

## IP Issues for Fashion Brands



The fashion industry is one of the most polluting industries in the world and is

responsible for roughly 10% of global greenhouse gas emissions. There are many contributing factors to this problem, including pollution from textile factories, water-resource depletion, and merchandise waste.

Younger consumers are increasingly prioritizing sustainability efforts in their [purchasing decisions](#). In fact, 74% of millennials and 62% of Gen Z are willing to pay [more for sustainable goods](#). Consumer demand has caused a discernable and welcome shift towards sustainability in the fashion and apparel industry. This underscores that sustainable fashion and transparency about those efforts will be increasingly important in the years to come.

To that end, below are a few ecocentric trends and related intellectual property (IP) issues that fashion brands should consider to further their sustainability goals while preserving brand value.

### **Recommerce—Boosting Sustainability While Maintaining Brand Integrity**

Consumers are reducing waste by purchasing sustainable, and increasingly secondhand, goods. The resale, or "recommerce," market contributes to the circular economy by reducing clothing waste and extending garment lifecycles. The secondhand market is projected to reach [\\$77 billion by 2025](#) and resale clothing is projected to be 27% of consumers' wardrobe by 2023. Even the luxury sector—a previous skeptic of resale—has warmed up to recommerce.

That said, resale's numerous environmental and economic advantages can come with a trade-off—namely, uncertainty as to product authenticity. The threat of fakes poses challenges for both resellers and brands alike. While the first-sale doctrine limits trademark owners from controlling resale of authentic and unaltered trademarked products, the failure to police against counterfeits could result in the dilution or loss of a trademark owner's rights. Counterfeits also pose significant risks for resellers in the form of infringement and even

[shareholder](#) lawsuits.

Brands can boost sustainability metrics and solve for infringement risk by partnering with recommerce retailers. For example, brands like Gucci, Burberry, and Stella McCartney have been [partnering with popular reseller The RealReal for years](#). By partnering with recommerce retailers, brands can participate in the authentication process, which allows them to prevent brand dilution while still reaping the benefits of participating in the circular economy. Of course, the cache and credibility of brand partnerships surely boosts reseller reputations too.

Brands are also increasingly establishing their own resale programs. For example, [Patagonia](#), [Eileen Fisher](#), [lululemon](#), and [Levi's](#) allow consumers to sell back, trade in, and/or purchase gently used clothes. This approach similarly satisfies consumer demand for fully authenticated secondhand products. Brands can also consider amplifying their trademark filings to cover sustainable or circular market offerings. For example, Nike and Madewell have filed to register some of their brands in association with promoting public interest and awareness around environmentally sustainable practices.

### **Blockchain Technology—Combating Counterfeits and Communicating Sustainability Metrics**

A blockchain is a digital ledger used to record transactions and track assets. Once information is added to a blockchain ledger, the information effectively cannot be removed or modified, which ensures transparency and reliability. This makes blockchain a particularly strong tool for both anticounterfeiting and substantiating sustainability claims.

For example, non-fungible tokens (NFTs)—one-of-a-kind blockchain-based assets—are most often used to represent digital goods and have revolutionized the fashion industry by digitizing physical goods and potentially reducing the need for physical resources, distribution, and manufacturing. Indeed, brands are increasingly filing to protect their key brands in association with NFT goods.

However, NFTs can also be tethered to real-world products, such that they can be used to combat the ever-increasing sale of counterfeit goods that has been accelerated by the rise of [secondhand fashion](#). Specifically, NFTs can be used as digital "passports," which include blockchain-based ledgers that verify the provenance of associated physical products that aid in authentication efforts. Key players in this space include Arianee, which is establishing "NFT digital passports for luxury goods" that will digitize service history and repairs, and LVMH's [Aura Blockchain Consortium](#), which issues digital certificates of authenticity that also detail products' sourcing and sustainability metrics. Digital passports are typically coupled with smart tags using radiofrequency identification (RFID), quick response (QR) codes, or near-field communication (NFC), which are attached to the associated physical products.

Digital passport NFTs are a potential win-win for brands. Their authentication technology will help consumers avoid inadvertently purchasing counterfeits, which reduces brand dilution and increases consumer trust. Further, their ability to communicate and verify information about a product's production and origin help to verify a brand's sustainability claims—which, again, promotes consumer trust and loyalty.

### **Sustainability Trademarks—Transparently Conveying Ecological Commitments**

Trademarks identify the origin of goods, but they also convey brand values—the emotions, missions, and purposes a brand stands for. Thus, trademarks are particularly effective for communicating sustainability.

Luxury brands have increasingly adopted trademarks to communicate the sustainable nature of their products. For example, Prada's Re-Nylon™ line of bags is made with [recycled nylon](#). Louis Vuitton also [adopted an Upcycling Signal Logo](#)—which is a combination of the LV logo and the recycling symbol—for products that are either upcycled or contain at least 50% recycled and bio-sourced materials. Similarly, Valentino recently introduced a sustainable version of its signature Rockstud sneakers, which are branded with [an ecocentric version of its V logo](#).

Trademarks communicate a company's values and signify its reputation. However, to avoid backlash and reputational harm, brands must be transparent and should not overstate their ecological commitments. For example, each of the above mark owners is transparent about its sustainability practices, fiber sourcing, and/or ecological footprints. Fashion and retail brands can enjoy similar success by pairing their branding efforts with achievable goals and transparent messaging.

## Takeaways

There is consumer demand for eco-friendly goods, and fashion brands have certainly reoriented to meet that demand through recommerce and enhanced messaging around their ecological commitments. That said, brands should be careful to consider the various pitfalls that can arise in this space.

Intellectual property counsel can help brands navigate these issues—including through negotiating contractual arrangements with recommerce partners, and selecting, clearing, and protecting trademarks that truthfully reflect sustainability practices and ecological policies.

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