verdict of the guild (without time limitations). The decision of the Guild’s committee could be appealed. If the piracy committee determined that the merchandise was copied, the retailer was advised of the fact by the Guild’s “shoppers” and requested to return the pirated copy to the manufacturer pursuant to the provisions of the warranty. Those retailers who refused to remove from sale items deemed copies were “red-carded” by the Guild. A “red-card” signified that a retailer had promoted copies, did not protect styles, refused to disclose the name of manufacturers from whom alleged copies were purchased, or had consistently violated FOGA policy regarding the protection of styles. The FOGA also issued red-cards to stores that violated state laws such as operating shops in residential homes.⁶⁰

Once a month, the Guild sent a list of all non-cooperating, red-carded merchants to retailers and manufacturers. Guild members were instructed to show, sell, and ship merchandise only to those department and specialty stores who acted in full collaboration with the signed “Declarations of Cooperation against Copying.” As a result of the activities

⁵⁹ Fashion Originators Guild of America v. Federal Trade Commission. 312 U.S. 4330 (1941).

⁶⁰ Ibid., 4363; “FOGA Program Called Neither Unreasonable Nor Violation of Interstate Commerce Laws,” *Women’s Wear Daily*, November 10, 1936, 8, 10.

of the FOGA, by the end of 1935, manufacturer membership in the Guild numbered 250 and retailer cooperation numbered 12,000 to 12,500 individuals, co-partners, and corporations, located throughout 32 states in the United States, but principally in New York City, Chicago, and Boston. The red-carded list, by March 20, 1936 contained the names of over 400 retailers located throughout the United States. Red-carded retailers included Strawbridge and Clothier, Philadelphia; R.H. White and Company, Boston; Ed. Shuster Company, Milwaukee; Bloomingdale Brothers, New York; J.L. Hudson Company, Detroit; and The Hub, Baltimore. There was a similar restrictive plan for protecting textile styles. By agreement, the garment manufacturing members of FOGA refused to buy textiles which were not registered in the Industrial Design Registration Bureau. Resigning Guild members were not allowed to return to the Guild for a period of six months and were fined a penalty of up to \$5000.⁶¹

New Regulations and Controversial Policies

Beginning in April of 1935, two major changes in the Guild's policies raised alarms with both retailers and low-price dress manufacturers. First, the Guild expanded its guardianship over style piracy to include moderately priced lines wholesaling from \$10.75 to \$16.75. This change was supported by The Dress Creators' League of America, a group of ladies' dress manufacturers with wholesale prices in this targeted price range. In 1935, the League had become an affiliate of the FOGA and used the Guild's style registration bureau. Others in the industry agreed, or at least went along with the extension of the Guild's program into these lines, until the Guild began a program in October of 1935 to extend the

⁶¹ "Guild Extends Shopping Staff," *The New York Times*, September 1, 1936, 38; "FOGA Adds Four Stores to 'Red Card' List," *Women's Wear*, February 14, 1936, 1, 18; *Fashion Originators Guild of America v. Federal Trade Commission*. 312 U.S. 9 (1941).

protection of styles to the \$6.75 to \$8.75 wholesale price lines. The Guild requested retailers sign new declarations of cooperation even in the lowest price ranges. It was at this point that the most crucial controversy surrounding the FOGA's policies began.⁶²

In the latter part of 1936, manufacturers of dresses wholesaling at \$3.75 and lower were admitted as protective affiliates of the Guild. This extension to lower priced merchandise caused an uproar from non-member manufacturers, chain store operators, buying syndicates, and others in the dress industry. The primary objection was that the main purpose of these firms was to copy and adapt the styles of higher priced dresses for the mass market, usually called the popular priced group. Ben Hirsch, president of the Popular Priced Dress Manufacturers Group, asserted the Guild system was "based purely on an attempt to set up an unwarranted monopoly for self-styled creators."⁶³ A decision to oppose the style registration system of the Guild on the basis that it was "monopolistic and illegal" was reached by the Popular Priced Dress Manufacturers Group, Inc. (PPDMG) a group representing over 400 jobbers and manufacturers who produced in the \$4.75 and under categories.⁶⁴

Popular priced groups in the protective affiliates of \$6.75 to \$8.75 withdrew from the Guild in September of 1936 (Figure 5.6). Retail stores that refused to participate with the

⁶² Before the Dress Creators' League of America collaborated with the FOGA, they used advertising and fashion shows to promote their "volume category" wares to retailers. The Dress Creators' League of America supported the Guild at the time of the cease-and-desist order by the FTC. Once the FTC v FOGA case went to court, little mention was paid to the Dress Creators' League of America in *The New York Times* or in *Women's Wear Daily*; Samuel Zahn, "League Feels It Has Won Style Niche For \$10.75 Dresses," *Women's Wear Daily*, April 3, 1935, 8; The Dress Creators' League of America, Inc., Incorporation Papers, November 9, 1932, New York Department of State; Stephen Hartman, "Protest Move to Bar Dress Style Copying," *The New York Times*, September 25, 1934, 32.

⁶³ *The New York Times*, December 22, 1935, sec. 3, 1.

⁶⁴ Popular Priced Dress Manufacturers Group, Inc., Incorporation Papers, September 1934, New York Department of State; Chas Call, "Pleasing Guilds and Pleasing Chains Two Different Games," *Women's Wear*, November 26, 1935, 14.

Guild, or to sign new “Declarations of Cooperation” within 8 to 10 days were “red-carded.” Furthering their program, the Guild refused to ship any merchandise already on order to red-carded retailers. By February of 1936, the Guild estimated over \$500,000 in orders was held by manufacturing members. Many red-carded stores were forced to purchase merchandise in other markets, including those in Boston, Chicago, and Los Angeles.⁶⁵

•

**WE CANNOT AND WILL NOT
ACCEPT ORDERS BEARING
THE F.O.G.A. STAMP**

**We Believe Their
Method Is Detrimental
To Retailer and Manufacturer Alike**

•

Popular Priced Dress Mfrs.' Group, Inc.
1440 BROADWAY, N. Y. C. LOUIS RUBIN, Exec. Dir.

Figure 5.6 Popular Priced Dress Manufacturers Group, Inc. announcement

Source: “A Statement by the Popular Priced Dress Mfrs.’ Group, Inc.,” *Women’s Wear Daily*, February 27, 1936, 14.

The second change that caused broad concern over the Guild’s practices was when it endeavored to formulate a code of fair trade practices that went beyond its initial objective to eliminating style piracy by “giving protection, support, and counsel to every group within the industry who honestly and competently creates designs.”⁶⁶ The new regulations included the prohibition of manufacturing members from the following: participating in retail advertising;

⁶⁵ “Designs Filed At Peak,” 8; “Stores Will Test Fashion Guild Ban,” *The New York Times*, February 20, 1936, 38; “Will Charge Guild with Conspiracy,” *The New York Times*, February 22, 1936, 26.

⁶⁶ M.D.C. Crawford, “End of Rash Individualism Started Era of Good Trade,” *Women’s Wear Daily*, January 22, 1936, 4.

selling at retail; selling to businesses conducted in residences, residential quarters, hotels, or apartment houses; showing manufacturer models in fashion shows not supported by the Guild and those who did not solely deal with FOGA members; and the elimination of discounts to retailers by urging members to uphold 8% to 10% EOM selling terms.⁶⁷

The Guild strongly advised retailers to devote no more than one percent of their budget expenditure for advertising and propaganda and that the advertising should accent quality merchandise rather than style trends. The Guild asked retailers to accept merchandise shipped as late as one month passed the specified delivery date; to extend the fall selling season by two months; and to delay early fall clearance sales and special private promotional sales. It also forbade Guild members from purchasing imported models.⁶⁸ These changes occurred in part because Rentner believed that women had ceased buying wardrobes but rather bought specific outfits based on occasions or the weather. Due to the shift in buying habits, women would wait for retailer sales and price promotions to purchase new dresses. FOGA auditors reviewed the books of Guild members to ascertain whether they were selling to red-carded retailers or violating other regulations or policies of the FOGA. Some members were reviewed as often as three times a week to ensure these firms were not circumnavigating Guild policies. Violations of policies by Guild members resulted in fines of \$100 for the first offense and \$500 for the second offense. There is evidence that in 1936,

⁶⁷ EOM, or end of month, refers to the cash discount and the net credit periods given to retailers. Some manufacturers attempted to compete by providing better discounts for early payment. The Guild urged manufacturers to give retailers no more than an 8% to 10% discount for EOM.

⁶⁸ It is not believed by this researcher that the Guild actively enforced this part of their program because members of the Guild, including Maurice Rentner and the Dress Creators League of America regularly advertised that their styles were “interpretations of imports.” “Announcing the Formation of the Dress Creators League of America, Inc.,” *Women’s Wear Daily*, December 1, 1932, 14.

the FOGA also formulated plans to control chain store buying of popular priced merchandise.⁶⁹

Retailers considered the Guild's activities an attempt to regulate and limit their production, and overall restrict their rights in operating their stores. The Guild maintained that, "fair trade practices, in the development of which the large retail organizations participated, are designed to protect the ethical retailer, equally with the ethical manufacturer."⁷⁰ The provisions were seen as necessary as, "success even in a bitterly competitive industry such as this must not necessarily be achieved by trampling upon the rights of others."⁷¹

These two major changes to the Guild's original program against style piracy caused industry watchdogs, large retail associations, and the Federal Government to take notice. In three courts, the New York Supreme Court, the Federal District Court, and the Circuit Court of Appeals of the first district, the practices of the FOGA were upheld. In 1936, the Federal Trade Commission began hearings on the Guild's practices which allegedly were in restraint of trade.⁷² In February 1939, after countless hearings held in New York, Massachusetts, and

⁶⁹ *Women's Wear Daily*, October 5, 1932, 18; *Women's Wear Daily*, September 27, 1932, 15; "Ban on Fashion Shows," *The New York Times*, November 26, 1933, 15; "Guild Avers New Pledge Is No Policy Shift," *Women's Wear Daily*, December 5, 1935, 1; "Guild Not To Copy Models Of Retailers" *Women's Wear Daily*, April 11, 1935, 2; "Guild Warns Against Sales To Consumers," *Women's Wear Daily*, April 9, 1935, 25; *Fashion Originators Guild of America v. Federal Trade Commission*, 312 U.S. 457-468 (1941); Ira Rentner, *The Reminiscences of Maurice Rentner From Varying Perspectives*, August 1982, The Oral History Collection of the Fashion Institute of Technology; "Rentner Raps Tactics Used by Retailers," 5, 8; Chas Call, "Pleasing Guilds and Pleasing Chains Two Different Games," 14; *Fashion Originators Guild of America v. Federal Trade Commission*. 312 U.S. 3952 (1941).

⁷⁰ "Guild Pushes Fight To Protect Styles," *The New York Times*, February 16, 1936, 9.

⁷¹ "Rentner Raps Tactics Used by Retailers," *Women's Wear*, August 9, 1936, 5.

⁷² Congress established the Federal Trade Commission in 1914 to exercise administrative control over monopolies and objectionable business practices. The statute provided that "unfair methods of competition in commerce" and (as amended in 1938) "unfair or deceptive acts or practices in

Pennsylvania, the Federal Trade Commission ordered the “combination known as the FOGA to cease and desist” from their monopolistic practices. The ruling was bitterly contested and the fight was carried to the United States Circuit Court of Appeals. On January 23, 1940, that court ruled the Guild had been guilty of unfair practices; that while the Guild’s intention to suppress style piracy might be justifiable, the means used were illegal.⁷³ The Guild was preventing retailers from doing what they had a clear common law right to do: sell copies of original dresses.

Regardless of legal precedent, the FOGA contended that style piracy was unfair competition. The Guild argued that, as business owners, they possessed the inalienable right to protect their industry from destruction and to prevent the appropriation of their businesses. In an appeal of the previous decision to the United States Supreme Court, on March 3, 1941, Justice Hugo Black agreed with the decision of the FTC that the “purpose and object of the combination, its potential power, its tendency to monopoly, the coercion it could and did practice upon a rival method of competition.”⁷⁴

The activities that brought the FOGA great fame and success also led to the FOGA’s dissolution. The forced boycotts through red-carding of non-participating retailers violated the Sherman and Clayton Acts that made illegal every contract, combination, or conspiracy in restraint of trade or commerce within the United States of America. In addition to this, the Guild was found to be an extra-governmental agency and “self-appointed tribunal” that prescribed rules for the regulation and restraint of interstate trade. The Guild was found to be

commerce” were unlawful. When the FTC had reason to believe that any person was using such unfair methods or practices, it had the power to issue an order requiring such persons to cease and desist. If the order was not obeyed, it could be enforced by court proceedings. Zecharias Chafee, *Unfair Competition*, 53 Harvard Law Review 1289, 1289-1321 (June 1940), 1289.

⁷³ Fashion Originators Guild of America v. Federal Trade Commission. 312 U.S. 8 (1941).

⁷⁴ Fashion Originators Guild of America v. Federal Trade Commission. 312 U.S. 457-468 (1941).

an unlawful combination because it involved a concerted refusal to deal with non-participating retailers. The issue of whether style piracy was good or destructive was not a deciding issue in the FOGA v. FTC case. In the appeals process, the FOGA contended that the Federal Trade Commission erred in refusing to hear evidence regarding the causes and consequences of the FOGA program and of the social and economic conditions in which it functioned. The cease and desist order was upheld, the Guild disbanded, and with it the most elaborate plan to stop style plagiarism in the apparel industry ended.⁷⁵

Although the FOGA was disbanded, the group continued to operate. In June 1941, the FOGA outlined a new protection plan that sought “complete legality in eyes of both the Department of Justice and the Federal Trade Commission” to establish some form of style protection in the dress industry. The plan for style protection was through speeding up the process of acquiring U.S. style patents. To achieve faster adjudication in establishing the validity of a patent or claims of infringement, the FOGA proposed prompt reference of cases to court-appointed referees or to independent agencies such as the American Arbitration Association. Before this plan could be instituted, the FOGA requested the approval of interested governmental agencies and the cooperation of retail groups. The most controversial FOGA policies, boycotts and red-carding, were eliminated from the new

⁷⁵ Other groups within the apparel industry had attempted to end or regulate piracy including the Dress Creators’ League of America and efforts by the Silk Textile Industry. None of these attempts were as elaborate as the FOGA’s creation of a registration bureau, issuance of labels, and extensive advertising and promotional campaign. “Text of Decision in FOGA Case,” *Women’s Wear Daily*, March 4, 1941, 14; “FOGA Outlines New Protection Plan on June 2,” *Women’s Wear Daily*, May 16, 1941, 1; “Style Patent Speedup in Proposed FOGA Plan,” *Women’s Wear Daily*, June 3, 1941, 1; “Official Schedule of showings at which the Guild Houses are Present,” *Women’s Wear Daily*, June 12, 1941, 25; “FOGA Approves Modified Style Piracy Plan,” *Women’s Wear Daily*, October 24, 1941, 1; *The New York Times*, March 30, 1930, sec.8, 1; *The New York Times*, February 22, 1936; *The New York Times*, January 7, 1935, 3; “Design Piracy Curb,” *Business Week*, January 12, 1935, 10.

protection plan. The FOGA continued to advertise as a group in trade papers such as *Women's Wear Daily*. On January 8, 1941, the FOGA in collaboration with the Fashion Group presented "New York's Fashion Futures" that featured furs, hats, shoes, accessories, and dresses produced and advertised by New York retailers and manufacturers.

Rentner, the chairman and creator of the FOGA, continued to try to foster the interests of the garment industry through his membership with the New York Dress Institute. This Institute was started in 1941 to "make New York City the world's fashion center and to maintain New York City's leadership in the dress field." Rentner also served on an advisory board of the Fashion Institute of Technology. Upon his death, his business, Maurice Rentner Inc., merged with his sister's Anna Miller & Company. Miller's head designer, Bill Blass became vice-president and then owner of the firm. Blass organized the company under his own name in 1970. Upon his death in 1958 at the age of 69, Maurice Rentner's lawyer stated, "The mystery of his achievements can only be understood in terms of the artist who's bound by no rules and violates the accepted standards." In his obituary, it was estimated that at least sixty percent of the industry's top executives had at one time worked for Rentner.⁷⁶

The National Recovery Administration Hearing: The Style Piracy Debate

According to Maurice Rentner, the "devastating evils growing from the pirating of original designs" destroyed the interests of manufacturer, retailer, consumer, and of labor.⁷⁷ The Guild maintained that it was trying to protect ethical retailers and manufacturers, but to other factions the issues were considerably less clear-cut. The arguments both for and against the Guild's efforts can be characterized as falling into two broad areas: technical

⁷⁶ "Maurice Rentner is dead at 69," *The New York Times*, July 8, 1958, 27.

⁷⁷ Rentner, 114.

issues and cost/benefit issues. The former hinged on the difficulty of actually defining what constituted an “original design.” The latter were complex and multifaceted, as they raised issues that involved fair labor, the relationships between retailers and manufacturers, and the rights and privileges of the consumer. Arguments often overlapped or were contradictory. One of the primary sources concerning the debates on design piracy is the National Recovery Administration’s Hearing on the Codes of the Dress Industry. As seen in the NIRA arguments, the issue of defining an original style was certainly the most difficult in terms of actual regulation and control of presumed copies. However, FOGA members, the press and participants in the NIRA hearings also debated the social implications and consequences. This section will examine these arguments for and against control of style piracy, using the NIRA hearing as a focal point.

Competition and Regulation of Originality

A program of the New Deal, the National Industrial Recovery Act (NIRA), passed in 1933, gave the force of law to any “code of fair competition” set up by a trade association. Industries were authorized to set up regulations concerning the regulation of wages, working conditions, production, and prices, for President Franklin Roosevelt’s approval. The provisions varied across industries, and all were presented at Code hearings to explain the provisions or to show the need for the codes. During the time of the NIRA, the courts largely kept out of decisions regarding unfair competition, one of the key features in arguments both for and against style protection, leaving defendants to the opinions of the Federal Trade Commission or the Better Business Bureau.

Under the NIRA, the style piracy problem was worked out in the code of each separate industry, and no uniform style code was established. Of the first 300 approved codes

of the N.R.A., 62 contained fair practice provisions dealing with piracy of style including the cotton textile industry, lace manufacturing, corset and brassiere trade, leather, knitting, silk textile, dress manufacturing, millinery and dress trimming, rayon and silk dyeing printing, and hand machine embroidery.⁷⁸

Participants of the National Recovery Administration's Hearing on the Codes of the Dress Industry included such key FOGA organizers and proponents as Maurice Rentner, chairman of the FOGA; Samuel Zahn, chairman of the Dress Creators' League of America; and Irene Blunt, executive secretary of the National Federation of Textiles and sometimes called the "first lady of style protection."⁷⁹ Although the Supreme Court found the National Industrial Recovery Act unconstitutional in May 1935, stating that the creation of code authorities was an unlawful and unconstitutional exercise of power, the concepts of originality, adaptation, and copying relative to style piracy provide critical insight into the attitudes of leading apparel insiders.⁸⁰

Originality and Adaptations

The combination of elements that resulted in an original style, and the point at which an adaptation became a copy, was passionately contested by presenters at the NIRA hearings. It was generally agreed that adaptations were acceptable, and a normal aspect of fashion circulation. Maurice Rentner maintained that trends could be imitated, but it was a specific combination of elements that set original creations apart. The difficulty lay in the

⁷⁸ Kenneth Dameron, "Retailing Under the N.R.A. I.," *The Journal of Business of the University of Chicago* (1935): 1-26; Zecharias Chafee, *Unfair Competition*, 53 *Harvard Law Review* 1289, 1289-1321 (June 1940); Karl Fenning, "N.R.A. Codes," *Journal of the Patent Office Society* (1934): 189-203.

⁷⁹ Sylvan Gotshal, *Today's Fight for Design Protection*, 3.

⁸⁰ For more information on the N.R.A. see: Chafee, 1289-1321; Karl Fenning, "N.R.A. Codes," *Journal of the Patent Office Society* (1934): 189-203; Robert Himmelberg, *The Origins of the National Recovery Administration* (New York: Fordham University Press, 1976).

understanding that all designers were in some sense “adapters,” and that some ideas were the result of “spontaneous generation.” Designers were inspired by similar fashions and trends in life. An example of this was widespread use of the decorative motifs from King Tut’s tomb, popular in many styles in the early 1920s.⁸¹

The Guild had, in fact, established a relatively undemanding method of registering styles within its Registration Bureau. In their defense, Rentner contended that

Style takes in the material which the designer thinks up, a certain color, a combination of the material designed by the textile house, and other trimmings that were decided by other houses, which the designer takes and puts together and creates a style. It may be an imitation but it is an original so far as combining these things together.⁸²

He conceded, however, that “no fashion creator will assert that everything about every dress he offers is new” and that the controversy over style piracy was “a conflict of individual interest.”⁸³

Explicating the need for the FOGA in the early 1930s, Andrew Goodman of Bergdorf Goodman legacy stated,

The philosophy of the FOGA thing was in some degree to protect creativity; to protect the artist, the person who developed new styles. In this business the legal protection for fashion is cumbersome and unworkable. In France now it is understood that the creativity of the designing artist should be protected. In this country the person who is protected is the copyists, the schemer, the sharp guy who sends his designers to showings with sharpened pencils and they run out to the men’s room and quickly make sketches. The man whom our laws protect in this guise is the man who preys on the talents of others, and it has an immoral attitude.⁸⁴

⁸¹ Meiklejohn, 303. There are numerous articles in *Women’s Wear* in 1922 and 1923 related to failed attempts to copyright designs based on tomb images and artifacts and even attempts to gain copy right of the name itself.

⁸² Rentner, 105.

⁸³ Rentner, 113.

⁸⁴ Andrew Goodman, Fashion Institute of Technology Special Archives.

Although the FOGA sought to change these conditions in the United States through creation of a system to protect original styles and designers, Rentner never popularized the name of any of his designers, but rather advertised under his company name. Rentner relied on one design assistant throughout the nineteen thirties and nineteen forties to realize his creations, yet his son-in-law Arthur Jablow and his half-brother Ira Rentner who worked with Maurice in the garment business could not remember her name. She was described only by Ira Rentner as “a big, fat lady, but she was a good designer.”⁸⁵ One of the more interesting aspects of the FOGA policies was the sheer invisibility of designers. Officers and members of the Guild were manufacturers and retailers. Seldom promoted and rarely mentioned, designers, the ones creating the original styles, were nearly invisible in the Guild’s fight to protect and popularize original styles.⁸⁶

Entitlement to Fashion

As fabric quality and technology improved in the twentieth century, piracy allowed consumers of diverse social and economic levels to enjoy the latest styles and keep up with the newest fashions. While some viewed this as a positive result of style piracy, others believed the purchasers of high priced originals should be protected from seeing themselves “walking down the street” in a reproduction of inferior quality.

According to the Guild, women purchased apparel for the following reasons: “utilitarian, 15%; sanitation and health, 15%; and fashion, 70%.”⁸⁷ Style was considered by most in the industry to be of “overshadowing importance,” and as a result, there were

⁸⁵ Ira Rentner, “Memoirs of Maurice Rentner from Varying Perspectives” Oral History Project of the Fashion Industries of FIT, Fashion Institute of Technology Special Archives, New York.

⁸⁶ Some manufacturers were also designers in the 1930s, such as Hattie Carnegie and Jo Copeland. Even the sub-designers who worked for these companies were rarely, if ever, mentioned in Guild advertising.

⁸⁷ “General Rather than Specific Style Appeal Urged,” *Women’s Wear*, October 10, 1932, 32.

frequent debates about origins of fashion and style change.⁸⁸ As early as the 1890s, style and fashion change had become the driving forces in growth of both the women's ready-made clothing industry and the large department stores. By the 1930s, however, it seemed clear to manufacturers where and how style diffusion, if not origination, occurred, through style piracy. What was not clear was whether it was generally beneficial or detrimental to the industry or to the consumer.

One of the issues that arose in most arguments against any attempt to control copying at the lower price points centered on the "ethical" need to provide women of lower incomes with fashionable clothing that did not set them apart. Copying practices in the industry led to the widely held belief that fashion flowed rapidly from high priced styles to the bargain basement. This presumably led to a democratization of style that allowed women of all classes to wear the latest fashion, even if it wasn't in the highest quality. If dresses were not allowed to be copied due to FOGA policies, consumers would be assured that cheap imitations would not be created and sold. This would allow the highest classes a means of showing their wealth through their inimitable clothing.

According to those who opposed style protection, style piracy was needed because copying produced a diversity of style variations that ultimately gave the consumer more from which to choose.⁸⁹ Hence, moderate and lower price firms contended that they provided a service to low income women. The Popular Priced Dress Manufacturers Group felt any laws or regulations that would stop style piracy would be harmful to the majority of American women. As quoted in *The New York Times*, a Popular Priced representative stated,

⁸⁸Meiklejohn, 303.

⁸⁹Sachar, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*.

The masses of American women have always demanded and received styles that are comparable with those worn by their rich sisters. [The anti-piracy movement] is seeking to deprive Judy O'Grady of her just right to dress as well for as little money as does the colonel's lady.⁹⁰

Throughout the FOGA cases, courts consistently found that style piracy was a socially useful form of competition since style piracy made the latest fashions readily available to lower income consumers.⁹¹

In the NIRA hearing, Samuel Zahn was asked whether he or members of his league “ever considered the fact of style piracy from the consumers’ viewpoint, that is, why should not the stenographer or the shop girl wear a dress just as beautiful as the society leader.” To this question, met with applause by the audience as recorded by the stenographer, Zahn replied “dresses of a \$3.75 style can be prettier than a dress that sells at \$10.75.” He continued, stating that members of the Dress Creators League of America

came to the conclusion that the people who buy \$3, \$4, \$6, \$7 merchandise are entitled just as much to originality as the people who buy \$50, \$60, or \$100 merchandise; that there is no reason why the stenographer should be embarrassed when she walks down the street and meets the same dress, even though the other person paid much more than she. There is no reason why a woman of limited means should not have originality in her dress as well as the woman who paid a large amount of money.⁹²

While Zahn may have been soliciting audience endorsement, his statement is representative of the ambiguity of the style copying issues. Indeed, the women who bought lower price dresses probably did not want to see other women wearing the same style, even if she paid only a few dollars for her dress. Membership in the Dress Creators League of America was confined to those houses that concentrated upon “individuality of design”

⁹⁰ S. Hartman, “Protest move to bar dress style copying,” *The New York Times*, September 25, 1934, 32.

⁹¹ “Style Piracy is Socially Desirable Lower Court Held,” *Women’s Wear Daily*, March 4, 1941, 9.

⁹² Zahn, 36, 38.

accomplished through the maintenance of “extensive designing staffs.”⁹³ For the majority of low price dress manufacturers, however, the cost of hiring a designer and making “original” styles was prohibitively expensive. Meiklejohn also observed that there was a possibility of dress becoming a “badge of class distinction” if all copying was prohibited. In other words, women of limited means preferred to dress in styles that were as similar as possible to the high end designer dresses.⁹⁴ Partly at issue was the fact that there was certainly not the same customer for both cheap and more expensive dresses, and “consumers of better quality products are unwilling to wear models that are common and cheap.”⁹⁵

These consumers of better dresses were also a focus of the Guild and the Guild’s protective affiliates in the issue of copying, but for a different reason. Zahn offered a counterpoint to his above argument. This was the idea that “a woman does not object when she sees a copy of a dress of at least the same quality that she has purchased. It is seeing the same dress of a cheaper quality that she objects to.”⁹⁶ A woman of higher income or the “discriminating consumer,” under copying conditions, was unable to purchase distinctive styles with any assurance that the style would not be copied and the uniqueness immediately ruined. Women became dissatisfied with an original style when they saw copies, and dissatisfied with the retailer who sold her the style. The original higher priced garment would be returned to the retail establishment. This lowered the net profit of the retailer, and decreased the number of reorders the original manufacturer would receive. According to Clay Meyers, the optimum retail situation in terms of profit was to be able to have a dress

⁹³ “Announcing the Formation of the Dress Creators League of America, Inc.,” *Women’s Wear Daily*, December 1, 1932, 14.

⁹⁴ Meiklejohn, 337.

⁹⁵ Magee, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 19.

⁹⁶ Zahn, 43.

sell so well that a reorder could be placed. If retailers had to exist and make profits on the “constant turnover in styles with the odds and ends that are left, the markdowns which we take to meet competition on the next corner, in the next block, we will be lost.”⁹⁷ Hence the arguments concerning benefit or loss to the consumer became entangled with retailer’s concerns about both profit and store image. In all of these debates, consumers’ opinions were never made known, but rather commercial interests spoke (supposedly) on their behalf.

Style and Economic Issues

The problem of style piracy was generally acknowledged to be a price issue. Only when the copy was marketed in the same price bracket as the original did the issue of property rights become more important than the issue of price. Copying shortened the life of a product to the distributor, to the retailer, and to the customer. As copies inundated the various price lines of the dress industry, higher priced merchandise was knocked off and “killed.”⁹⁸ The higher priced merchandise would be returned to the retailer by the disgruntled consumer and the retailer would thus cancel remaining orders or not place re-orders. The protection of styles could potentially eliminate rapid design changes, which in turn would lengthen the seasons of operations and avoid wastes resulting from the rapid turnovers.⁹⁹ The assumption was that the waste that resulted from the shortened lifespan of a garment, and the frequent turnover of fashions, was ultimately reflected in higher prices and poorer quality. This was considered a tremendous economic disadvantage to consumers and

⁹⁷ Clay Meyers, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 242.

⁹⁸ A low priced copy was frequently said to “kill” the higher priced dress, in that no more sales of the higher end dress occurred.

⁹⁹ Johnson and Fitch, 8.

businesses through the lowering of standards, both in the quality of the goods and in the conditions of workers.

This position was underlined by the contention that the “pernicious practice of piracy contributed substantially to the bankruptcy of many concerns engaged in original style creation.”¹⁰⁰ Copies of successful lines were invariably sold at a lower price than the original dress lines, as copyists saved on product research, development and production costs, and avoided the pitfalls of producing unsuccessful lines. But they regularly produced merchandise of inferior quality and materials. There was a loss of incentive to create and invest in designing original goods. Many manufacturers did not intend to spend money on creation and designing costs, when copying was so easy and profitable.

As copying occurred at all price ranges in the dress industry, the Guild felt justified in extension of its program of protection into the lowest price merchandise. In the existing business climate, the manufacturers of high quality and high priced merchandise assumed that it was the copiers who made their businesses vulnerable, while those who sought self-preservation copied simply to stay in business.¹⁰¹ In reality, however, there were other economic factors at play that made higher priced businesses vulnerable to business failure, including the demand and the need due to the Great Depression for lower priced dresses by a large number of consumers.

The Debate over Labor and Employment Issues

Labor issues and the general economic health of the industry provided the framework for a compelling argument in support of copy regulation. According to those who sought to

¹⁰⁰ “Complete Text of Master’s Report that Upholds FOGA’s Style Protection is No Monopoly,” 10.

¹⁰¹ Johnston and Fitch, 132.

eliminate piracy, style protection not only lengthened the lifespan of a style, it also encouraged creation of original garments. As a result, there would be an increase in the number of attractive pieces on the market at any one time. Protection would also have the effect of “selling a larger volume of the dresses because the woman who wears the dress desires to keep in style.”¹⁰² The argument was that consumer demand would, in turn, be stimulated, benefit the industry as a whole, and therefore avert insolvencies. Employment would also be stimulated, as the array of creative, original, quality merchandise, even in the lowest prices, would have an “emotional and decorative appeal so essential to maintain the level of production...that would afford employment to many thousands of dress workers” in the United States industry.¹⁰³

As already stated, style pirates were able to eliminate work/style processes. In order to undersell the original manufacturer, pirates used less labor and paid lower wages. Machine labor also was substituted for hand labor. According to Zahn, it was labor that was victimized severely by piracy. By reducing the number of man hours per dresses it was possible to reproduce an original style at a lower price. He stated that in his firm’s price range of \$10.75 to \$16.75, “from three to four man hours are ordinarily required, this being five to six times as much as is consumed in the production of copies.”¹⁰⁴

Conversely, those critics of style protection stated that the growth of the fashion industry was in fact due to the ability of lower price manufacturers to supply affordable fashionable merchandise. The rapid turnover of styles not only increased the volume of business generated by the industry, but also permitted consumers of all economic means to

¹⁰² Zahn, 48.

¹⁰³ Rentner, 111.

¹⁰⁴ Zahn, 33.

participate in the fashion process. Lower price manufacturers also pointed out the economic infeasibility of employing designers to create original merchandise. As stated by fashion writer Chas Call, originals in lower prices “would be nice,” but the main purpose of these firms was “bringing out some nice copies of slightly higher priced dresses.”¹⁰⁵ Since salability of dresses was based on overall elements of a trend, who in fact benefited from design protection? According to Zahn, fashion individuality strengthened the selling appeal of his merchandise. The protection of original goods could potentially decrease the number of new firms who relied on copying to survive, and save the better firms from insolvency.¹⁰⁶

Meyers suggested that piracy also hurt designers and aspiring designers. He stated:

We have three colleges in Pittsburgh that are developing stylists, designers, technicians. Those girls will all be looking for something to do. The most pitiful thing in my experience is the great number that are coming in and looking for work, capable, excellent, clever people. I think piracy is narrowing down this field.¹⁰⁷

Others agreed with Meyers. There was an increase in the number of designers hired in the mid-1930s, which Meiklejohn suggested was the direct result of design protection measures, as the “cheap firms” were forced to hire designers. On the other hand, some firms purchased styles from free-lance designers, a practice that left them open to victimization. As one stated, “Once seen, style ideas are so easily stolen that few free-lance designers are ever paid for all the creations they show to manufacturers.”¹⁰⁸ With this said, the Design Creators

¹⁰⁵ Call, 37.

¹⁰⁶ Zahn, 37.

¹⁰⁷ Meyers, 240.

¹⁰⁸ *Costume Design* (N.Y.: Federated Council on Art Education and the Institute of Women's Professional Relations, 1936), 14.

League of America, organized in 1934, issued a call to the FOGA that if so consulted they, the designers, could actually do something about eliminating style piracy.¹⁰⁹

The sale of copied merchandise at lower prices had one other effect on designers - the original merchandise was no longer salable. This was a primary motivating force in the rapid turnover of styles. According to Zahn, original manufacturers needed approximately 20 to 25 new styles per week in order to stay ahead of style pirates.¹¹⁰ Other designers described a work environment that demanded as many as 1500 new models a year. Conversely, these factors were suggested as contributing factors in the “complete dependence of some industries upon foreign sources for styles.”¹¹¹

Quality Considerations

According to Rentner, the loss of billions of dollars in available business in the dress industry was caused by the standardization of styles and the depreciation of quality in women’s garments. Copying, considered “the bane of the dress industry,” caused women to “drift away from quality original merchandise.”¹¹² Supporters of the provisions against piracy and other abuses in the trade, felt manufacturers who competed in terms of quality rather than price, would “stay in business longer, have a more decent existence, [make a more] legitimate profit by changing a dress style a little so he does not kill the sale of the other man, and will not have to sweat his labor.”¹¹³ According to Irene Blunt, Director of the Industrial Design Registration Bureau of the Silk Association, copyists saved on producing

¹⁰⁹ No ideas were offered in this article or other articles publicizing the Design Creators League of America addressing exactly how design piracy could be solved by the designers themselves. *Women’s Wear Daily*, December 4, 1935, 11.

¹¹⁰ Zahn, 41.

¹¹¹ Johnson and Fitch, 135.

¹¹² “Fashion Originators to Confer Shortly with High Grade Stores,” *Women’s Wear Daily*, sec. 2, March 7, 1932, 3.

¹¹³ Keating, 27.

costs through the cheapening of fabric, “by making it of less satisfactory construction, by using cheaper dyers, and printers.”¹¹⁴

F. Eugene Ackerman, president of the Forstmann Woolen Company of New Jersey, went so far as to say that style piracy had “made it necessary for textile manufacturers to make cheaper and cheaper and more and more shoddy fabrics in order to meet the demand for prices” dictated by the demands of style pirates.¹¹⁵ He went on to say that piracy had so ruined the textile industry, that “legitimate manufacturers and merchants today are obligated to advertise and guarantee against shoddiness.”¹¹⁶ According to Miss Ruth O’Brien, chief of the Division of Textiles and Clothing of the Bureau of Home Economics of the United States Department of Agriculture, in a speech before the Boston Conference on Distribution:

One fact which seems to stand out clearly is that many consumers have money and need to buy but are very skeptical about getting their money’s worth. It is chiefly because consumers have no measure of quality that they are misled into buying inferior products, often with the result that inferior goods drive superior goods off the market.¹¹⁷

Whether or not these were justifiable issues in the control of style piracy, the fact that competition had become based to a large extent on price (and therefore quality) was clearly affecting the overall organization of the industry.

Arguments for and against piracy revolved around the ideas of style and economic issues and quality concerns. The FOGA seemed most concerned that women were turning away from FOGA produced higher priced merchandise because styles were quickly copied in

¹¹⁴ Irene Blunt, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 37.

¹¹⁵ Eugene Ackerman, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on The Code of Fair Competition for the Dress Manufacturing Industry*, 337.

¹¹⁶ Ackerman, 339.

¹¹⁷ Ruth O’Brien, *Boston Conference on Distribution* (Boston: Retail Trade Board, Boston Chamber of Commerce, 1934).

lower priced imitations. The FOGA also stated that piracy caused a lessening of quality standards throughout the apparel industry because companies were forced to save on costs of production to compete with pirates. The Dress Creators League of America, sought to protect lower priced goods from piracy. Their arguments for protection seemed to indicate that lower income consumers deserved original, exclusive styles as much as their wealthier counterparts.

Did the FOGA Monopolize the Industry?

Although the Guild was judged a monopoly by the FTC, the Guild's effective control over the dress industry is somewhat unclear. According to the master's report of *William Filene Sons Co. v. the Fashion Originators Guild*, in the spring of 1936, Guild members accounted for only 130 of the 2,130 dress manufacturers in New York and produced only 6% of the total 84,000,000 dresses manufactured in 1935. In contrast, the Supreme Court, in the case of *the Fashion Originators Guild v. the Federal Trade Commission*, found that in 1936 Guild members sold more than 38% of all women's garments wholesaling from \$6.75 to \$10.75 and more than 60% wholesaling at \$10.75 and above.¹¹⁸

In the Court's opinion, the Guild's power was great because both competition and demand for dresses by the consuming public made it necessary for most retailers to stock at least some of the Guild members' products. This opened them up to the demands of the anti-piracy program instituted by the Guild. The power of the Guild was strengthened by the cooperation of members of the National Federation of Textiles, who elected to sell their products only to those garment manufacturers who in turn agreed to sell exclusively to

¹¹⁸ *WM Filene's Sons Co v. Fashion Originators Guild*, 90 F.2d, 556 (1937); *Fashion Originators Guild of America v. Federal Trade Commission*, 312 U.S. 457-468 (1941).

cooperating retailers. Manufacturers were certainly responding to demand for cheaper clothing in the beginning years of the depression and felt threatened by any action that would limit their ability to supply that market. One estimate from the period indicated that over half (55%) of dress manufacturers produced at the \$3.75 and under price category.¹¹⁹

Reactions following the FOGA ruling were varied. According to an informal poll of National Retail and Dry Good Association (NRDGA) members, 88% indicated the Guild should confine its activities to style protection and 75% indicated the Guild activities and original style protection program should be confined to merchandise \$16.75 and more and that dresses less than \$10.75 should not be regarded in the area of style protection.¹²⁰

Maurice Spector, head of the Blum Store, called the decision “unfortunate for the dress business. It will remove the incentive to create, and the piracy situation will stifle the country’s designing genius, which needs some sort of protection.”¹²¹ Others in the dress industry believed the FOGA overstepped its bounds. One leading New York retailer stated, “While the Guild has done excellent work, it possessed too much power, and the exercise of such power resulted in greater evil than those sought to be eradicated.”¹²² Possibly, by the late 1930s, the guild’s programs were no longer representative of the industry as a whole.¹²³ The difficulty of identifying and controlling copies at the lower price points may ultimately have become insurmountable.

¹¹⁹ *Costume Design*, 28.

¹²⁰ “Hits Garment Practices,” *The New York Times*, October 29, 1936, 46.

¹²¹ “Reactions Pour In on FOGA Ruling,” *Women’s Wear Daily*, March 5, 1941, 24.

¹²² “Retail Opinion Divided on FOGA Ruling,” *Women’s Wear Daily*, March 4, 1941, 6.

¹²³ Meiklejohn, 337.

Summary

The Guild's program of self-regulation against style piracy was short-lived. While the case of the FOGA v. the Federal Trade Commission is still considered a pivotal case in legal proceedings, it has ultimately become a footnote in the history of the style piracy debate within the apparel industry itself. It was important to bring together the two histories, of the legal case and of the apparel industry, for complete insight into protection problems.¹²⁴ The FOGA attempted to guard against action that would curb the freedom of the artist, and fought continuously against regimentation and the stifling of new ideas, but it was the need for wide-reaching control within these programs to support American design that violated the Sherman and Clayton Anti-trust legislation. Efforts by the apparel industry to curb piracy failed largely due to the ambiguities and controversies inherent in a system of style protection.¹²⁵

¹²⁴ The history of the apparel industry is often misunderstood or not completely taken into account in legal reviews. In a Harvard Law School article, the author states that in the past "American designers traditionally did not copy each other," and argues that it is contemporary technology that makes copying so fast, easy and widespread. This is clearly not the case when the historic record is examined. See Christine Magdo, "Protecting Works of Fashion from Design Piracy," *LEDA at Harvard Law School*, <http://leda.law.harvard.edu/leda/data/36/MAGDO.html>, retrieved May 18, 2004.

¹²⁵ Rocky Schmidt, *Designer Law: Fashioning a Remedy for Design Piracy*, 30 UCLA L. Rev. 861, 861-880 (1983).

CHAPTER SIX: SUMMARY AND CONCLUSIONS

The purpose of this research was to examine the concept of style and design piracy within the historical context of the American ready-to-wear apparel industry. The study of the arguments for and against piracy within the early U.S. apparel industry provided crucial ethical, economic, and social implications relative to protecting works of fashion for their originality. Through an analysis of journalistic coverage in trade and popular fashion periodicals, pertinent legal records, economic and census data, governmental hearings, archival sources, and the case study of the Fashion Originators Guild of America, this research demonstrated the relationships between American perceptions about access to fashion, the developing ready-to-wear-establishment, and piracy. The precise time boundaries of this research were 1910 through 1941. These years encompassed the rise of the ready-to-wear industry and coincided with the beginning of the trade publication *Women's Wear Daily*. The year 1941 marked the end of the Fashion Originators Guild of America court case that decided their program of industry self-regulation against piracy was illegal.

Summary

In the late nineteenth and early twentieth century, the women's ready-to-wear apparel industry grew rapidly. Changes in the need and availability of apparel as well as technical advancements that speeded mass production allowed for a wide variety of styles, quantities, and prices of women's ready-to-wear clothing. Increased opportunities for consumption through the retail medium of department stores and expanding societal roles of women intensified the tempo of fashion. Women desired, needed, and were more able to afford and acquire fashionable clothing. Department stores and manufacturers catered to the need for

more clothing by rapidly producing, promoting, and selling garments that contained elements with only small stylistic changes.

These rapid style changes stimulated clothing sales and profits by encouraging obsolescence and premature replacement of goods. Remaining “in fashion” became a more important motivator for purchasing clothing than did reasons of durability or quality of materials. The public compulsion for continual style creativity, evinced in the number of styles introduced each season by various manufacturers, was encouraged by the ready-to-wear women’s apparel industry. Firms operating on very little capital and with few employees were able to enter the apparel industry and achieve relative success by imitating the fashionable styles produced by other manufacturers and designers. There was great multiplicity of similar looking styles. Due to advances in the quality of less expensive materials, such as rayon, manufacturers were able to produce comparable styles in a wide variety of quality and price. This resulted in less obvious visual differentiation between social and economic classes.

As the women’s ready-to-wear apparel industry grew in value and number of establishments, there were ardent attempts by industry individuals and organizations to bridge the gap between ready-to-wear mass production and the establishment of creative style leadership. While this leadership had traditionally come from France, America, specifically New York, had developed many of the essential elements necessary for a creative fashion center. There was a plethora of designers, unexcelled technical skill in the needlecraft industries, expansive retail outlets, and a quickly developing garment district. There were great debates, however, concerning the appropriateness and ability of the United States to become a center of fashion and of style leadership. France, due to laws that

protected style originators as well as a rich artistic heritage, created the most fashionable styles. Yet, economic considerations, such as rising duties on French goods and a need to promote U.S. economic interests, propelled the U.S. ready-to-wear apparel industry to create and support creative design talents. Numerous proposals were discussed to support and encourage emergent creative talents in America. These included a call to teach design students independence from Paris, the establishment of style libraries and museums for American designer inspiration, and a plea for U.S. retail stores to use advertising to promote American fashion.

Historically, the U.S. copied from the French. However, as the women's ready-made industry expanded rapidly after the 1890s a trickle-down process of copying within the United States became a widespread practice. One of the most peculiar characteristics of the women's dress trade was the rapidity with which rival firms copied higher end manufacturers. As a style was copied at successively lower prices, the market was flooded with cheap imitations of higher end goods. Original dress manufacturers were forced to produce with such "multiplicity and at such frequent intervals" that rival competitors would "lag behind."¹ As the twentieth century progressed, techniques for creating fashionable styles became increasingly streamlined for U.S. manufacturers. Rather than spending money on custom duties and paying for the authorization to copy Parisian styles, American manufacturers began the practice of copying garment styles from rival U.S. firms.

Style piracy affected the structure of the apparel industry. One of the greatest complications of the style piracy dilemma, however, was that few parties agreed to the

¹ Julius Henry Cohen, *Law and Order in Industry: Five years Experience* (New York: The MacMillan Co., 1916), 88.

implications of these changes. Proponents in favor of style protection believed piracy resulted in great economic losses and disadvantages to the manufacturer and retailer, since imitators of styles were able to produce cheaply with fewer risks of creation. Proponents believed the practice of piracy which promoted the fashionability of clothing rather than durability features, created inferior quality goods to the detriment of consumers. Further, consumers who paid for high-priced originals had no guarantee that their garments would remain exclusive and not copied in all price ranges within weeks. Paid minimum wages for long hours, employees couldn't learn styles fast enough to master new techniques and details accelerated by the promotion of rapid style change.

Those industry members opposing style protection argued that the growth of the dress industry was due to the affects of piracy: the ability to supply fashionable merchandise at low prices and the frequent changes of fashion, which caused obsolescence of articles before their actual utility was exhausted. They contended the frequent turnover of styles, caused by copying, accounted for the sizable volume of business done by the apparel industry. Manufacturers who opposed style protection and produced in the lower price points, worried that ending piracy would destroy their ability to create fashionable goods at cheap prices. It was, after all, their purpose to copy the latest high-fashion, high-price styles into garments lower income consumers could afford.

In many ways, the style piracy debate intensified as a result of the Great Depression's impact on women's consumption habits. During the Depression, thousands of able-bodied, willing workers were unemployed. Accustomed to buying ready-to-wear in a variety of price and quality levels, women chose to purchase less-expensive garments rather than cease buying altogether. The shift in consumer demand from high priced to low priced dresses

caused a fundamental shift in the competitive relationship of the dress industry. More high priced than low priced firms went out of business. To meet consumer demand, firms specializing in the lower price brackets grew dramatically and higher-priced firms simply could not compete.

In this climate, the Fashion Originators Guild of American incorporated (FOGA) in 1932. The FOGA was a trade association of leading, higher-priced dress manufacturers and retailers who cooperated in an attempt to eliminate design piracy. The FOGA created a style registration bureau that recorded members' original styles; produced identifying FOGA labels to be sewn into garments; and formulated rules and policies for retailer and manufacturer members in order to protect original merchandise. The Guild extensively advertised and publicized their program for style protection in the trade press, specifically, *Women's Wear Daily*. The Guild, with thousands of retailer-manufacturer members throughout America, was highly effective at safeguarding against piracy. However, changes in the Guild's original agenda, primarily the inclusion of lower priced manufacturers and retailers in their style protection program, caused great controversy. Lower priced manufacturing groups banded together to fight against the Guild. The Federal Trade Commission and the United States Supreme Court in 1941 deemed the FOGA's actions monopolistic. The Guild was ordered to cease and desist, ending one of the most effective and controversial industry attempts at self-regulation against piracy.

Protection of women's apparel against style piracy was quite difficult. First, protection of styles against piracy was contradictory to the concept of fashion. Without the social process of imitation, the lucrative business of the women's ready-to-wear apparel industry could not exist. There must be copies if there are to be fashions, and thus the fashion

industry. The most paradoxical feature of the style piracy debate was that those who complained about piracy seemed to demand on one hand the continuation of the social custom of rapidly changing fashions because it provided them constantly new markets for styles, and seemed to demand on the other some sort of monopoly control over the process. It became an inescapable conclusion that proponents of style protection were trying to provide the copies themselves.

Second, an objective criterion for determining product originality was difficult. To distinguish the old from the new, the original from the adaptation, the adaptation from the copy, and the obvious from the unobvious, was nearly impossible. These problems were multiplied in the women's ready-to-wear apparel industry which placed thousands of different styles in production each season, each conforming to the prevailing fashion in varying price and quality levels. Women plainly sought clothing that was within the range of fashionability, yet met their requirements of affordability.

Today, the ease and speed of piracy has reached new proportions in the age of global communications, as copies often reach stores before the originals and at a fraction of the cost. Large apparel producers continue to use price to compete, able to keep wholesale costs low for some of the same reasons that existed in the 1930s. They eliminate at least a portion of the cost of developing original styles and patterns. While some designers still attempt to fight the problem, others compare it to the process of sampling in the music industry. According to Tom Wolfe "copying became referencing and the stigma was removed." Joan Kaner observed that "today's knock-off houses provide good value and style," making it a better

buy than “overpriced” designer houses that spend a lot on advertising and fashion shows.² The legality of “creatively borrowing” others’ ideas has produced such Internet websites as Anyknockoff.com and Designer Style for Less. These sites do not come without controversy, however. In a summer 2003 article in the popular press magazine, *USA Weekend*, Mitch Clow, international trade specialist for the U.S. Bureau of Customs and Border Protection, suggested the possibility that at least some apparel firms producing counterfeit and pirated apparel “fund organized crime and terrorism.”³ While the apparel industry continues to debate the rubric of “referencing,” the FOGA was an important early case highlighting the ethical, economic, and social considerations of a program of industry-wide self-regulation.

² Teri Agins, *The End of Fashion: The Mass Marketing of the Clothing Business* (New York: William Morrow and Co., 1999); Cathy Horyn, “Is Copying Really a Part of the Creative Process?” *The New York Times*, April 9, 2002, 1.

³ Staci Wood, “Buying Knockoffs is a Slippery Slope,” *USA Weekend*, July 27-29, 2003, 17.

REFERENCES CITED

- Adams, Samuel Hopkins. "How American Women Come out for Open Recognition on merit of American Styles and Merchandise." *Ladies Home Journal*, March 1913.
- Agins, Teri. *The End of Fashion: The Mass Marketing of the Clothing Business*. New York: William Morrow and Co., 1999.
- . "Fashion Knockoffs Hit Stores before Originals as Designers Seethe." *The New York Times*, August 8, 1994, 1.
- Anspach, Karlyne. *The Why of Fashion*. Iowa: Iowa State University Press, 1969.
- Archer, Melanie, and Judith R. Blau, "Class Formation in Nineteenth Century America: The Case of the Middle Class." *Annual Review of Sociology* 19 (1993): 17-41.
- Aspinwall, Grace. "Lady Duff-Gordon." *Good Housekeeping* (1910) 573.
- Bailey, William. *Americans in Paris, 1900-1930: A Selected, Annotated Bibliography*. New York: Greenwood Press, 1989.
- Barber, Bernard, and Lyle Lobel. "Fashion in Women's Clothes and the American Social System." *Social Forces* 31, no. 2 (December 1952): 124-131.
- Benbow-Pfalzgraf, Taryn. (ed.). *Contemporary Fashion* (Detroit, MI: St. James Press, 2002).
- Benoit-Smullyan, Emile. "Status, Status Types, and Status Interrelations." *American Sociological Review* 9 (1944): 151-161.
- Benson, Susan Porter. *Counter Cultures: Saleswomen, Managers, and Customers in American Department Stores 1890-1940*. Chicago: University of Illinois Press, 1986.
- Bernhardt, Sarah. "Can the American Woman Design her Own Clothes?" *Ladies Home Journal* (1912): 9.
- Bidwell, Percy W. *The Invisible Tariff*. New York: Council on Foreign Relations, 1939.
- Bonney, Therese and Louise Bonney. *A Shopping Guide To Paris*. New York: Robert M. McBride & Company, 1929.
- Blumberg, Paul. "The Decline and Fall of the Status Symbol: Some Thoughts on Status in a Post Industrial Society." *Social Problems* 21 (1974): 480-98.

- Blumer, Herbert. "Fashion Movements." *From Collective Behavior: An Outline of the Principles of Sociology*. Edited by Robert Ezra Park. New York: Barnes and Noble, 1939.
- Blunt, Irene. "Fighting the Design Pirate." *Journal of the Patent Office Society* 15 (1933): 29-35.
- Buckland, Sandra S. "Promoting American Fashion 1940 through 1945: From Understudy to Star." Ph.D. diss., The Ohio State University, 1996.
- Buckland, Sandra S., and Gwendolyn S. O'Neal. "'We Publish Fashions Because They Are News': The New York Times 1940-1945." *Dress* 25 (1998): 33-4.
- Call, Chas. "Pleasing Guilds and Pleasing Chains Two Different Games." *Women's Wear*, November 26, 1935, 14.
- Clark, Marjorie Belle. "America...Refuge for Fashion." *Textile World* (1940): 72.
- Coburn, Julia. "So You Want to Be A Designer," *Ladies Home Journal* (1935): 22-5.
- Coffin, Judith G. "Women's Place and Woman's Work in the Paris Clothing Trades." Ph.D. diss., Yale University, 1985.
- Cohen, Julius H. *Law and Order in Industry: Five Years Experience*. New York: Fairchild Publications, 1970.
- Cornelius, Helen. "American Designer Movement." *Journal of Home Economics* (1934): 500-501.
- Costume Design*. N.Y.: Federated Council on Art Education and the Institute of Women's Professional Relations, 1936.
- Cranor, Katherine. "Homemade Versus Ready-Made Clothing." *The Journal of Home Economics* (1920): 230-233.
- Crawford, M.D.C. "We Need Interpretive Creation-Not Copying." *Women's Wear*, June 28, 1919, 3.
- . "Suggests Establishment of Special Stores to Carry Merchandise of American Craftsmen," *Women's Wear*, July 1, 1919, 2.
- . "High Time That Design Piracy Should Disappear." *Women's Wear*, February 7, 1919, 21.
- . "How Is a Costume Created?" *Arts and Decoration* (1921): 228-229.

- . "End of Rash Individualism Started Era of Good Trade." *Women's Wear Daily*, January 22, 1936, 4.
- . *The Ways of Fashion*. New York: G.P. Putnam's Sons, 1941.
- . "One of Best Things Written on Subject." *Women's Wear*, April 29, 1941, 21.
- Creange, Henry. *The Guilds of America*. New York: The Guilds of America Foundation, Inc., 1932.
- Dameron, Kenneth. "Retailing under the N.R.A. I." *The Journal of Business of the University of Chicago* (1935): 1-26.
- Daves, Jessica. *Ready-Made Miracle: The American Story of Fashion for the Millions*. New York: G.P. Putnam's Sons, 1967.
- Derenberg, Walter. "Commercial Prints and Labels: A Hybrid in Copyright Law." *Journal of the Patent Office Society* 22 (1940): 452-468.
- Dickerson, Kitty, and Jeanette Jarnow, *Inside the Fashion Business*. New Jersey: Prentice Hall, 2002.
- Donahue, Mary. "Design and the Industrial Arts in America, 1894-1940: An Inquiry into Fashion Design and Art and Industry." PhD diss., The City University of New York, 2001.
- Dulles, Eleanor L. *The French Franc 1914-1928*. New York: The Macmillan Company, 1929.
- Duval, Elizabeth. *The New York Times Magazine*. September 15, 1940, 89
- Ely, Grace D. *American Fashion Designers*. New York: Personnel Group, 1935.
- Fainsod, Merle, Lincoln Gordon, and Joseph Palamountain. *Government and the American Economy*. New York: W.W. Norton And Company, 1959.
- Farrell-Beck, Jane, and Colleen Gau. *Uplift: The Bra in America*. Philadelphia, PA: University of Pennsylvania Press, 2002.
- Farrell-Beck, Jane, Alyson Rhodes-Murphy, Meredith I. Richardson. "Clothes Hangers: From Business Tool to Consumer Convenience, 1852-1936." *Clothing and Textiles Research Journal* 18 (2000): 9-18.
- Fenning, Karl "N.R.A. Codes." *Journal of the Patent Office Society* (1934): 189-203.

- Fleming, E. McClung. "Artifact Study: A Proposed Model." *Winterthur Portfolio* (1974): 153-173.
- Funderburk, Jane A.U. "The Development of Women's Ready-To-Wear, 1865 to 1914: Based on *New York Times* Advertisements." PhD diss., The University of Maryland, 1994.
- Gamber, Wendy "The Female Economy: The Millinery and Dressmaking Trades, 1860-1930." PhD diss., Brandeis University, 1990.
- Geier, Oscar. "What has Been Accomplished towards Protecting Textile Designers." *Journal of the Patent Office Society* 16 (1934): 221-227.
- Glock, Ruth E., and Grace I. Kunz. *Apparel Manufacturing: Sewn Products Analysis*. Upper Saddle River N.J.: Prentice Hall, Inc., 2000.
- Gotshal, Sylvan, and Alfred Leif. *The Pirates will Get You*. New York: Columbia University Press, 1945.
- Gotshal, Sylvan. *Today's Fight for Design Protection*. New York: Sylvan Gotshal, 1957.
- Green, Nancy. "Art and Industry: The Language of Modernization in the Production of Fashion." *French Historical Studies* 18, no.3 (Spring 1994): 722-748.
- Gregory, Paul M. "Fashion and Monopolistic Competition." *The Journal of Political Economy* (1948): 69-75.
- Haire, Alphonsus. "Pirated Designs." *The New York Times*, January 20, 1913, 10.
- Harman, Henrietta. "Development of the American Designer." *Journal of Home Economics* 23 (1931): 423-6.
- Hartman, Stephen. "Protest Move to Bar Dress Style Copying." *The New York Times*, September 25, 1934, 32.
- Hawes, Elizabeth. *Fashion is Spinach*. New York: Random House, 1938.
- Himmelberg, Robert. *The Origins of the National Recovery Administration*. New York: Fordham University Press, 1976.
- Holbrook, Weare, and Frank Fogarty, "Clarence," *The New York Herald Tribune*, January 20, 1935.
- Hollen, Norma R., and Carolyn M. Kundel. *Pattern Making by the Flat-Pattern Method*. Upper Saddle River N.J.: Prentice Hall, Inc., 1993.

- Hooper, Emma M. "Remodeling Last Year's Gowns." *The Ladies' Home Journal* (1893).
- Horyn, Cathy. "Is Copying Really a Part of the Creative Process?" *The New York Times*, April 9, 2002, 1.
- Hudson, Thomas. "A Brief History of the Development of Design Patent Protection in the U.S." *Journal of the Patent Office Society* 30 (1948): 380-400.
- Hurlock, Elizabeth. *Psychology of Dress*. New York: Arno Press, 1976.
- Hutchinson, Kenneth. "Design Piracy." *Harvard Business Review* 53, no. 2 (Winter 1940): 191-198.
- Josephy, Helen, and Mary M. McBride. *Paris is a Women's Town*. New York: Coward-McCann, Inc, 1929.
- Keesing, F.M. *Cultural Anthropology*. New York: Holt, Rinehart, & Winston, 1958.
- Kidwell, Claudia, and Margaret Christman. *Suiting Everyone: The Democratization of Clothing in America*. Washington: The Smithsonian Institution Press, 1974.
- King, Elizabeth Miner. "War, Women, and American Clothes." *Scribner's Magazine*, (1917): 592-598.
- Kunz, Grace. *Merchandising: Theory, Principles, and Practice*. New York: Fairchild Books, 1998.
- Larson, Simon. "Union Impact on Price in the Dress Industry." Master's thesis, City College, 1963.
- Laver, James. *A Concise History of Fashion*. New York: Doubleday, 1965.
- Leach, William. *Land of Desire: Merchants, Power, and the Rise of a New American Culture*. New York: Vintage Books, 1993.
- . "Transformations in a Culture of Consumption: Women and Department Stores, 1890-1925." *The Journal of American History* 71 (September 1984): 319-342.
- Leipzig, Sheryl F. "It Is a Profession That is New, Unlimited And Rich!: The Promotion Of The American Fashion Designer in the 1930s." Phd diss., Iowa State University, 2005.
- Levine, Lewis. *The Women's Garment Workers: A History of the International Ladies Garment Workers Union*. New York: B.W. Huebsch, 1924.

- McDonnell, Eleanor K. "Plain Tales from the Tourists." *Saturday Evening Post* (1930): 125.
- Meiklejohn, Helen Everett. *Dresses: Impact of Fashion on a Business*. N.Y.: McGraw-Hill Book Co., Inc., 1938.
- Mendes, Valerie, and Amy De La Haye. *20th Century Fashion*. New York: Thames and Hudson, 1999.
- Milbank, Caroline Rennolds. *New York Fashion: The Evolution of American Style*. New York: Harry N. Abrams, 1989.
- Miller, Ethelwyn. "Americanism: The Spirit of Costume Design." *The Journal of Home Economics* 10 (1918): 207-211.
- Morris, Desmond. *The Human Zoo*. New York: McGraw Hill, 1969.
- Muelle, Babette. "New York Dressmakers." *Good Housekeeping* (1903): 302-303.
- Nikonow, John P. "Patent Protection for New Designs of Dresses." *Journal of the Patent Office Society* (1935): 253-4.
- Norris, James D. *Advertising and the Transformation of American Society, 1856-1920*. New York: Greenwood Press, 1990.
- Nystrom, Paul H. *Fashion Merchandising*. N.Y.: The Ronald Press Co., 1932.
- . *Economics of Fashion*. N.Y.: The Ronald Press Co., 1928.
- O'Brien, Ruth. *Boston Conference on Distribution*. Boston: Retail Trade Board, Boston Chamber of Commerce, 1934.
- Oglesby, Catharine. *Fashion Careers: American Style*. New York: Funk and Wagnalls Company, 1936.
- Parker, B.W. "The Commerce of Clothes." *Good Housekeeping* (1909): 524-526.
- Parsons, Jean L. "No Longer a 'Frowsy Drudge' Women's Wardrobe Management: 1880-1930." *Clothing and Textiles Research Journal* 20 (2002): 33-41.
- . "Dressmakers: Transitions in the Urban Production of Custom-Made Clothing, 1880-1920." PhD diss., The University of Maryland, 1998.
- Payne, Blanche, Geital Winakor, and Jane Farrell-Beck. *The History of Costume*. New York: Longman, 1992.

- Pope, Jesse E. *The Clothing Industry in New York*. New York: Burt Franklin, 1905.
- Richards, Florence S. *The Ready-to-Wear Industry 1900-1950*. New York: Fairchild Publications, 1951.
- Richardson, Bertha June. *The Woman Who Spends: A Study of Her Economic Function*. Boston: Thomas Todd Co., 1916.
- Robinson, Selma. "America Dresses Herself." *Woman's Home Companion* (1941): 15.
- Roshco, Bernard. *The Rag Race: How New York and Paris Run The Breakneck Business of Dressing American Women*. New York: Funk & Wagnalls, 1963.
- Rossman, Joseph. "Proposed Registration of Designs." *Journal of the Patent Office Society* 17 (1935): 995-998.
- Rukeyser, M.S. "American Returns from Europe." *World's Work* (1927): 82-89.
- Schorman, Rob. *Selling Style: Clothing and Social Change at the Turn of the Century*. Pennsylvania: University of Pennsylvania Press, 2003.
- Severa, Joan. *Dressed for the Photographer: Ordinary Americans and Fashion, 1840-1900*. Ohio: Kent State University Press, 1995.
- Shaw, Madelyn. "American Fashion: The Tirocchi Sisters in Context." *From Paris to Providence, Fashion, Art and the Tirocchi Dressmakers' Shop, 1915-1947*. Providence, R.I.: Museum of Art, Rhode Island School of Design, 2000.
- Simmel, Georg. "Fashion." *International Quarterly* (1904): 130-155.
- Sjoberg, Gideon. "Are Social Classes in America Becoming More Rigid?" *American Sociological Review* 16 (1951): 775-783.
- Smith, Bernard. "A Study of Uneven Industrial Development: The American Clothing Industry in the Late 19th and Early 20th Centuries." PhD diss., Yale University, 1989.
- Steele, Valerie. *Paris Fashion: A Cultural History*. New York: Oxford University Press, 1988.
- Stevenson, Margaretta (ed.). *How the Fashion World Works: Fit Yourself for a Fashion Future*, Addresses given at The Fashion Group's Training Courses. N.Y.: Harper & Brothers Publishers, 1938.
- Storm, Penny. *Functions of Dress*. New Jersey: Prentice Hall, 1987.

- Stuart, Jessie. *The American Fashion Industry*. Boston: Simmons College, 1951.
- Tarbell, Ida *The Business of Being a Woman*. New York: The Macmillan Company, 1912.
- Taussig, F.W. *The Tariff History of the United States*. New York: G.P. Putnam's Sons, 1914.
- Tortora, Phyllis, J., and Keith Eubank. *Survey of Historic Costume*, 4th ed. New York: Fairchild Publications, 2005.
- Traphagen, Ethel. "The French Fashion Factory." *The North American Review* (1930): 19-22.
- Trimble, Jesse. "Why Paris is the Capital of Fashion." *The Delineator* (1907): 291, 408.
- Troy, Nancy. *Couture Culture: A Study in Modern Art and Fashion*. Massachusetts: MIT Press, 2003.
- Veblen, Thorstein. *The Theory of the Leisure Class*. New York: Random House, 1934.
- Walsh, Margaret. "The Democratization of Fashion: The Emergence of the Women's Dress Pattern Industry." *The Journal of American History* (1979): 299-313.
- Welters, Linda, and Patricia A. Cunningham. "The Americanization of Fashion." *Twentieth Century American Fashion*. Oxford: Berg, 2005.
- Westermann, Anna Burnham. "Can America Originate its Own Fashion?" *Ladies Home Journal* (1909): 11-12.
- Williams, Henry. "Report of the Committee on Protection of Designs." *Journal of the Patent Office Society* 15 (1933), 807-813.
- Wood, Staci. "Buying Knockoffs is a Slippery Slope." *USA Weekend*, July 27-29, 2003, 17.
- Zahn, Samuel. "League Feels It Has Won Style Niche For \$10.75 Dresses." *Women's Wear Daily*, April 3, 1935, 8.

GOVERNMENT AND LEGAL DOCUMENTS

- Allinson, May. *Dressmaking as a Trade for Women in Massachusetts*, U.S. Bureau of Labor Statistics, Census Bulletin 193. Washington, D.C.: GPO, 1919.
- Drake, Leonard and Carrie Glaser. *Trends in the New York Clothing Industry*. NY: Institute of Public Administration, 1942.
- Dress Creators' League of America, Inc. Incorporation Papers. November 1932, New York Department of State.

Fashion Originators Guild of America, Inc. Incorporation Papers. March 1932, New York Department of State.

Fashion Originators Guild of America v. Federal Trade Commission. 312 U.S. (1941).

Johnston, A.C., and Florence A. Fitch. *Design Piracy: The Problem and Its Treatment Under NRA Codes*. Washington: Office of N.R.A. Administration, 1936.

Popular Priced Dress Manufacturers Group, Inc. Incorporation Papers. September 1934, New York Department of State.

Recent trends in important manufacturing industries in New York. New York: Division of State Planning, 1941.

Tepere, Lazare. *The Woman's Garment Industry, an Economic Analysis*. New York: Educational Department of the International Ladies Garment Workers Union, 1937.

The American Society of Style Creators. Incorporation Papers. 1930, New York Department of State.

The Clothing and Textile Industries in New York and its Environs. New York: Regional Plan of New York and its Environs, 1925.

The Dress Creators' League of America, Inc. Incorporation Papers. November 9, 1932, New York Department of State.

The National Association of Style Creators. Incorporation Papers. November 1934, New York Department of State.

The National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*. November 15, 1934.

Trends in the Foreign Trade of the United States. New York: National Industrial Conference Board, 1930.

Trowbridge, S. *Some Aspects of the Women's Apparel Industry*. Division of Review, N.R.A., Work Materials No. 44., March 1936.

U.S. Census Office. Fifteenth Census. *Fifteenth Census of the United States Taken in the Year 1929, Distribution* (Washington, D.C.: Government Printing Office, 1932).

U.S. Census Office. *Census of Manufacturers, 1921*. (Washington, D.C.: Government Printing Office, 1924).

WM Filene's Sons Co v. Fashion Originators Guild, 90 F.2d, 556 (1937).

LEGAL ARTICLES

- Anne Theodore Briggs, Student Author, *Hung Out to Dry: Clothing Design Protection Pitfalls in United States Law*, 24 Hastings Communications and Entertainment L. Journal 169, 169-200 (Winter 2000).
- Ralph Brown, *Design Protection: An Overview*, 34 UCLA L. Rev. 1337, 1337-1404 (1987).
- Zecharias Chafee, *Unfair Competition*, 53 Harvard Law Review 1289, 1289-1321 (June 1940).
- David Goldenburg, *The Long and Winding Road, A History of The Fight Over Industrial Design Protection in the United States*, 45 JCPS 21, 21-48 (Fall 1997).
- Leslie Hagen, *A Comparative Analysis of Copyright Laws Applied to Fashion Works: Renewing the Proposal for Folding Fashion Works in the United States*, 26 Texas Int. L. Journal, 341-388 (1991).
- Christine Magdo, "Protecting Works of Fashion from Design Piracy," *LEDA at Harvard Law School*, <http://leda.law.harvard.edu/leda/data/36/MAGDO.html>, retrieved May 18, 2004.
- Roger Meiners and Robert Staaf, *Patents, Copyrights, and Trademarks: Property or Monopoly*, 13 Harvard Journal of Law and Public Policy 911, 911-934 (Summer 1990).
- Jennifer Mencken, *A Design for the Copyright of Fashion*, B.C. Intell. Prop. & Tech F. 121201 (1997).
- Safia Nurhabhai, "Style Piracy Revisited", *NYSBA* 10, no. 3, (Winter 2001): 1-11.
- Peter Schalestock, Student Author, *Forms of Redress for Design Piracy: How Victims can Use Existing Copyright Law*, 21 Seattle U. L. Rev. 113, 113-126 (Summer 1997).
- Rocky Schmidt, *Designer Law: Fashioning a Remedy for Design Piracy*, 30 UCLA L. Rev. 861, 861-880 (1983).
- Maurice Weikart, *Design Piracy*, 19 Indiana Law Journal 235, 235-257 (1943-1944).

SPECIAL COLLECTIONS

- Memories of Maurice Rentner From Varying Perspectives. The Oral History Project of the Fashion Industries of FIT. Fashion Institute of Technology, New York, 1982.
- Special Collections, Gladys Marcus Library, Fashion Institute of Technology, New York.

TRADE NEWSPAPERS

Ladies' Home Journal. 1910-1932.

The New York Times. 1912-1940.

Women's Wear Daily. 1911-1942.