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PYTHON CROSSING PROHIBITED: THE INTERPLAY OF ETHICS, AESTHETICS, REGULATION, AND INDUSTRY TRANSFORMATION IN THE LUXURY APPAREL MARKET

SOPHIA MOSSBERG*

INTRODUCTION

For over a century, python has been a valuable and coveted mainstay in designer collections, particularly in the accessories market for luxury goods.¹ Python boots, handbags, and jackets are among the most expensive and sought-after items of all exotic skin products, which make up about 4% of the luxury goods market.² Recent multinational studies and media focus on fashion's demand for the trade of exotic goods reveal its pervasive impact on wildlife conservation, sustainability, illegal trade practices, and animal welfare.³ A combination of state interest in protecting endangered species and public consumer interest in ethical practices of production has created an interesting regulatory landscape in which states may elect to prohibit trade of certain species' skins.⁴ For example, California is the only state in the nation that bans the commercial importation, sale, or possession with intent to sell of python.⁵ In practice, this means that no seller, whether an individual with an eBay account or Gucci on Rodeo Drive, may lawfully ship or sell any python product across the California border.⁶

This trade prohibition is meaningful (if not ultimately effective) considering the role of exotic skins in California's markets and California's

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¹ Vanessa O'Connell, *The New Politics of Purses*, THE WALL STREET JOURNAL (Aug. 4, 2007), <http://www.wsj.com/articles/SB118617695123687760> [<https://perma.cc/SUH5-JT9A>].

² Christina M. Russo, *Fashion's Love of Python Comes at a Price*, FASHIONISTA (June 2, 2014), <http://fashionista.com/2014/06/python-fashion> [<https://perma.cc/XR6F-AKXQ>].

³ DANIEL J.D. NATUSCH & JESSICA A. LYONS, INTERNATIONAL UNION FOR CONSERVATION OF NATURE, ASSESSMENT OF PYTHON BREEDING FARMS SUPPLYING THE INTERNATIONAL HIGH-END LEATHER INDUSTRY, 5 (2014), <https://portals.iucn.org/library/sites/library/files/documents/SSC-OP-050.PDF> [<https://perma.cc/5AF3-T6UC>].

⁴ CAL. PENAL CODE § 653o (West 2016).

⁵ *Id.*

⁶ O'Connell, *supra* note 1.

role within a global context.⁷ California is not only one of the most important luxury goods markets in the United States,⁸ but also in the world.⁹ Los Angeles is a luxury goods hub, and in addition to being home to various designer flagships and outposts, the city is also home to over one-third of all apparel manufacturing jobs in the United States.¹⁰ Many brands, including luxury powerhouse Bottega Veneta and mid-market leaders like Michael Kors, increasingly use anaconda skin as a python alternative.¹¹ However, the Convention on International Trade in Endangered Species deems both anacondas and pythons to be at risk of extinction if trade is not monitored closely.¹² These two exotic skins are treated equally in terms of endangerment, yet are regulated and protected differently among countries and among states in North America.¹³ Though some countries, such as Brazil, prohibit commercial harvest and export of the anaconda, it can be traded freely into California, while the similarly threatened python species slithers into California only legally as hand-carried gifts or illegally on the black market.¹⁴

This contradiction, along with various loopholes to compliance, is an example of the need for clarified and uniform standards in order to reconcile conflicting ideas about how and why we protect certain species, and whether piecemeal state regulations can actually serve the environmental goals of the original legislation. Productive answers toward reconciling domestic and international inconsistencies and creating workable ethical standards of production that protect exotic species may be found not in legal provisions or revisions, but in the belly of the beast itself: within the fashion industry's corporate decisions as they respond to consumer demand, which simultaneously impact policy.¹⁵ Ultimately, a combinatory approach that takes both regulation and industry evolution

⁷ *Id.*

⁸ Hiroko Tabuchi, *Rushing to Cater to America's Rich*, THE NEW YORK TIMES (Nov. 18, 2014), http://www.nytimes.com/2014/11/19/your-money/in-sales-of-luxuries-geography-matters-.html?_r=0 [<https://perma.cc/4HQU-JZPE>].

⁹ Austen Leah Rosenfeld, *Is Los Angeles the World's Next Fashion Capital?* I-D (Mar. 30, 2015), https://i-d.vice.com/en_us/article/is-los-angeles-the-worlds-next-fashion-capital [<https://perma.cc/LFK3-AMLF>].

¹⁰ Hayley Phelan, *Could Los Angeles Be the Next Fashion Capital?* FASHIONISTA (Aug. 16, 2012), <http://fashionista.com/2012/08/is-los-angeles-the-next-fashion-capital-we-asks-in-dustry-vips-to-weigh-in> [<https://perma.cc/QUD7-GMMV>].

¹¹ O'Connell, *supra* note 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Russo, *supra* note 2.

into account may be most productive and powerful toward fulfilling ethical, aesthetic, and corporate goals.

In recent years, various high-profile fashion houses, designers, and international apparel companies have publicly pledged never to use exotic animal skins in their garments, accessories, or manufacturing processes.¹⁶ These measures are not mere acts of regulatory compliance, but rather are proactive business decisions responding to consumer interest in ethical production.¹⁷ In these cases, which include examples from all market sectors, including H&M¹⁸ (mass retail), Nike¹⁹ (athletic), and Stella McCartney²⁰ (luxury), the approval sought is not that of the government; fashion manufacturing is imposing stricter environmental policy standards from within, in a direct appeal to consumer interest.²¹ These companies are banking on a business model that trusts the alignment of consumer spending and consumer values.²² They also reflect a changing standard of normalcy in terms of an environmental and ethical baseline.²³ The more brands that voluntarily cater to a consumer interest in ethical and sustainable production, the less optional and voluntary the practice becomes, as companies must conform in order to compete.²⁴ As companies and brands increasingly make this transition, others follow suit, recognizing that what was once seen as merely a moral imperative has become an economic imperative as well.²⁵

While the impetus for ethical production likely stems from public relations interests, and thus chiefly serves branding directives as opposed to ecological or social concerns, such marketing decisions yield the same environmental results.²⁶ In this way, leading brands and apparel conglomerates are shaping and setting industry standards that are far

¹⁶ Harriet Quick, *Planet fashion: on how consumers demand ethics to match their aesthetics*, WALLPAPER (July 28, 2015), <http://www.wallpaper.com/fashion/planet-fashion-on-how-consumers-demand-ethics-to-match-their-aesthetics> [<https://perma.cc/8RJJC-PE78>].

¹⁷ *Id.*

¹⁸ *Animal Welfare Policy*, H&M, <http://sustainability.hm.com/en/sustainability/downloads-resources/policies/policies/animal-welfare-policy.html> [<https://perma.cc/M2C7-2BUB>].

¹⁹ *Nike Inc—Animal Rights*, ETHICAL CONSUMER, <http://www.nikeresponsibility.com/report/uploads/files/Animal-Skins-Policy.pdf> [<https://perma.cc/BQ6U-VKA9>].

²⁰ *Responsible Sourcing*, STELLA MCCARTNEY, <http://www.stellamccartney.com/experience/us/sustainability/responsible-sourcing-policies/> [<https://perma.cc/7L3B-U3ZV>].

²¹ Quick, *supra* note 16.

²² Nathaniel Dafydd Beard, *The Branding of Ethical Fashion and the Consumer: A Luxury Niche or Mass-market Reality?*, 12:4 FASHION THEORY, 447, 452 (2008).

²³ *Responsible Sourcing*, *supra* note 20.

²⁴ Beard, *supra* note 22, at 452–53.

²⁵ *Id.* at 452.

²⁶ Quick, *supra* note 16.

more ambitious, environmentally activist, and comprehensive than existing legislation, thereby lapping state and federal government protectionist provisions in their wake.²⁷ This Note will provide a background on the trade of python and other exotic skins, discuss the confusing and often contradictory regulatory framework that governs the import and export of such skins, and finally, argue that industry self-regulation is a more powerful tool in addressing issues of sustainability and animal welfare than federal, state, or treaty regulatory intervention.

I. BACKGROUND

A. *Background on the Python Trade*

Python skin used in production for the luxury market comes from python farms in Cambodia, China, Indonesia, Malaysia, Thailand, and Vietnam.²⁸ Python farm production systems are complex, involving breeding, housing, feeding, caging, and slaughter.²⁹ The reticulated python and the Burmese python, both large Asian pythons, have been harvested from the wild for the use of their skins for nearly eighty years.³⁰ These skins are primarily used in production to serve the international luxury leather goods market.³¹ In recent decades, and particularly the past twenty years, the fashion industry's growing demand for python skins has caused the scale of trade in python skins to skyrocket; within the last ten years, roughly half a million python skins were exported from Asian countries each year.³² Luxury brands have a vested interest in increasing both supply and demand for exotic skin products.³³ Analyst Mario Ortelli told Bloomberg Business, "Louis Vuitton, Prada, and Gucci are trying to elevate the level of perceived exclusivity of their brands, and exotic-skin products really help."³⁴ Italy, Germany, and France are among the largest importers of python skins.³⁵ With no sign of demand slowing

²⁷ Beard, *supra* note 22, at 450.

²⁸ NATUSCH & LYONS, *supra* note 3, at 12–13.

²⁹ *Id.* at 16–19.

³⁰ Press Release, Kering, Kering and IUCN Announce First Report on Python Captive Breeding (Mar. 31, 2014), http://www.kering.com/en/press-releases/kering_and_iucn_announce_first_report_on_python_captive_breeding_ [<https://perma.cc/C9MZ-FEJB>].

³¹ NATUSCH & LYONS, *supra* note 3, at 8.

³² *Id.* at 8.

³³ Janice Kew & Andrew Roberts, *A Crocodile's Bumpy Road From Farm to Handbag*, BLOOMBERG BUS. (Oct. 24, 2013), <http://www.bloomberg.com/bw/articles/2013-10-24/a-crocodiles-bumpy-road-from-farm-to-handbag> [<https://perma.cc/EHZ9-YZ9W>].

³⁴ *Id.*

³⁵ Kering, *supra* note 30.

down, it is likely a growing need for more product will continue, which would put pressure on the wild supply.³⁶

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”) aims to prevent the overexploitation of species by trade, and has been in force since 1975.³⁷ Appendix I of CITES lists species that are threatened with extinction, and may be affected by trade, and Appendix II lists species for which trade must be controlled, or else the species will be at risk of extinction.³⁸ The reticulated python and the Burmese python are listed under Appendix II, which requires countries that are signatories to CITES to ensure that any trade in these species is legal, is traceable through a system of permits and certificates, and will not be detrimental to wild populations.³⁹ The term “detrimental to wild populations” comes from Article IV of the CITES Convention, which provides that a permit will only be granted for export if “a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species.”⁴⁰ The permit also requires that “the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora” and that “any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.”⁴¹

Countries involved in the sourcing and breeding of pythons, some of which are CITES signatories, must balance the issues of cost, labor, and resource efficiency with environmental considerations.⁴² There are three primary types of production systems used for sourcing python skins.⁴³ First, closed-cycle captive breeding occurs when adult pythons exchange gametes in a controlled environment with no reliance on, or input from, wild populations.⁴⁴ The second type is ranching, in which eggs or young pythons are removed from the wild to be raised in a controlled environment, where veterinary treatment, habitat manipulation, and supplementary feeding

³⁶ *Id.*

³⁷ CONVENTION ON INT’L. TRADE AND ENDANGERED SPECIES OF WILD FAUNA AND FLORA, What is CITES?, <https://cities.org/eng/disc/what.php> [<https://perma.cc/9SV3-6R8P>] (last visited Apr. 4, 2017).

³⁸ Endangered Species and Wild Fauna and Flora, U.N. app. 1–3, July 1, 1975 [hereinafter CITES].

³⁹ *Id.*

⁴⁰ *Id.* at art. 4.

⁴¹ *Id.*

⁴² *Id.*

⁴³ NATUSCH & LYONS, *supra* note 3, at 19.

⁴⁴ *Id.*

take place.⁴⁵ Once the pythons reach a specific size or weight, they are exploited for use of their skins.⁴⁶ The third type is wild harvesting, in which there is regular and programmed removal of pythons from the wild for either live export or further processing to supply the commodity, which in this case is skins.⁴⁷ In wild harvesting, any subsequent processing does not require intensive human management, as do the first two types of production systems.⁴⁸ As pythons are included in the Appendix II list of species for which trade must be controlled in order to prevent extinction and destruction to habitat and life, the ever-increasing demand for python skins for use in fashion and accessory products poses a conflict between economic interests and environmental interests for both the importing and exporting countries.⁴⁹ The standards and policies for countries of origin are inconsistent and vary in regards to export controls, legality of wild capture, permitting, and endangerment classification.⁵⁰ For example, Vietnam banned wild harvest in 1998, listing python among endangered, rare, and precious fauna that are prohibited for exploitation or use for commercial purposes.⁵¹ Vietnam categorizes python as Critically Endangered, which means that the population has decreased due to illegal trade, hunting, and habitat degradation.⁵² However, Vietnam is the largest exporter of captive-bred python skins in the world.⁵³ In Cambodia, little information is available about trade practices and breeding farms, which results in inconsistent information.⁵⁴ For example, Cambodia reported thousands of python exports under a captive-bred CITES source code, yet authorities cannot confirm any known python farms in the country.⁵⁵

Because there is so much variation and inconsistency in how countries enforce rules and regulations, the effectiveness of overarching systems like CITES is severely diminished. The lack of an international framework for how and why to protect the python population in a way that goes beyond rhetoric or text in an agreement results in a lack of knowledge, control, and power for companies striving to comply with

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ NATUSCH & LYONS, *supra* note 3, at 8, 49–50.

⁵⁰ *Id.* at 12–14.

⁵¹ *Id.* at 13.

⁵² *Id.* at 14.

⁵³ *Id.* at 13.

⁵⁴ *Id.* at 12.

⁵⁵ NATUSCH & LYONS, *supra* note 3, at 12.

weak and varying rules.⁵⁶ Even giant companies that have the capital and market power to enact any production scheme they desire or are required to effect, such as Gucci Group or LVMH (owner of Louis Vuitton, among others), often do not have direct control over their supply chain.⁵⁷ Producing countries such as Vietnam and Cambodia export large numbers for use in handbags, shoes, and other products, without complying with control measures.⁵⁸ The process and environmental destruction becomes lost in translation as the skins are harvested and sent from farm to factories in a shroud of mystery that hides animal cruelty, illegal trade, and unsustainable practices; that this occurs behind the scenes is convenient for the importers.⁵⁹

B. The Impact of Captive Breeding Production Systems

It is largely undisputed that the impact of the python trade on wild populations raises issues related to sustainability, illegal trade, and animal welfare. In response, high-end leather industry representatives advocate for captive breeding production systems, which they argue can sustain international demand for python skins in a way that is acceptable according to global standards for sustainability and animal welfare.⁶⁰ The Python Conservation Partnership is a collaboration between Kering, the Boa and Python Specialist Group of the International Union for Conservation of Nature, and the International Trade Center.⁶¹ Kering is a particularly important and influential member of the Partnership because it owns luxury brands including Gucci, Bottega Veneta, Saint Laurent, Alexander McQueen, Balenciaga, and Stella McCartney.⁶² This Partnership presented a report titled “Assessment of Python Breeding Farms Supplying the International High-end Leather Industry” in March of 2014.⁶³ The Assessment argues in part that python conservation would likely benefit from captive breeding.⁶⁴ As part of its published

⁵⁶ Karl Ammann, *The Medan Connection*, CULTURE UNPLUGGED, <http://www.cultureunplugged.com/documentary/watch-online/play/13088/The-Medan-Connection> [<https://perma.cc/2WHQ-NUUG>].

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ NATUSCH & LYONS, *supra* note 3, at 5.

⁶¹ Kering, *supra* note 30.

⁶² *Luxury Brands*, KERING, <http://www.kering.com/en/brands/luxury> [<https://perma.cc/QMF8-6NGZ>].

⁶³ Kering, *supra* note 30.

⁶⁴ *Sustainably Sourced Precious Skins & Furs*, KERING, <http://www.kering.com/en/sustainability/targets/sustainable-precious-skins-furs> [<https://perma.cc/5D8A-VQ2D>].

sustainability mission, Kering states that “100% of precious skins and furs in Kering’s products will come from verified captive breeding operations or from wild, sustainable managed populations. Additionally, suppliers will employ the upmost animal welfare and humane treatment practices in sourcing.”⁶⁵ Kering’s paring of captive breeding with sustainability reveals the extent to which fashion industry players believe such harvesting is the way of the future, and sell this idea to the public.⁶⁶ It is, of course, to the benefit of the fashion industry to find that python farming is a viable path toward sustainability, since the industry and its leaders have an economic interest in fulfilling the increasing market demand for exotic skins.

Despite the Assessment’s claims, those with conservationist and wildlife interests take issue with the biological and economic feasibility of breeding pythons for skins.⁶⁷ There is limited information currently available that would determine whether the python harvesting is sustainable long-term.⁶⁸ For example, the current numbers and data may not reflect that fact that many of the pythons are killed before they are able to breed, reducing the population of pythons that can actually sustain growth.⁶⁹ There is also evidence to suggest that a lack of oversight and regulation of the harvest sites enables ranching facilities to catch wild pythons and present them as a product of on-site breeding.⁷⁰ Furthermore, although captive breeding may seem like a sustainable alternative to wild capture and harvest of python skins, captive breeding for the purpose of commercial production may create commercial incentives leading to extinction, thereby increasing the value of captive bred product, as opposed to encouraging recovery of wild python populations that could potentially compete in the market with the captive bred product.⁷¹ In this way, python farming potentially disincentivizes protection of wild pythons.⁷² Captive breeding also disincentivizes the protection of the wild python habitats that must be maintained to sustain a growing population.⁷³ Therefore, even though captive breeding has elements of sustainable

⁶⁵ *Sustainability Targets*, KERING, <http://www.kering.com/en/sustainability/targets> [https://perma.cc/6X2E-3BAM].

⁶⁶ *See id.*

⁶⁷ NATUSCH & LYONS, *supra* note 3, at 30–37.

⁶⁸ Russo, *supra* note 2.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ NATUSCH & LYONS, *supra* note 3.

⁷² *Id.*

⁷³ *Id.*

use and protection in its underlying objectives, python farming systems are likely to undermine conservation of the species and its habitats.

C. *California's "Python Law"*

California Penal Code § 653o, often referred to as California's "Python Law" by fashion industry personnel, concerns the importation of animal parts for commercial purposes.⁷⁴ The law governs specific animal parts that have been flagged as necessary to control for environmental and sustainability reasons.⁷⁵ Section 653o(a) provides that "It is unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable antelope, wolf (*Canis lupus*), zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free-roaming feral horse, dolphin or porpoise (*Delphinidae*), Spanish lynx, or elephant."⁷⁶ In addition to python, other exotic skins that have a direct impact on fashion production and merchandizing are alligator and crocodile.⁷⁷ There are 25,000 handbags alone made from crocodile skins for the luxury market.⁷⁸ Section 653o(b)(1) provides that "Commencing January 1, 2015, it shall be unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any crocodile or alligator."⁷⁹ Retailers, particular luxury goods retailers based in Los Angeles, have been actively lobbying the legislature to exempt alligator skin from the prohibition.⁸⁰

The California legislature's intent targets commercial activity, and does not prohibit possession of python (or the other listed animals) for any other purpose.⁸¹ Other permissive purposes may include possession for decoration, personal use, or education, as long as the item is legally acquired.⁸²

⁷⁴ *Information Regarding CA Penal Code Section 653o*, CALIFORNIA DEP'T OF FISH AND WILDLIFE, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=55138> [<https://perma.cc/4HWG-Z5XP>].

⁷⁵ *See id.*

⁷⁶ CAL. PENAL CODE § 653o (West 2016).

⁷⁷ Marc Lifsher, *Bill to Let Retailers Keep Selling Alligator Products Advances*, THE LOS ANGELES TIMES (April 18, 2014), <http://www.latimes.com/business/la-fi-alligator-legislation-20140411-story.html> [<https://perma.cc/CQV8-NCZE>].

⁷⁸ Kew & Roberts, *supra* note 33.

⁷⁹ CAL. PENAL CODE § 653o (West 2016).

⁸⁰ Lifsher, *supra* note 77.

⁸¹ *See* CALIFORNIA DEP'T OF FISH AND WILDLIFE, *supra* note 74.

⁸² *See id.*

Therefore, a California resident may purchase an article of clothing made with exotic skin, or a piece of exotic skin itself in another country or state, and bring it into California for use under the “personal” umbrella.⁸³ According to § 6530(d), the penalties for violating the law include fines, imprisonment, or both.⁸⁴

There is some evidence that the Python law has been a deterrent on smaller, up-and-coming designers whose work is principally based in California.⁸⁵ For example, California-based designer Heather Belle uses leather versions of exotic skins “because the faux versions look as good as the real thing—for a much lower cost. . . . Also, she notes, python-skin products, for example, are banned in California.”⁸⁶ In an example of intervention post-manufacturing, famed boot designer Tony Loma was forced to reach a settlement with the Los Angeles County District Attorney’s office, agreeing “to import no more python boots and to pay penalties and costs of \$143,000.”⁸⁷

D. Shortcomings of the “Python Law” in Practice

Various loopholes and practices enable designers, consumers, suppliers, and participants in the production chain to circumvent the California law in both procedural and substantive ways.⁸⁸ In terms of logistics, small-scale retailers and individuals can bring python products across the border under the guise of “personal use” and stock small quantities for sale, as authorities would not likely police such small-scale activity.⁸⁹ It is therefore a favorable gamble for a boutique owner to take the risk of stocking one or two python items at a time, the sale of which could bring

⁸³ *Id.*

⁸⁴ *Exotic Skins Bans in California*, TROUTMAN SANDERS (Apr. 18, 2012), <http://www.troutmansanders.com/files/Uploads/Documents/CLE%20Seminar%20-%20Exotic%20Skins%20Bans%20in%20California%20-%20April%2018,%202012.PDF> [https://perma.cc/4NZN-QHB5].

⁸⁵ See, e.g., Samantha Critchell, *Animal Skins: Real Or Fake, Is Donning Exotic Animal Pelts The Latest Fashion Trend?* (May 1, 2012), http://www.huffingtonpost.ca/2012/05/01/animal-skins-spring-trend_n_1468396.html [https://perma.cc/ZT6K-6P6W].

⁸⁶ *Id.*

⁸⁷ Michael Parrish, *Python Skin Cowboy Boots Get the Boot*, LOS ANGELES TIMES (Dec. 6, 1990), http://articles.latimes.com/1990-12-06/business/fi-8024_1_python-skin-cowboy-boots [https://perma.cc/Y3VG-MP6W].

⁸⁸ CAL. PENAL CODE § 6530 (West 2016).

⁸⁹ Monica Corcoran, *Banned in California—This Season’s Snakeskin*, THE NEW YORK TIMES (Mar. 9, 2000), <http://www.nytimes.com/2000/03/19/style/banned-in-california-this-season-s-snakeskin.html> [https://perma.cc/M589-QFNP].

in thousands of dollars.⁹⁰ Because the statute prohibits the sale of python, retailers would not be able to claim that any imported goods were already on the shelf prior to the enacting of any law banning importation.⁹¹ However, illegal trade practices can occur at any point in the supply chain procedure.⁹² In addition to fraudulently sourcing from wild populations, laborers at harvesting and breeding sites may seek to sell excess skins illegally in order to circumvent export quotas.⁹³ For example, “in the export process, the snake skins can easily be concealed within shipments of other legally exported products, permits can be falsified, or the documents that state whether a python has been captive bred or caught in the wild can be forged.”⁹⁴

Retailers may look to modern merchandizing operations to circumvent liability. In an increasingly technology-focused market, e-commerce is driving sales of luxury goods at a high and increasing rate. There is a lack of guidance from caselaw governing internet purchases in this arena.⁹⁵ The question of when an internet sale is affirmatively made in the state of California has yet to be answered in a legal context.⁹⁶ Factors could include IP address information, the state of residence of the purchaser, the state of residence of the seller, the location of the computer server, the billing address to which the item was sent, and the delivery address at which the item arrived.⁹⁷ Until there is more concrete guidance or litigation history, the determination of the geographic point of sale via e-commerce remains murky. Buyers and sellers across the country may be able to take advantage of what seems to be a less-regulated online landscape where the rules are unclear.

Designers can circumvent the law in substantive—and perhaps ultimately more destructive—ways, by using anaconda in lieu of python.⁹⁸ According to the *Wall Street Journal*, “anaconda has seen a surge in popularity recently as designers use it to get around the California python ban. . . . Designer Kara Ross says high-end department store Neiman Marcus suggested she make some handbags only in anaconda, so they

⁹⁰ *Id.*

⁹¹ CAL. PENAL CODE § 653o (West 2016).

⁹² Russo, *supra* note 2.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ TROUTMAN SANDERS, *supra* note 84.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ O’Connell, *supra* note 1.

could be sold in California as well as other states.”⁹⁹ Using anaconda skin in products that would traditionally require python is in some ways trading one destructive path for another. Anaconda is just as threatened as python, and in fact is protected in other countries.¹⁰⁰ For example, Brazil protects the anaconda, and prohibits its commercial harvest and export.¹⁰¹ The two snake breeds are similarly threatened from an international perspective.¹⁰² Despite this, while Brazil prohibits exportation and importation, designers and importers in the United States view anaconda skin as a means to comply with the python prohibitive laws. Demand for anaconda skin, imports of the skin, and price-per-meter of the skin have all risen in recent years.¹⁰³ Furthermore, most brands that use anaconda in lieu of python are marketed and sold internationally, so, because of the inconsistencies in regulation, there is no major impact.¹⁰⁴ Without an amendment to include anaconda as well, the python law is in practice arbitrary in terms of conservation.

Even though California has one of the most important luxury markets, one state’s law cannot have a resounding national or international impact, because designers are marketing to multiple states and countries that have inconsistent export and import rules. According to George Buehler, an attorney for Tony Loma, “[w]ith this species of python, it was legal to export it from Africa, to import it to Spain and then to Texas. The only problem came in California’s extraordinarily broad statute banning all python imports. No other state bans this product.”¹⁰⁵ Weak enforcement mechanisms, a thriving black market, and inconsistency among the states in terms of how they regulate trade practices contributes to a confusing legal landscape for companies to navigate. The state law is meaningful in intent and purpose, but cannot act alone to assuage the social and environmental problems that stem from U.S. imports of python in fashion. Piecemeal, state-by-state solutions at the micro level are not adequate solutions or steps toward a larger solution to the social and environmental costs associated with the python trade in fashion. Without an overarching, systematic framework for controlling its use and

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Injurious Wildlife Species; Listing Three Anaconda Species and One Python Species as Injurious Reptiles, 80 Fed. Reg. 12702 (Mar. 10, 2015).

¹⁰³ O’Connell, *supra* note 1.

¹⁰⁴ *See id.*

¹⁰⁵ Parrish, *supra* note 87.

sale, designers and consumers face inconsistent laws, guidelines, and messages that are unproductive in resolving the issues.

II. PROPOSED SOLUTIONS

A. *Alternatives in Lieu of the State-by-State Approach*

Because a state-by-state approach to regulating the commercial use of exotic skins gives way to loopholes and inconsistency on a national scale, some might champion the alternative of federally implemented regulation. Differing state interests and regulations are often ineffective when in combination for a multistate transaction. For example, Louisiana is the primary source of wild alligator skins bought and sold in California, and is the only shrimping state in the U.S. that does not enforce federally mandated protections for endangered sea turtles in its shrimp fleet.¹⁰⁶ A federal regulatory framework for prohibiting trade of certain exotic skins could streamline regulation and solve the issues with cross-border inconsistencies. However, a federal initiative is likely infeasible on a national scale because of conflicting state economic interests.

Administrative feasibility is a difficult hurdle to overcome for federal initiatives. Time frame, resources, and various procedural roadblocks are factors that may preclude an overarching rule from passing. Even if passed on a legislative level, the regulation would be unlikely to survive the Administrative Procedure Act's "arbitrary and capricious" test.¹⁰⁷ This standard of review gives courts the authority to set aside agency action.¹⁰⁸ It would be an especially difficult standard of review in this case, because a federal standard would require a critical mass of states' interests to align. Complicated and time-consuming litigation would result.

A federal alternative that may encounter fewer administrative roadblocks would be the proposition of a treaty that codifies a list of animals of which trade has enormous social and environmental costs.

¹⁰⁶ Jennifer Molidor, *A Bad Boutique Law Shows its Skin*, ANIMAL LEGAL DEFENSE FUND (Oct. 15, 2014), <http://aldf.org/blog/a-bad-boutique-law-shows-its-skin/> [<https://perma.cc/KRK7-77F8>].

¹⁰⁷ Ninth Circuit Court of Appeals, *Standards of Review—Review of Agency Decisions* (revised May 2012), http://cdn.ca9.uscourts.gov/datastore/uploads/guides/stand_of_review/IV_Review_AD.pdf [<https://perma.cc/JVW9-CDCA>].

¹⁰⁸ Edward Rubin, *Viewing the Arbitrary and Capricious Test as a Set of Function-Specific Criteria*, JOTWELL (Mar. 17, 2014), <http://adlaw.jotwell.com/viewing-the-arbitrary-and-capricious-test-as-a-set-of-function-specific-criteria/> [<https://perma.cc/6MCZ-84FF>] (reviewing Louis J. Virelli III, *Deconstructing Arbitrary and Capricious Review*, 92 N.C.L. REV. (2014)).

The list could include factors already at play under the Endangered Species Act, but could steer additional focus to animal welfare factors, as well as habitat destruction and sustainability factors.¹⁰⁹ In doing so, this treaty could streamline a national and international understanding of which exotic skins are borne from destructive trade and manufacturing practices. States would then implement import laws according to which exotic skin species are both native and listed. It would be difficult to require states to do so, however, or enforce compliance, without facing the same regulatory and administrative roadblocks as would a federal law or scheme. Therefore, this type of broad top-down approach is unlikely to combat ethical and environmental concerns with practical and measured results.

B. Self-Regulation Within the Industry

Over the past decade, the rise of formalized participation in prohibitory programs and public commitment to cruelty-free and sustainable production has taken a strong hold in the luxury marketplace.¹¹⁰ There has been a similar trend in the mass-market retail sphere toward a focus on sustainability and welfare.¹¹¹ Corporations and their brands have capitalized on the commercial value of public relations campaigns that align with the public interest.¹¹² Related industries such as publishing have contributed to the rising focus on ethical treatment and environmental conservation.¹¹³ For example, a number of British fashion magazines including *Vogue*, *Elle*, and *Harper's Bazaar* prohibit the publication of photos of real fur.¹¹⁴ While this exclusion does not yet extend to exotic skins like python and crocodile, the stage is set and the rhetoric and

¹⁰⁹ 16 U.S.C. §§ 1531–1544 (2006).

¹¹⁰ WHARTON SCHOOL OF UNIVERSITY OF PENNSYLVANIA, *From 'Eco-luxury' to 'E-luxury': Redefining the Concept of Luxury after the Crisis* (June 1, 2001), <http://knowledge.wharton.upenn.edu/article/from-eco-luxury-to-e-luxury-redefining-the-concept-of-luxury-after-the-crisis/> [https://perma.cc/A2YT-V7YC].

¹¹¹ Sarah Roth-Oosten, *Eco-Consciousness in Luxury Fashion*, FASHION GLOBE MAGAZINE (Feb. 8, 2013), <http://www.thefashionglobe.com/eco-luxury-fashion> [https://perma.cc/HN C3-HWGU].

¹¹² Rachel Dodes & Sam Schechner, *Luxury-Goods Markers Brandish Green Credentials*, THE WALL STREET JOURNAL (July 2, 2009), <http://www.wsj.com/articles/SB124650107013784081> [https://perma.cc/B2J8-FAZK].

¹¹³ Rebecca Gonsalves, *Fashion's faux and sustainable options: How designers are redefining luxury with ethical substitutes*, THE INDEPENDENT (Nov. 16, 2015), <http://www.independent.co.uk/life-style/fashion/features/fashion-s-faux-and-sustainable-options-how-designers-are-redefining-luxury-with-ethical-substitutes-a6736671.html> [https://perma.cc/GW88-VZ7N].

¹¹⁴ *Id.*

rationale for doing so are already in motion.¹¹⁵ While decades past saw a focus on ostentatious materialism and conspicuous flaunting of exotic products, a new concern for environmental and social issues is reflected in consumer demand for ethical and sustainable products.¹¹⁶ Marketing teams across the country and around the world have implemented campaigns highlighting these emerging directives.¹¹⁷ In 2009, the *Wall Street Journal* took note of this shift, stating that “over the past year, many of the world’s best-known luxury labels have started to introduce ecofriendly products, snap up brands that tout their social responsibility and weave environmental themes into their advertising and marketing.”¹¹⁸ This trend creates a prism of “eco” and “fair trade” and “socially conscious” language through which production is analyzed and consciously aligned.¹¹⁹ As a result, the proliferation of sustainable materials and faux skins has taken a strong hold within the industry, prompting an overhauling of prominent designers’ production processes.¹²⁰

The fact that influential brands like Louis Vuitton have made public commitments to these environmental and social values creates a domino effect among other brands and retailers. For example, LVMH (Louis Vuitton’s parent company) conducted a “carbon inventory” in order to research its impact on greenhouse gas emissions, and, based on this study, made concrete changes to travel and air shipment of goods.¹²¹ Such high-profile initiatives send a message that the luxury market cares about these values, and raises the bar for the rest of the market to respond in similar environmentally responsible ways. This trend is present in mass-market retail as well. Statements like the following have become commonplace: “Levi Strauss & Co. is pioneering practices to reduce the use of energy, water, chemicals and other materials in the apparel industry. We can’t do this alone, but by taking innovative actions and partnering with others throughout the industry, we can help drive change and reduce our overall environmental impact.”¹²² Sustainability and traceability are ever more important to the modern consumer, as “[t]oday’s consumers are interested in knowing where the products they consume

¹¹⁵ *Id.*

¹¹⁶ Dodes & Schechner, *supra* note 112.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Gonsalves, *supra* note 113.

¹²¹ Dodes & Schechner, *supra* note 112.

¹²² *Sustainability*, LEVI STRAUSS & CO., <http://www.levistrauss.com/sustainability/planet/> [<https://perma.cc/8V48-VQ54>].

are coming from, and understanding the impact of their design, production and development on the environment and on people.”¹²³ Now that some of the most prominent designers and retailers have made such public and real commitments, without a substantial revenue hit, others are following suit for marketing purposes, which has the same effect in terms of social, animal, and planet welfare.¹²⁴ In many ways, leaders in the luxury goods industry are self-regulating by publicly signing agreements, committing to never use exotic skins in garment and accessory manufacturing.¹²⁵ There is now an abundance of alternative materials available from luxury fashion houses and the mass-market sphere.¹²⁶ More importantly, key players within the industry are working together to promote the use of these materials and ways they can be integrated into the supply chain and production process.¹²⁷ For example, François-Henri Pinault (Kering’s chairman and chief executive, and the majority shareholder in Balenciaga and Gucci) shared in a speech at London College of Fashion that Kering had developed new ways of working with leather in the production process that eliminated polluting and environmentally harmful elements.¹²⁸ More important than the development of such processes was that Kering “would share this information with rival companies, signifying a desire to enact real change rather than maintain a competitive edge in order to sell more bags.”¹²⁹ Kering also established the Material Innovation Lab in order to develop sustainable luxury textiles.¹³⁰

The mass market has already embraced faux-skins, largely because they are available at an affordable price, whereas authentic exotic skins are generally unavailable at mass-market price points.¹³¹ At stake here is the luxury consumer, who knows the difference in product quality and value, can afford products at any price point, and desires products with exclusive

¹²³ WHARTON SCHOOL, *supra* note 110.

¹²⁴ *Id.*

¹²⁵ See Gonsalves, *supra* note 113 (discussing how companies are stopping the use of fur, or refusing to advertise it).

¹²⁶ *Sustainable Materials*, STELLA MCCARTNEY, <http://www.stellamccartney.com/experience/us/material/> [https://perma.cc/8QQT-2D52].

¹²⁷ KERING, *supra* note 65.

¹²⁸ Gonsalves, *supra* note 113.

¹²⁹ *Id.*

¹³⁰ Maya Singer, *The Clothing Insurrection: It's Time to Take On the Fashion Supply Chain*, VOGUE (Apr. 20, 2015), <http://www.vogue.com/13268385/fashion-supply-chain-environmental-impact/> [https://perma.cc/8WXZ-MS27].

¹³¹ *Animal Welfare*, H&M, <http://about.hm.com/en/About/sustainability/commitments/natural-resources/animal-welfare.html> [https://perma.cc/2U6Z-7TPZ].

value such as exotic skins.¹³² Often, the very fact that the skins are limited and require incredible feats of labor production is what attracts these customers and gives the exotic skin products their unique and high value.¹³³ Additionally, “because of their long-standing concern for quality and craft, luxury brands could effectively counteract some of the problems endemic to fast fashion and provide leadership on issues relating to sustainability.”¹³⁴ Therefore, the potential to make a large impact lies within the luxury bracket. It is also within the luxury market where there is great momentum already towards sustainable and ethical production. Top designers with a commitment to cruelty-free products include Stella McCartney,¹³⁵ Cole Haan (owned by Nike),¹³⁶ Ferragamo,¹³⁷ and Miu Miu (owned by PRADA Group).¹³⁸ As the industry is already evolving and progressing at a faster rate and in more impactful ways than piecemeal government regulation can, potential for change within the industry is strong.

It is important to highlight the unique global reach and influence of many of these companies.¹³⁹ While borders limit state legislation, and even federal legislation, corporate policy reaches wherever the company expands. Therefore, the international nature of the fashion industry posits its companies in a position to effect global change.¹⁴⁰ This global influence is especially meaningful when on a mass scale involving a large company.¹⁴¹ It is also especially important, since “fast-fashion” retailers have greater

¹³² *How the Legendary Birkin Bag Remains Dominant*, THE FASHION LAW (June 23, 2015), <http://www.thefashionlaw.com/archive/how-the-legendary-birkin-bag-remains-dominant> [<https://perma.cc/T9HW-4JUP>].

¹³³ *Id.*

¹³⁴ Annamma Joy, John F. Sherry Jr, Alladi Venkatesh, Jeff Wang & Ricky Chan, *Fast Fashion, Sustainability, and the Ethical Appeal of Luxury Brands*, 16:3 FASHION THEORY, 273–95 (2012).

¹³⁵ *Sustainability Commitment*, STELLA MCCARTNEY, <http://www.stellamccartney.com/experience/us/sustainability/our-commitment/> [<https://perma.cc/W9WE-25SN>].

¹³⁶ *Cole Haan: Stepping Towards Innovative Solutions*, <http://www.nrcm.org/documents/ColeHaanProfile.pdf> [<https://perma.cc/RA3X-SVZH>].

¹³⁷ Elisa Niemtow, *2011 in Retrospect: What Luxury Brands Teach Us about Sustainability*, THE CORPORATE SOCIAL RESPONSIBILITY NEWSWIRE (Dec. 23, 2011), <http://www.csrwire.com/blog/posts/250-2011-in-retrospect-what-luxury-brands-teach-us-about-sustainability> [<https://perma.cc/9YDL-KP24>].

¹³⁸ *Social Responsibility*, THE PRADA GROUP, <http://www.pradagroup.com/en/group/social-responsibility> [<https://perma.cc/6L7Q-ZQLD>].

¹³⁹ Joy, Sherry, Venkatesh, Wang & Chan, *supra* note 134.

¹⁴⁰ *Collaboration*, THE APPAREL COALITION, <http://apparelcoalition.org/collaboration-article/> [<https://perma.cc/ARY5-JT37>].

¹⁴¹ F. Caniato et al., *Environmental sustainability in fashion supply chains: An exploratory case based research*, INT. J. PRODUCTION ECONOMICS 135 659–70 (2012).

pressure to cut costs and corners.¹⁴² H&M is a prime example of immense national and global influence, with suppliers and stores in over sixty countries around the world.¹⁴³ Sixty countries—the sheer potential impact of one mere sentence from the company, let alone a sustainability document, is enormous. H&M has committed not only to responsible material sourcing, but also to increasing supply chain transparency by publicizing information about suppliers and holding these supplies to elevated standards across all borders.¹⁴⁴ Nike is another example of expansive global reach and power in the apparel and footwear industry.¹⁴⁵ Its sustainability mission and monitoring is robust, beginning at the outset of the production cycle.¹⁴⁶ Decisions made “in the design phase determine the majority of a product’s environmental impacts, and can have exponential effects up and down our value chain.”¹⁴⁷ Nike also makes explicit the collaboration necessary to effect permanent and meaningful advancement of sustainability.¹⁴⁸ Toward that end, Nike collaborates with the Sustainable Apparel Coalition,¹⁴⁹ the Fair Labor Association,¹⁵⁰ the International Labor Organization,¹⁵¹ and the International Finance Corporation.¹⁵² The fragmented nature of production adds to the complexity inherent in a global fashion industry.¹⁵³ The Sustainable Apparel Coalition states, “[t]he urgency and expanse of the sustainability issues facing the apparel, footwear and home textiles industries requires collective attention on a global scale. . . . No company alone can shift the existing industry paradigms.”¹⁵⁴

¹⁴² Joy, Sherry, Venkatesh, Wang & Chan, *supra* note 134.

¹⁴³ *Sustainability*, H&M, <http://sustainability.hm.com/en/sustainability.html#cm-menu> [<https://perma.cc/A7WY-Z93D>].

¹⁴⁴ *Id.*

¹⁴⁵ *Sustainability Strategy*, NIKE, <http://www.nikeresponsibility.com/report/content/chapter/our-sustainability-strategy#sthash.nQ7eGID8.dpuf> [<https://perma.cc/C3E9-CGX5>].

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Members*, THE SUSTAINABLE APPAREL COAL., <http://apparelcoalition.org/members> [<https://perma.cc/8VZ2-8HTS>] (last visited Apr. 4, 2017).

¹⁵⁰ *Affiliates*, FAIR LABOR ASS'N, <http://www.fairlabor.org/affiliates?page=10> [<https://perma.cc/C9R7-6W2R>] (last visited Apr. 4, 2017).

¹⁵¹ *ILO Public-Private Partnerships: Who Has Partnered with the ILO?*, INT'L LABOR ORG., http://www.ilo.org/pardev/partnerships/public-private-partnerships/WCMS_456482/lang--en/index.htm [<https://perma.cc/G49G-5P64>] (last visited Apr. 4, 2017).

¹⁵² FY 14/15 SUSTAINABLE BUSINESS REPORT, NIKE, INC. 58 (2016), http://s3.amazonaws.com/nikeinc/assets/56356/NIKE_FY14-15_Sustainable_Business_Report.pdf [<https://perma.cc/8JLW-SR89>].

¹⁵³ Joy, Sherry, Venkatesh, Wang & Chan, *supra* note 134, at 275.

¹⁵⁴ THE SUSTAINABLE APPAREL COAL., *supra* note 149.

Another collaborative global venture is the Responsible Ecosystems Sourcing Platform (“RESP”), which organizes events and discussions that bring to light new technologies, existing practices, and challenges facing responsible sourcing.¹⁵⁵ For example, RESP collaborated with the Mexican government on an event showcasing “technology to track and trace reptile skins” and “the strategy to test this technology in the field in semi-controlled commercial environments.”¹⁵⁶

A combinatory public-private approach may be the best mechanism for addressing the accountability and enforcement limitations inherent in a self-regulating market-controlled system. Government entities may be able to partner with existing industry trade organizations and initiatives to encourage investment in sustainable and ethical practices. Public funding initiatives may look to programs such as the World Bank Group’s International Finance Corporation, which is working with Levi Strauss & Co. to establish a new model for financing (and thereby incentivizing) environmental compliance and stewardship.¹⁵⁷ The collaborative model works under the Global Trade Supplier Finance Program.¹⁵⁸ Through the program,

IFC will offer lower interest rates to suppliers who score better under [Levi Strauss & Co.’s] sophisticated evaluation system for labor, health, safety, and environmental performance. In the intensely competitive garment industry, access to lower cost financing is an advantage for suppliers. And the benefits go beyond money. Suppliers can differentiate themselves from competitors through the validation of the environment and social ratings.¹⁵⁹

State action and capital can help to fund public promotion of companies championing and executing such practices, and promote exposure of

¹⁵⁵ *Reptile Skins*, RESPONSIBLE ECOSYSTEMS SOURCING PLATFORM, <http://www.resp.ch/international-work-groups/reptile-skins> [<https://perma.cc/4JHR-A6A2>] (last visited Apr. 4, 2017).

¹⁵⁶ *Id.*

¹⁵⁷ Farzin Mirmotahari, *Shared Prosperity: IFC and LS & Co. Team Up to Reward Suppliers for Doing the Right Thing*, LEVI STRAUSS: UNZIPPED BLOG (November 5, 2014), <http://www.levistrauss.com/unzipped-blog/2014/11/shared-prosperity-ifc-and-levis-team-up-to-reward-suppliers-for-doing-the-right-thing/> [<https://perma.cc/MT98-RCGV>].

¹⁵⁸ *Trade and Supply Chain*, INT’L FIN. CORP., http://www.ifc.org/wps/wcm/connect/Industry_EXT_Content/IFC_External_Corporate_Site/Industries/Financial+Markets/Trade+and+Supply+Chain/ [<https://perma.cc/2N2K-FHBR>] (last visited Apr. 4, 2017).

¹⁵⁹ Mirmotahari, *supra* note 157.

those whose practices fall short, to the detriment of animals, workers, consumers, and our earth. One route might be offering subsidies or tax credits for adherence with certain ethical and sustainable standards. Companies that meet certain thresholds for sustainable production may be eligible for subsidized billboard space on state highways, for example.

There are, of course, significant limitations to the effectiveness of a predominantly self-regulated system. One of the key problems that often arises is accountability, because a lack of oversight and enforcement allows for discrepancies between public marketing narratives and actual company practices and results.¹⁶⁰ There are various trade associations that encourage and monitor sustainable and ethical practices, but “there is no single organization or governmental body to regulate any specific ‘code of conduct’ for the fashion industry.”¹⁶¹ Examples spanning the globe include the United Kingdom’s Ethical Trading Initiative,¹⁶² the Fair Wear Foundation,¹⁶³ and the Rainforest Action Network’s Out of Fashion campaign in the United States.¹⁶⁴ These organizations and campaigns are influential and important, but their lack of enforcement, integration, and uniformity limits their power and effectiveness in an inherently global industry.¹⁶⁵ Scrutiny of production varies, and companies often use popular “buzzwords” to promote certain kinds of branding, while failing to define the terminology used as it applies to their products or production process.¹⁶⁶ In fact, many have an economic interest in failing to do so, choosing to capitalize on the ambiguity of language relating to conservation and ethical treatment, while expending only minimum resources to actually change practices.¹⁶⁷ The sole change in a brand’s sustainability evolution might be the words used in an advertising campaign.

¹⁶⁰ Antonio Argandoña, *Ethical Management Systems for Not-For-Profit Organizations* 3, 9 (Univ. of Navarra IESE Bus. School, Working Paper No. 693, 2007), https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=1026231 [<https://perma.cc/2ZAW-D47U>].

¹⁶¹ Beard, *supra* note 22, at 450.

¹⁶² *About ETI*, ETHICAL TRADING INITIATIVE, <http://www.ethicaltrade.org/about-eti> [<https://perma.cc/3G2J-V3G3>] (last visited Apr. 4, 2017).

¹⁶³ *About Fair Wear Foundation*, FAIR WEAR FOUND., <http://www.fairwear.org/22/about/> [<https://perma.cc/4DLA-57DX>] (last visited Apr. 4, 2017).

¹⁶⁴ *RAN’s Mission, Vision & Values*, RAINFOREST ACTION NETWORK, http://www.ran.org/mission_and_values [<https://perma.cc/6G9R-Y65C>] (last visited Apr. 4, 2017).

¹⁶⁵ JULIE MCKAY, MARIA OLIVA ARMENGOL & GEORGES PINEAU, EUROPEAN CENT. BANK, REGIONAL ECONOMIC INTEGRATION IN A GLOBAL FRAMEWORK 12, 19 (2005), <https://www.ecb.europa.eu/pub/pdf/other/regionaleconintegrationglobalframework2005en.pdf> [<https://perma.cc/ZHH6-EJF6>].

¹⁶⁶ Beard, *supra* note 22, at 448, 450, 452–53.

¹⁶⁷ *Id.* at 452–53.

Therefore, it is important to mention phraseology as it operates in fashion and retail marketing, in some cases duping consumers with vague, associative language that suggests a far more ethical or environmentally friendly process has occurred.¹⁶⁸ The consumer landscape is flooded with language such as “ethical,” “fair trade,” “ecofashion,” and “vintage,” which is “used in persuading customers to believe that the fashion products they purchase are environmentally friendly and ethically sound.”¹⁶⁹ Questions arise as to what standards and procedures should constitute laudable production from an ethical and ecological perspective. These questions and the difficulty of promoting effective and uniform standards reveal a primary weakness in a system of industry self-regulation.

The flood of ambiguous language and the lack of a precise, universal understanding of what actually constitutes ethical treatment or sustainable materials can be viewed as both a positive and negative thing for environmental welfare. On one hand, there is no doubt that the public may be wary of trusting claims from companies purporting to be beacons of environmental justice while actually doing very little to advance conservation, ethical treatment, illegal trade, and sustainability.¹⁷⁰ A very similar problem occurs in the food labeling industry with the prevalence of ambiguous “organic” language in packaging and marketing.¹⁷¹ Because of the ambiguity and flood of such branded products, “it remains up to individual consumers to navigate their way through the offerings of the fashion brands, deciphering for themselves which brands and products have genuine ‘green credentials,’ from those that do not.”¹⁷²

On the other hand, the lack of regulation and oversight that allows companies to hop on the eco-friendly bandwagon at a relatively low cost helps to advance the environmental cause, because it contributes to a marketplace where these ethical and sustainable considerations are at the forefront of advertising and adds to consumer demand.¹⁷³ This demand can have an impact beyond mere corporate narrative, as “the

¹⁶⁸ *Id.* at 450.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 459, 464.

¹⁷¹ Patrin Watanatada, *Questioning and Evolving the Eco-Label*, THE GUARDIAN: SUSTAINABLE BUS. BLOG (March 10, 2011, 5:00 AM), <http://www.theguardian.com/sustainable-business/blog/questioning-evolving-the-ecolabel> [https://perma.cc/27E2-S8EA].

¹⁷² Beard, *supra* note 22, at 450.

¹⁷³ Michael Hozik, *Making the Green by Going Green: Increased Demand for Green Products and the FTC’s Role in a Greener Future*, GEO. ENVTL. L. REV., Feb. 1, 2016, <https://gellr.org/2016/02/01/making-the-green-by-going-green-increased-demand-for-green-products-and-the-ftcs-role-in-a-greener-future-georgetown-environmental-law-review/> [https://perma.cc/H38R-MFFS].

necessity of transparency in business practice continues to be important, not only as a means of short-term damage limitation in a public relations sense, but as a long-term sustainable economic proposition.¹⁷⁴ A marketplace that is saturated with sustainability language creates a new baseline for optimal, and eventually acceptable, production practices.¹⁷⁵ It creates a consumer base that expects and demands attention to environmental and social concerns.¹⁷⁶ Companies may direct this attention to public relations campaigns and billboards, but arguably the discussion will also arise in boardrooms, design meetings, and investor meetings. In this way, a lack of gatekeeping and top-down regulation in terms of what companies must do to purport to be eco-conscious may actually help to promote widespread attention to these issues and also serve to associate environmental consciousness with added value in the public perception. These shifts, especially over time and in large numbers, can make a large symbolic impact that ultimately translates to actions backing branding associations, even those that were initially tenuous and solely for the purpose of consumer goodwill.¹⁷⁷

CONCLUSION

For practical purposes, it may not matter whether a brand's Chairman of the Board is an environmental activist or an exotic skin enthusiast; market demand, influenced by a sweeping consumer interest in ethical products, will drive the same bottom line. It is well-documented that historically, "the industry of fashion, particularly clothing production, has been a tale associated with exploitation, of both resources and of people."¹⁷⁸ But times are changing. If public and corporate will can strategically align to capitalize on the current demand for ethically and ecologically sourced products, the bottom line will improve to the simultaneous benefit of the consumer, the corporations, those working on the supply chain, and the habitats from which they source (not to mention, the pythons.)

¹⁷⁴ Beard, *supra* note 22, at 458.

¹⁷⁵ EDIT CSANÁK, ECO-FRIENDLY CONCEPTS AND ETHICAL MOVEMENTS IN THE FASHION INDUSTRY 1, 5 (2014), https://www.researchgate.net/profile/Edit_Dr_Csanak/publication/283211577_ECO-FRIENDLY_CONCEPTS_AND_ETHICAL_MOVEMENTS_IN_THE_FASHION_INDUSTRY/links/562e1a2508ae518e3482c07b/ECO-FRIENDLY-CONCEPTS-AND-ETHICAL-MOVEMENTS-IN-THE-FASHION-INDUSTRY.pdf?origin=publication_detail [<https://perma.cc/2E8W-QB3N>].

¹⁷⁶ *Id.* at 4, 5.

¹⁷⁷ Caniato et al., *supra* note 141, at 667–68.

¹⁷⁸ Beard, *supra* note 22, at 450.